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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In re the Matter of)
Determining the Proper Carrier)
Classification of)
GLACIER RECYCLE, LLC;) DOCKET NO. TG-072226
HUNGRY BUZZARD RECOVERY, LLC;) Volume V
AND T&T RECOVERY, INC.) Pages 128 - 215

A settlement conference in the above matter
was held on April 14, 2010, at 9:33 a.m., at 1300
South Evergreen Park Drive Southwest, Olympia,
Washington, before Administrative Law Judge ADAM E.
TOREM, Chairman JEFFREY GOLTZ, Commissioners PATRICK
OSHIE and PHILIP JONES.

The parties were present as follows:

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
telephone, (360) 624-1225.

GLACIER RECYCLE, LLC; HUNGRY BUZZARD
RECOVERY, LLC; T&T RECOVERY, INC., by DONALD L.
ANDERSON, Attorney at Law, Eisenhower & Carlson, 1201
Pacific Avenue, Suite 1200, Tacoma, Washington 98402;
telephone, (253) 572-4500.

WASHINGTON REFUSE AND RECYCLING ASSOCIATION,
by JAMES K. SELLS, Attorney at Law, Ryan, Sells,
Uptegraft, 9657 Levin Road Northwest, Suite 240,
Silverdale, Washington 98383; telephone, (360)
307-8860.

Kathryn T. Wilson, CCR
Court Reporter

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1 MURREY'S DISPOSAL COMPANY, INC.; WASTE
2 CONNECTIONS OF WASHINGTON, INC.; ISLAND DISPOSAL, INC.;
3 LYNNWOOD DISPOSAL, d/b/a ALLIED WASTE OF LYNNWOOD;
4 EASTSIDE DISPOSAL, d/b/a ALLIED WASTE OF BELLEVUE, by
5 DAVID W. WILEY, Attorney at Law, Williams Kastner, 601
6 Union Street, Suite 4100, Seattle, Washington 98101;
7 telephone, (206) 628-6600.

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1 P R O C E E D I N G S

2 JUDGE TOREM: Good morning. It's Wednesday,
3 April the 14th. It's a little after 9:30 in the
4 morning, and this is Docket TG-072226. This is the
5 case of Glacier Recycle, Hungry Buzzard Recovery, and
6 T&T Recovery. I'm Administrative Law Judge Adam Torem
7 sitting today with the Commissioners, Chairman Goltz,
8 Commissioner Oshie, and Commissioner Jones, to hear
9 summary of and testimony in support of a proposed
10 settlement agreement that's been submitted by
11 Commission staff and the responding companies. It's
12 been opposed, at least in part, by a number of
13 intervenors in this case.

14 What I would like to do now is take
15 appearances, and I would like to ask that the counsel
16 supporting the settlement agreement give a brief
17 summary of the agreement, what it covers and why they
18 believe it's a good resolution to this case, and then
19 I'll give counsel for the opposing intervenors an
20 opportunity to speak to it as well. The Commissioners
21 and I have reviewed it already, and then we have some
22 questions that we may choose to ask of counsel and of
23 the fact witnesses.

24 When we get to the fact witnesses, it may be
25 helpful to bring them all forward, state their names

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1 and which company or party they are providing testimony
2 on behalf of, and swear them in as a group, and then
3 they will be available to answer questions as
4 appropriate based on the content. So let me start with
5 appearances, and we will start with the Commission
6 staff.

7 MR. THOMPSON: Jonathan Thompson on behalf of
8 Commission staff.

9 JUDGE TOREM: On behalf of the responding
10 companies?

11 MR. ANDERSON: I'm Don Anderson on behalf of
12 the three respondents.

13 JUDGE TOREM: We have a number of
14 intervenors, and I'll turn to Mr. Wiley to name those
15 that he represents.

16 MR. WILEY: Your Honor, Dave Wiley. I
17 represent Murrey's Disposal Company, Island Disposal,
18 Waste Connections of Washington, Inc., Lynnwood
19 Disposal and Eastside Disposal in this proceeding.

20 MR. SELLS: If Your Honor please, James Sells
21 representing intervenor Washington Refuse and Recycling
22 Association.

23 JUDGE TOREM: I don't believe we have anybody
24 on the bridge line this morning, do we? Polly McNeill
25 had indicated at her representation of Waste Management

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1 of Washington that her client is not taking a position
2 on the settlement. She sent in a letter yesterday
3 clarifying that, and she will not be appearing today in
4 today's proceeding.

5 With that, let me turn to Mr. Thompson. Let
6 me hear on the settlement agreement that you have
7 worked on as perhaps the culmination of a long case and
8 why you and the respondent companies are proposing that
9 today.

10 MR. THOMPSON: I guess I will start by giving
11 some background. The general context for the case is
12 the fact that there is a carve-out from the requirement
13 to have a solid waste collection certificate for
14 entities that transport recyclable materials from
15 commercial or industrial innervators to recyclers, so
16 it's treated as transportation or common carriage
17 property that's regulated under 81.80 as motor freight
18 carriage and not as solid waste collection.

19 The particular facts that were at issue was
20 the question of whether companies transporting
21 construction and demolition debris down to a
22 Weyerhaeuser special-purpose landfill in Cowlitz County
23 for deposit in that landfill basically to serve a
24 structural and drainage purpose within the landfill,
25 Whether that constituted a recycling end-use or some

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1 sort of prior use that would fit within the exception
2 for the solid waste certificate or whether that was
3 essentially just disposal of solid waste.

4 So Staff back in 2007 asked the Commission to
5 initiate a classification proceeding, basically to
6 determine that issue and whether the three respondent
7 companies should be ordered to cease and desist from
8 some activities in that regard.

9 Prior to that time, the Staff had advised
10 companies engaged in that activity that we did believe
11 at that time that that was a higher use of the material
12 and therefore did not require a solid waste collection
13 certificate. Staff reappraised that position and
14 concluded that it was disposal and had advised the
15 Companies that they should regard it as such. So the
16 issue was teed up in this proceeding as to the status
17 of that use by Weyerhaeuser, and Judge Torem issued an
18 initial order after our cross-motions for summary
19 determination that the use of this material as an
20 industrial waste stabilizer did constitute disposal
21 rather than recycling or reuse.

22 There is a rule within the WAC's applicable
23 to solid waste companies that basically has a
24 multifactor approach to determining whether a company
25 that's operating as a motor carrier also needs to have

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1 a solid waste certificate, and it has Parts A through G
2 that are considered. Essentially, Judge Torem's order
3 resolved the questions or issues A through E, which had
4 to do with the intent of the shipper, the intended
5 destination of the shipment, the actual destination of
6 the shipment, special handling, the value of the
7 commodity being transported, but an issue remained as
8 to whether the carriers were primarily -- there is this
9 question of whether the carriers were primarily engaged
10 in the business of providing solid waste collection or
11 in some other business, and this is only an incidental
12 activity to some other primary business activity.

13 So while this was going on, there was
14 simultaneously a rule-making proceeding going on that
15 was addressing these same issues, and that has been
16 going on for some time now, so we've had a series of
17 continuances with the idea that we would eventually
18 come up with an objective standard to apply in these
19 sorts of cases to determine whether a company that is
20 collecting construction demolition waste, taking it to
21 a sorting yard, separating it out into different kinds
22 of commodities, like wood and drywall and metal and so
23 forth, and then carrying those on to recyclers, if
24 there is some amount of residual waste that can only be
25 disposed of, what is the diminimus amount that is

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1 acceptable, and what sorts of end-uses constitute
2 disposal versus recycling.

3 So that's the subject of the rule-making, and
4 we believe that the rule-making is actual the better
5 forum for addressing those issues because they do
6 impact all sorts of different parties, such as local
7 governments and companies that receive these kinds of
8 materials in addition to the parties that are present
9 in this case. Judge Torem essentially gave us the
10 ultimatum after several continuances that we should
11 either resolve this case through settlement or proceed
12 to hearing on facts, and that's what precipitated our
13 settlement agreement.

14 The terms of the settlement agreement that
15 Staff has reached with the respondent companies is
16 really pretty simple. The first provision is that the
17 respondent companies would not seek administrative or
18 judicial review of Judge Torem's initial order
19 regarding the Weyerhaeuser disposal issue, and we are
20 also asking that the Commission adopt that finding as
21 its own for precedential purposes. I think all parties
22 believe that's an important finding and that it should
23 be the strongest precedent for the industry as a whole
24 for other companies that might seek to engage in the
25 same activity of transporting waste to Weyerhaeuser.

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1 That's the reason for that request.

2 Then secondly, the Companies have committed
3 that they will desist from what we call direct hauls,
4 material from a customer location directly to
5 Weyerhaeuser. That doesn't preclude them from taking
6 some amount of residual waste after they've sorted the
7 materials at their sorting yard to Weyerhaeuser, but it
8 would prohibit them from doing direct hauls. We
9 clarify also that this doesn't, consistent with
10 long-standing Commission precedent, this would not
11 restrict them from when they are engaged in their own
12 demolition activities from carrying that debris for
13 disposal because we've considered that private
14 carriage, so not subject to Commission regulation.

15 The Companies have also committed for three
16 years following the approval of the settlement, if it's
17 approved, that they would file with the Commission
18 reports that they file with the Department of Ecology
19 which indicate by tons the source of the materials they
20 collect and then the various places where they
21 ultimately take the materials, whether it's different
22 kinds of recyclers, and it would also indicate what
23 percentage is ultimately disposed of.

24 So we don't have a hard and fast standard
25 because we haven't developed one yet in the rule-making

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1 as to what a diminimus or small permissible amount of
2 disposal would be, but we have that general concept in
3 there as sort of a placeholder while the rule-making
4 proceeds. We do think that we getting closer, I guess,
5 to publishing a rule in the CR-102, hopefully, and we
6 have made significant progress we think recently in
7 developing a rule that we think will work.

8 In the meantime, we think this settlement is
9 the sort of closest we can get under this record to
10 resolving the broader issues. That's basically the
11 rationale for the settlement.

12 JUDGE TOREM: Mr. Anderson, is there anything
13 else you want to add on behalf of your clients?

14 MR. ANDERSON: I think Mr. Thompson has
15 fairly stated our view of the settlement also. Just to
16 add that taking this in context, we are looking back a
17 couple of years, and the initial issue was really
18 resolved by Judge Torem's earlier ruling, which we are
19 by this settlement willing to accept, which was the
20 direct hauling of C and D waste from third-party
21 locations when we had to drop a pick-up box and would
22 be taken with minimal sorting by Weyerhaeuser placed in
23 there as an industrial type of waste stabilizer in
24 their special-purpose landfill.

25 In that context, it is a beneficial use, but

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1 Judge ruled that it's not recycling or reuse, and that
2 as an aside may be the same case as ABC in a landfill,
3 and so it's part of a greater issue as to what's
4 included in recycling or reuse, beneficial use, but my
5 clients have altered their business models to some
6 extent, and that's no longer an issue for them. We
7 wish to move on in the rule-making process to do what
8 can be done to facilitate the growth of the recycling
9 industry and keeping tons of material out of the
10 landfills, so we believe this is a step in the right
11 direction while we are waiting for the rule-making
12 process to add some clarity.

13 I think the lack of clarity is exhibited by
14 the fact that the Staff policy switched on us. My
15 clients when they initiated this had no ill intent to
16 certainly any regulation. They were actually doing the
17 blessing of prior policy, and things changed and we are
18 willing to accept that and move on.

19 JUDGE TOREM: At this time, I think the
20 Commissioners will hear from Mr. Wiley and Mr. Sells as
21 to why their clients are opposing, at least in part,
22 and I would appreciate, Mr. Wiley, if you would clarify
23 your position as to the first prong of the settlement
24 and the request that the Commissioners adopt Order 06
25 and make it precedential, if that's opposed or not, or

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1 parties for the record today are opposed.

2 MR. WILEY: Thank you, Your Honor. We are
3 going to try to honor your original admonition to us to
4 combine comments as much as possible, and I would like
5 to say just by way of opening, I have a few comments I
6 would like to reserve in case we would like to make
7 some other points and follow-up at the end.

8 In answer to your first question, Your Honor,
9 we are in agreement that Order No. 6 should be adopted.
10 Our only concern is a procedural one. I think you
11 alluded to it, or Mr. Thompson, at the last status
12 conference where under the rule, which is
13 WAC 480-07-825(a), the Commission has the absolute
14 discretion to modify any initial order, so if in the
15 final order process it were to modify your order, the
16 question we have is, are the settling parties still
17 bound by that?

18 Again, we agree, concur with, and we are in
19 support of the ruling. Our only concern was the
20 procedural issue, and I don't know if we've resolved
21 that yet.

22 JUDGE TOREM: Let me say to that we've had a
23 long discussion as to whether or not Order 06 could or
24 couldn't be properly classified as an initial order or
25 an interlocutory order. We hope if the settlement is

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1 approved and it's not modified, it will moot all of
2 those issues, and the Commission would be clear in what
3 it's adopting and incorporate them specifically so for
4 all the parties, you know exactly what is being made
5 precedential. Go ahead, please.

6 MR. WILEY: Fair enough. I did want to say a
7 couple of things about the posture of this case, which
8 I think is a little unusual. This is not sort of a
9 conventional settlement hearing to the extent that you
10 and the Commissioners are here today without any
11 affirmative evidence whatsoever. In other words, there
12 isn't any prefiled testimony. There is no
13 cross-examination. There are no facts on the record.
14 That is unusual.

15 What we are here with is the original
16 complaint and the summary judgment motions, so in
17 effect, I think you are being asked by the punitive
18 settling parties to enter a judgment on the pleadings.
19 That's essentially what it seems to me, and if that's
20 the case, I'm wondering if the presumption in terms of
21 approval should go against the moving parties in the
22 absence of a record.

23 We believe that we are here today because of
24 the Judge's decision that by the, as he termed it, that
25 we are going into the next biennium he put in one of

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1 his orders, and that was so unusual to have something
2 protracted for this length of time that we were
3 basically forced to an election of remedies, procedural
4 remedies, which were either to go to hearing or settle.

5 We as the intervenors are not obstructionists
6 in this proceeding at all. We are merely intervenors
7 trying to avoid what we believe to be premature
8 dismissal of a complaint because of the procedural
9 election that the parties are being asked to make, and
10 by the way, we don't blame anybody for the inertia, not
11 the Respondents, not the Staff. This is a very unique
12 situation where we have sort of a potentially parallel
13 rule-making going at the time a show-cause proceeding
14 is going on.

15 We are asked to choose. We choose to
16 maintain the complaint, and if we have to go to hearing
17 now, we prefer that over dismissal, but we think there
18 are some other alternatives. Maybe I'll talk about
19 them here briefly in terms of what the proposed outcome
20 is.

21 First of all, we think the Commission can
22 refuse to dismiss the complaint and set the matter for
23 hearing in June or later. We are not opposed to a
24 later date. The alternative is to continue this
25 proceeding pending rule adoptions provided they address

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1 the remaining issues in this proceeding. I should say,
2 we believe the remaining issues in this proceeding,
3 which we mention in our narrative and we believe are
4 clearly stated in the Staff's motion and Judge's order,
5 are how the Respondents hold out, whether they hold out
6 to perform a solid waste collection and transportation
7 service, and the other issue is whether, and it's right
8 out of the rule, and by the way, I have copies of the
9 rule. That rule is 480-70-016. It is whether it need
10 to obtain a certificate of public convenience and
11 necessity if they transport solid waste to disposal
12 sites on more than an occasional basis. Those are the
13 issues that were reserved. Those are what we believe
14 are still in the case, and that's what we believe are
15 being prematurely and dispositively treated if you
16 adopt the settlement.

17 So going back, we would agree to continue
18 this proceeding pending adoption of the final rules,
19 and alternatively would like to reserve the right at
20 any unspecified later day. If you set it for the
21 rule-making to reserve -- the CR-102 final that I just
22 listed to renew the complaint, have Staff renew the
23 complaint. So those are the procedural posture issues,
24 the substantive issues and why we are here in
25 opposition.

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1 JUDGE TOREM: Mr. Sells, were you going to
2 add anything?

3 MR. SELLS: Very briefly, if Your Honor
4 please. Washington Refuse and Recycling Association
5 agrees with everything Mr. Wiley said. I would like to
6 add two points that have been of great concern to us
7 and continue to be here. One is use of vague language
8 in the settlement agreement itself. The word "small"
9 and the word "occasional" mean absolutely nothing
10 unless and until they are defined either by a rule or a
11 statute or a decision, for that matter.

12 It just simply makes no sense to use those
13 kinds of vague terms in a settlement agreement that we
14 expect not only these folks to follow and us, but
15 everyone else in the industry is going to be looking at
16 it and trying to follow it and figure out what those
17 two words and others mean.

18 Our second concern is that with the pending
19 rule, and we believe there is a pending rule and there
20 eventually will be a rule, we run the risk of doing
21 this all over again, and the cost, obviously, of this
22 situation is rapidly increasing every day, as I'm sure
23 the clients are well aware. If this settlement is
24 adopted and then a rule is adopted which calls the
25 settlement into question or the settlement calls the

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1 rule into question, then we are going to start from
2 scratch again, and we don't need to do that.

3 Our preference is that we simply go ahead and
4 adopt Order No. 6 and then sit back and wait until
5 there is a rule that we can refer to, and that may or
6 may not result in a factual hearing. It may result in
7 a settlement that everybody can sign off on, but until
8 we have that in place, it just simply makes no sense to
9 enter into a partial settlement. Let's either settle
10 this matter in accordance with the rule or go ahead and
11 have a hearing, and it would seem to be in everyone's
12 interest to wait and see what the rule is, and then we
13 can go from there and hopefully avoid going through
14 this whole thing again.

15 JUDGE TOREM: Thank you, Mr. Sells.

16 COMMISSIONER OSHIE: Thank you, Judge.

17 Mr. Sells, to some extent Mr. Wiley as well, I just
18 need to get some boundaries around your position.

19 Mr. Sells, you said that you would like us to provide
20 an opportunity for the parties to reach a full
21 settlement, meaning the actual parties to this case and
22 then the intervenors, and I'm assuming, and perhaps
23 that's always the wrong thing to do, and so I want to
24 ask you directly if there was a definition of "small"
25 or a definition of "occasional" -- in particular, let's

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1 use the word "small" because that's in the settlement
2 agreement -- if that were defined, would that be a
3 reason for your client to join in the settlement, or is
4 it deeper than that?

5 MR. SELLS: I think it's deeper than that,
6 but that would certainly meet one of our concerns with
7 the understanding, however, that the rule may well
8 define a percentage. The last draft I saw I believe it
9 was 25 percent, 75, 25, and other governmental entities
10 have used everything from 10 to 15 to 20 percent. So
11 if we define it in a settlement agreement, in a
12 percentage, for example, and then the rule is adopted
13 with a different percentage, then we are right back
14 where we started, but it would certainly help.

15 COMMISSIONER OSHIE: I guess this would be
16 for both Mr. Wiley and Mr. Sells. Generally, there are
17 parties to a case and they are intervenors, and when
18 the parties settle, where does that leave the
19 intervenors? It doesn't really leave them in a
20 position of not being able to dispute, generally, the
21 settlement because essentially, the underlying action
22 to the intervention goes away. So if you can address
23 that, Mr. Wiley.

24 MR. WILEY: I think that's a fair question,
25 Commissioner Oshie, and one that we addressed. The

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1 role of intervenor is a discretionary role and it's a
2 limited role. You are not unfamiliar with Public
3 Counsel opposing settlements frequently that the Staff
4 and the Company have proposed. This, I believe, is the
5 first time, at least in the solid waste transportation
6 context, we've had the formality of a settlement,
7 particularly -- I'm sure this is the only one where
8 there hasn't been any sort of record, and to answer
9 your prior question as well, I think the reason I am
10 concerned about the "small" and "occasional" issue
11 being resolved, as you said, alternatively, if we could
12 solve that, without a record, that kind of definitional
13 standard isn't going to help us, in my opinion, very
14 much.

15 A rule-making would be preferable in terms of
16 broadening the stakeholders and getting a lot of
17 vetting of that issue, but here, even if you put a
18 little flesh on the bones for "occasional" or "small",
19 I don't think it would be much use for us in the future
20 without some sort of record.

21 COMMISSIONER OSHIE: Thank you, Mr. Wiley.
22 Just one comment, Public Counsel is a statutory party
23 to our proceedings. I don't know if that carves out a
24 special place for them in our proceedings or not, but I
25 think that certainly distinguishes them from other

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1 parties which are what I call the classic intervenor.

2 MR. WILEY: I think that's fair.

3 CHAIRMAN GOLTZ: I've got a couple of
4 questions first for Mr. Anderson and Mr. Thompson to
5 see if I understand the language in the settlement
6 agreement. I'm referring to Paragraph 10, which is
7 Part 2 of the three paragraphs here, and I'm looking at
8 the sentence that starts, "This restriction also does
9 not apply to residual debris that's left over after
10 Respondent company sorts out...", etcetera.

11 So my first question is how the
12 next-to-the-last line of that settlement it says, "So
13 long as the amount of residual material disposed of or
14 delivered for use as industrial waste stabilizer
15 remains small." My first question is does the term,
16 "for use as industrial waste stabilizer" refer to both
17 delivered and disposed or just delivered?

18 Is it possible under this settlement to
19 dispose of the residual material without it being used
20 as industrial waste stabilizer?

21 MR. THOMPSON: I could take a stab at that
22 first. I guess the way we looked at it is there is
23 this overall amount of material that the companies can
24 bring in, and then some portion of that, let's say 25
25 percent or something less than that --

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1 there because they hold out saying, well, it's not
2 really disposal. It's a little bit different. So do
3 you agree, Mr. Anderson, that if you took 100 percent
4 of the residual debris to a plain old ordinary
5 landfill, that would be authorized as long as the
6 amount is small in relationship to the overall amount?

7 MR. ANDERSON: Yes. The intent of this is to
8 speak to the disposal of the residual amount left after
9 the processing by our clients. The wording "industrial
10 waste stabilizer" is a descriptor as to what is
11 actually happening there, but under the precedential
12 order that we are agreeing to, that's disposal.

13 CHAIRMAN GOLTZ: I understand, but under the
14 settlement, if you took zero of the residual debris to
15 a facility for use as industrial waste stabilizer, that
16 doesn't matter. You could still simply take it to a
17 landfill.

18 MR. ANDERSON: If I understand you correctly,
19 I agree.

20 CHAIRMAN GOLTZ: If we adopt this settlement,
21 you decide no more goes to Weyerhaeuser for industrial
22 waste stabilizer, under this settlement, you could take
23 all of the residual debris, as long as it stays small
24 in relation to the overall amount, you could take it to
25 just a plain old landfill and be in compliance with

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1 this.

2 MR. ANDERSON: Correct. In fact, it's going
3 a variety of different places from the different
4 clients now. There is only a limited residual going to
5 Weyerhaeuser at this point.

6 CHAIRMAN GOLTZ: My next question, and these
7 are legal questions, the meaning of the term "small" in
8 relation to the overall amount, I gather if the
9 residual debris that's disposed of is the numerator,
10 what's the denominator? Is the denominator all the
11 materials collected from a construction site, or is it
12 just the amount left over after the sorting goes on?

13 MR. ANDERSON: It's a relationship between
14 what's left over is the numerator, the residual, and
15 the entirety of what's taken in as the denominator.

16 CHAIRMAN GOLTZ: So the denominator includes
17 residual debris, but it also includes everything else,
18 all this drywall, two-by-fours, metal.

19 MR. ANDERSON: The concept is you take a
20 mixed material container. You may have wood,
21 sheetrock, metal. That comes in in bulk and gets
22 sorted, and you have the fines, some other materials
23 that can't not be effectively recycled that are left
24 over. That's the residual, and it's that residual
25 compared to what came in in the box to begin with.

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1 CHAIRMAN GOLTZ: My next legal question is
2 what we are operating under now is WAC 480-70-011,
3 which states that the following collection and hauling
4 operations are not regulated by the Commission of solid
5 waste. Subparagraph 'A' says, the operations of a
6 carrier operating under a permit issued by the
7 Commission under Chapter 81.80 RCW that occasionally
8 transports to a disposal site.

9 So is what we are talking about here is the
10 legal issue whether or not this hauling of residual
11 debris is occasional transport?

12 MR. THOMPSON: I think that's one place I
13 would look, and I think that's correct. Another place
14 to look is WAC 480-70-016, which I think also uses the
15 word "occasional."

16 MR. WILEY: Your Honor, I have copies of both
17 of those rules, if it would be helpful.

18 CHAIRMAN GOLTZ: I have too.

19 COMMISSIONER OSHIE: I think it would be
20 great, Mr. Wiley, if you bring the rules up and we will
21 have an opportunity to take a look at them.

22 CHAIRMAN GOLTZ: So it's basically the term
23 we are working with here is "occasional"; is that
24 right?

25 MR. THOMPSON: I'm sorry?

1 CHAIRMAN GOLTZ: What I want to find out is
2 under the existing rule, because that's what we are
3 operating under, is whether or not the activities of
4 Hungry Buzzard, et al., that would be allowed under the
5 settlement are occasional transport to a disposal site?

6 MR. THOMPSON: Yes, I think that's correct.

7 CHAIRMAN GOLTZ: Therefore, is the settlement
8 agreement where it says as long as the amount is small
9 in relationship to the total, is that an attempt to
10 define what is "occasional"?

11 MR. THOMPSON: Yes, that is correct. There
12 is a definition of "occasional" in the solid waste
13 rules, which is 480-70-041, and essentially, it's got a
14 lot of words, but it essentially boils down to "small."

15 CHAIRMAN GOLTZ: It's more than that. It
16 says, means occurring at irregular or infrequent
17 intervals. So one of the factual questions I have is
18 under existing practice, how often is that stuff going
19 into the Weyerhaeuser site or some other place? That
20 would be one of the factual questions I would like to
21 ask, and I would like to ask Mr. Wiley and Mr. Sells,
22 if you are saying there is no record, if you were to
23 have a record, what evidence do you think we need to
24 rule on the settlement?

25 MR. WILEY: Well, Chairman Goltz, I think

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1 what we need are -- certainly that would be a start.
2 Typically, we have more than that in terms of potential
3 customer information, illustrative exhibits. I think
4 you are illustrating one of the concerns we have on
5 this because of the ambiguity of the definition as
6 applied to the settlement.

7 CHAIRMAN GOLTZ: I guess what I'm wondering
8 is if the terms of the regulation are more specific
9 than the terms of the settlement.

10 MR. WILEY: I think they are, but I don't
11 know if as applied they provide solutions, and I do
12 think in your question about the residual, with no pun
13 intended, that garbage in, garbage out issue is a big
14 part of sort of trying to put flesh on the bones of
15 these definitions.

16 CHAIRMAN GOLTZ: So I'll ask you again,
17 Mr. Thompson and Mr. Anderson, if the Respondent
18 companies transport residual material every day on a
19 regular basis but the amount transported is small in
20 relation to the overall amount, is that allowed under
21 the settlement, A, and then is it allowed under the
22 regulation, B?

23 MR. THOMPSON: Well, I think the way the
24 language originated had to do with the operations of
25 dump truck companies, and I guess we view that as sort

0154

1 of a -- there is no sorting going on with respect to
2 loads carried in dump trucks. This is sort of a
3 different business model where they are taking this
4 material to a sorting facility and separating it out
5 into it's constituent commodities.

6 To my mind, it doesn't necessarily make sense
7 to apply a frequency, how many times. I suppose they
8 could stockpile it and take it only every week or
9 something, just hypothetically talking here, but if the
10 amount is essentially the same, whether they are taking
11 it every day or every month or something, I think the
12 amount is the fundamental issue, the amount of residual
13 in relation to the whole that's taken in, so I think
14 that's what we focused on rather than frequency.

15 What's not going on here is, as there is in
16 the dump truck context, is a direct haul from the
17 customer location to the landfill. There is this
18 intermediate step where there is sorting going on,
19 removing of the recyclable material from the waste.

20 CHAIRMAN GOLTZ: So the last question I have
21 is why isn't that private carriage? If someone has a
22 recycling business and they are collecting construction
23 debris, they've got some stuff they have to dispose of,
24 why isn't that incidental to the recycling business,
25 and therefore, exempt because it's private carrier?

0155

1 MR. THOMPSON: If it's a demolition business
2 and they are knocking down the building themselves, if
3 they take that material with their own employees and
4 their own trucks to the landfill, that is private
5 carriage.

6 CHAIRMAN GOLTZ: I understand that.

7 MR. THOMPSON: But then there is a second
8 question of whether the company that is operating a
9 sorting facility, whether that residual is incidental
10 to their business and therefore private carriage, I
11 think that's arguable, but there is also this issue of
12 the exemption is for the transportation of recyclable
13 materials to a recycler for reuse or recycling.

14 Well, in this case, they pick up a load.
15 Some of it eventually goes to a recycler for recycling,
16 but some of it is diverted off and goes to the
17 landfill. I don't know. There is just a question of
18 whether or not we want to conclude that the operator of
19 the Materials Recovery Facility, one of the sorting
20 businesses of a business unto itself or just part of
21 transportation, if that makes sense.

22 I'm not sure that Staff would be ready to
23 concede that the business of sorting materials is a
24 business unto itself that could have an incidental
25 amount of disposal.

0156

1 CHAIRMAN GOLTZ: Anyone else have a comment?

2 COMMISSIONER OSHIE: I just want to follow-up
3 because I want to get this clear. The operator is on a
4 job, so they contract out to haul material from some
5 kind of construction site, and they do that. They pick
6 up all the material, and I guess from the WRRRA's
7 position, perhaps, there should be two bins there, one
8 that is for recycled material and one for the
9 individual doing the sorting at the site and put that
10 in what I will call the solid waste bin, but that's not
11 the way this apparently works.

12 So all the material is collected in the bin
13 by one of these parties, as an example. It's hauled to
14 a sorting yard. I'm assuming when they pick it up,
15 it's their material. They own it and they have to deal
16 with it, so they sort it out because it's their
17 property now. They sort it out at their yard, and they
18 have to distinguish between what is recyclable and what
19 isn't, and what isn't becomes at least part of the
20 solid waste stream, and what's recycled goes into the
21 recycle stream. That individual company owns in that
22 sense both streams. They own the solid waste stream
23 and they own the recycle stream.

24 So the question I have is if you can
25 self-haul, then I would think that individual could

0157

1 take that material to the landfill. If you can't
2 self-haul then you would have to have a bin of one of
3 the licensed companies to take that material. I guess
4 the question I have is, can they self-haul in that
5 circumstance? Does the rule really apply? Can
6 individuals self-haul, or is there a requirement that
7 there be a bin there for the solid waste. They own the
8 material, so can they decide what they want to do with
9 it?

10 In my mind, they own the material. Maybe
11 legally, that's not correct. We have a lot of lawyers
12 around the table and you all have an opinion on it, but
13 it seems once you take possession, it's yours. In
14 other words, you are responsible for it. You can't
15 just dump it out on the street and say, Hey, that's not
16 mine anymore.

17 MR. ANDERSON: Commissioner Oshie, my clients
18 have always taken the position that the residuals from
19 the MRF operation are incidental to their recycling
20 business, and therefore, they have the right to
21 self-haul those. I think what the proposed regulation
22 or almost-proposed regulation is attempting to define
23 is when that is a recycling operation and when it's
24 just hauling garbage, for lack of a more technical
25 term.

0158

1 To go back to an earlier comment regarding
2 the solid waste, the way this actually works is the
3 clients do have a dumpster or some other place the
4 lunch bags are supposed to go and the municipal solid
5 waste-type materials are supposed to go, and these are
6 supposed to be clean containers; in fact, can be
7 rejected by the clients if they aren't.

8 Irrespective of that, at the end of the day,
9 what goes into there, as like the old days was the
10 "clean fill wanted" sign by the side of the road, which
11 wasn't going to the landfill, isn't 100 percent
12 recyclable, so there is going to be after processing
13 fines, unusable materials, maybe economically
14 disadvantageous to dispose of through the recycling
15 process or unaccepted by a recycler at that particular
16 time because the business is fluid so you get something
17 left over. Those are the things we are really talking
18 about.

19 If you refer back to WAC 480-70-016, that's
20 an underlying question primarily engaged in the
21 business of providing the service other than the
22 collection of solid waste. Our clients would argue
23 that our business is not primarily engaged in the
24 collection of solid waste. Its primary business is
25 recycling to keep things out of a landfill.

0159

1 COMMISSIONER OSHIE: I think what complicates
2 this for me, Mr. Anderson, and I appreciate your
3 response, is it seems that this issue is really
4 segmented in two ways. The first is probably more
5 difficult for me, and I think it has been for the
6 industry, which I what do you do at the job site? The
7 materials go into a bin, and as you say, there is
8 another bin present for the classic solid waste stream
9 and materials are supposed to go in there. Then there
10 is the other material. So that's where there has been
11 at least arguments within the industry for a long time
12 over what's really recycled material, what isn't, and
13 what's in the recycle bin. Is there solid waste there
14 that should be hauled by a regulated carrier?

15 So that's one segment of it because that's
16 the initial sort that goes on on the job site, but then
17 whatever the material is, if it's not hauled to a
18 landfill at that point in gross, which I can see that
19 as a real problem if that were happening, but it's not,
20 at least under the circumstances we are talking about,
21 it gets hauled to a sorting yard. That's where I see
22 segment two coming in, and what about the material in
23 the second segment, which is dividing up the waste
24 stream into two pieces?

25 I guess I don't see this as being one

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1 operation from the job site to the sorting yard to the
2 landfill or to the recycling center. It seems to me
3 it's really two segments, one from the job site to the
4 sorting yard, and that's where the argument is. There
5 is too much nonrecyclable materials in the bins, if I'm
6 kind of reading Mr. Wiley and Mr. Sells' clients, and I
7 see the second segment -- again, this is the material
8 owned by essentially your client, Mr. Anderson at that
9 point, and then they sort it out, and there is material
10 that goes into the recycle stream, and then you have
11 what's left over, and that's where I have the question
12 about why can't you just self-haul that if you own it.

13 You answered the question, and maybe Staff
14 and perhaps Mr. Wiley and Mr. Sells can answer the
15 question. Mr. Thompson, you have a look. You are
16 wondering about the two-segment hypothetical here or
17 how I'm looking at this.

18 MR. THOMPSON: It seems like we are getting
19 into the whole question of whether -- I guess what you
20 are suggesting is that the business of sorting
21 construction and demolition list debris into different
22 commodities is a business, and therefore, to the extent
23 they haul away their own garbage, that's private
24 carriage.

25 COMMISSIONER OSHIE: That's my question

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1 exactly. It seems with that business, once the
2 material is hauled by the recycled material it's their
3 property; they own it. So they take it back to their
4 facility and they sort it out, and in that sorting
5 process, you end up with reusable materials that is
6 recycled and material that isn't reusable in the
7 recycled rule, and it must be disposed of. Why
8 couldn't they just dispose of it independently? And
9 I'm sure Mr. Wiley is waiting to go here.

10 MR. THOMPSON: We are saying they can haul
11 that. They can take that garbage as long as it's small
12 and dispose of it.

13 COMMISSIONER OSHIE: My question is why does
14 it need to be small if it's their own material? Why
15 are there limitations?

16 MR. THOMPSON: I guess the reason being is
17 that would create an enormous way of avoiding
18 regulation as a solid waste company as an initial
19 matter, because you could say, I'll pick up your waste
20 and I will sort it. There is bound to be some
21 recyclable material in there. It may only be 10
22 percent of the entire load, so I will sort that out for
23 you, and the rest is my residual waste which I'll take
24 to the garbage dump. That would be an enormous way of
25 evading regulation.

0162

1 COMMISSIONER OSHIE: Why can't Fred Meyer do
2 that if they wanted to or Costco? If it's because
3 there is a municipal regulation or a county regulation
4 that says you have to have it hauled, that would be an
5 easy answer to this. Why couldn't any other business
6 decide, I'll just haul my own and do that.

7 MR. THOMPSON: Well, Fred Meyer is different
8 because they are a business that -- they don't go out
9 and offer to collect material from entities out there
10 in the world and take it somewhere. That's not their
11 business. This business that we are talking about is
12 actually holding itself out to the public as we will
13 come and pick up your discarded material and take it
14 somewhere for you. I think that's fundamentally
15 different than a manufacturer or a grocery store that's
16 in the business of selling stuff or making stuff.

17 What we have here is something that looks an
18 awful lot like solid waste collection but for the fact
19 that instead of taking it to disposal, they are taking
20 it to recyclers primarily. It's discarded material.
21 It's the removal of discarded material is the business,
22 which is the same whether you are a transporter of
23 recyclables or a solid waste collection company.

24 COMMISSIONER OSHIE: Wouldn't the answer then
25 to be at least to require them to have a regulated

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1 company at their sorting facility that would be hauled
2 away? That would be one response to it. In other
3 words, let that solve the issue. No one is suggesting
4 that's how I'm thinking about this. This is really
5 hypothetical.

6 Wouldn't it solve the issue that is really at
7 play here? If you take my two-segmented examples, as
8 long as they could not haul directly from the
9 construction site to the landfill, if it goes back to
10 the MRF, and there is a bin that's owned and controlled
11 by one of the regulated carriers, the industry
12 wouldn't, I think, would care then. They are going to
13 get whatever solid waste goes into the stream at the
14 point of its origin.

15 MR. THOMPSON: That was one of the proposals
16 that we had in the rule-making at one point, which
17 we've changed now, but these are all reasonable ideas I
18 think, but I think our point is these are the kind of
19 ideas that ought to be vetted in the rule-making
20 process where lots of people have an opportunity to
21 comment on the implications, which is exactly why we
22 want to have it in that venue rather than decided in
23 this one.

24 COMMISSIONER OSHIE: Mr. Wiley?

25 MR. WILEY: Thank you, Commissioner Oshie.

0164

1 First of all, on your private carrier point, solid
2 waste law is a bit different versus transport or a
3 general commodity laws. Under Washington law, and it's
4 36.58.060, the ownership of waste does not actually
5 transfer from a generator to the transporter until the
6 recognized point of transfer, which is typically a
7 transfer station recognized in a local comprehensive
8 plant. That's why the front-end leg that you
9 bifurcated is important to the solid waste haulers.

10 Transporter liability may attach from the
11 point of pickup at the job site, but ownership of the
12 waste typically doesn't transfer until the recognized
13 point of transfer. You are illustrating in your
14 questions one of the big problems we have is the
15 holding-out issue. It's how these people hold out to
16 the public, and we believe that the Commission's
17 current rule in its infinite wisdom -- It's 016, Sub
18 2 -- talks about carriers who are engaged extensively
19 in both classes of service. Both common carriage,
20 which is the recyclables, and solid waste, and that
21 ties into Chairman Goltz's question about whether this
22 is the amount versus the frequency.

23 We think current rule clearly talks about,
24 041, and what this settlement does is appear to shift
25 to amount of waste, which is ostensibly what this

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1 rule-making is going to do, but under current law, you
2 look at 041, and it disclaims the kind of -- it says,
3 "This term is qualitative not quantitative in that the
4 term applies to services that are only performed from
5 time to time." That's the definition at 041 of
6 "occasional," not that the solid waste hauling is only
7 a small part of the services offered.

8 Under current law, I believe frequency does
9 matter, and that is one of the huge problems with the
10 settlement from the intervenors' standpoint.

11 COMMISSIONER JONES: Mr. Thompson, good to
12 have you back. Since you brought up the MRF, what does
13 that stand for?

14 MR. THOMPSON: "Materials recovery facility."

15 COMMISSIONER JONES: Since you are now
16 working for the Department of Ecology, this is kind of
17 a legal question not a factual question. Could you
18 explain the relevant statute for recycling and
19 recyclable materials is RCW 70.95.030; correct?

20 MR. THOMPSON: Right. I think the Commission
21 statutes cross-reference the definitions there, yes.

22 COMMISSIONER JONES: What I'm trying to get
23 at is how Ecology looks at the MRF, because you brought
24 up the issue of -- as Commissioner Oshie said, this is
25 a two-part question. We are going to an MRF first. So

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1 what I'm trying to get at is what Ecology looks at, if
2 it does, in terms of incidental use or recyclable
3 materials at the MRF.

4 MR. THOMPSON: Not speaking for the
5 Department of Ecology, but this is my understanding is
6 the term MRF is used pretty broadly for any facility
7 which there is sorting going on for the purpose of
8 delivery to an actual recycler at some point. There is
9 an Ecology rule that says, basically, that if the
10 materials received at the facility don't exceed some
11 minimum threshold of solid waste, then that facility
12 does not have to have an interim solid waste handling
13 permit. I think it's five percent per year total or
14 ten percent per load.

15 So there are these entities which are
16 colloquially called, I guess, clean MRF's that meet
17 that standard, and then there are what are sometimes
18 referred to as dirty MRF's that don't meet that
19 standard that have to have an interim solid waste
20 handling permit, which is the same thing a transfer
21 station has to have, and even though it's under an
22 Ecology rule, they get it from the local county, I
23 believe, local health jurisdiction.

24 So this is part of what the recent drafts in
25 the rule-making attempts to address.

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1 COMMISSIONER JONES: This is getting more
2 complicated the more we delve into it. Let me clarify
3 your understanding of Sub 3 of the settlement agreement
4 where it requires the responding companies to file with
5 the Commission, the DOE, the ecology reports for 2010,
6 2011 and 2012. So what was behind Staff's thinking on
7 that? What kind of information would we gain from
8 those ecology reports on this issue that we don't
9 currently have?

10 MR. THOMPSON: This is the same sort of
11 information that Staff obtained through discovery in
12 the case prior to the motions for summary
13 determination, and basically it's a report which says
14 tons of material brought in by type, so let's say
15 crushed concrete and drywall and cleaned wood or things
16 of that nature, and then on the other side, it will say
17 the ultimate destinations of materials by tons as well.

18 So you would have different places, different
19 actual recyclers that take the material and
20 remanufacture it into something or produce something
21 out of it. You would have those listed by name and the
22 amount of tons that went there. So if you look at it
23 in total, you can determine that percentage of residual
24 that's going to either a landfill or Weyerhaeuser, what
25 have you, so you could decide whether you think that's

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1 small in relation to the total.

2 COMMISSIONER JONES: That's what I was
3 driving at. So if we adopt the settlement agreement
4 and 06 is precedential but do nothing on the
5 rule-making, and hypothetically, if based on those
6 reports, Staff through a staff investigation would find
7 that the residual was not small, then would that be a
8 sufficient basis in Staff's view to bring a complaint
9 against that company?

10 MR. THOMPSON: Yes. I think we would
11 probably take the approach we could bring an action to
12 enforce the Commission's order at that point if we
13 believed it was not small.

14 COMMISSIONER JONES: What I'm driving at is
15 even though there is no quantifiable definition in
16 either 06 or the settlement agreement, it would be
17 basically Staff's discretion to define what "small" is
18 based on those Ecology reports and then bring it to the
19 Commission for determination; correct?

20 MR. THOMPSON: Correct. We would have to
21 argue at that point what we believe that means,
22 "small."

23 COMMISSIONER JONES: Thank you.

24 CHAIRMAN GOLTZ: I'm not sure one of my
25 questions ever got answered, and that is if the facts

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1 are that there is a daily once-a-day transport of the
2 residual material to a landfill, but yet the amount of
3 material transported is small in relation, whatever
4 that means, it's small in relation to the total
5 collected, that that regular daily transport to a
6 landfill would be permitted under this settlement
7 agreement?

8 Is that the intent of the parties; that that
9 regular transport of small amounts of residual material
10 in relation to the total would be allowed under the
11 settlement agreement.

12 MR. ANDERSON: In context. If you look at
13 the regulation in the context of a smaller operator,
14 that the smaller you are the less frequently you would
15 need to haul residual, unless you are stock-piling it
16 to a large extent, which obviously could be done to
17 meet an objective definition of that term. So the more
18 appropriate measure of frequency is frequency in
19 relationship to the number of trips in and trips out.

20 If you are bringing a thousand units in and
21 one unit goes out for disposal, we argue that that's
22 infrequent and not regular in context of the operation.
23 As our operation gets larger, timewise there are
24 obviously going to be more frequent, so it can't be the
25 intent of the regulation to penalize someone with more

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1 success, the better recycler we are, the more we grow,
2 that you would work your way into a daily, or if you
3 are not stock-piling, a daily disposal of residuals,
4 but they would still be infrequent and irregular with
5 respect to the number of units if you are successfully
6 keeping that volume down.

7 CHAIRMAN GOLTZ: So you would say that --
8 assume two companies, each one sends out a truckload to
9 a landfill once a day. Company "A" gets in 100
10 truckloads of construction debris every day; one goes
11 out. Company "B" gets ten loads in; one goes out. You
12 are saying that the one would be regular and one would
13 not be regular?

14 MR. ANDERSON: It's kind of what the
15 denominator of your fraction is.

16 CHAIRMAN GOLTZ: One is 100. Assume one is
17 one half. I don't care.

18 MR. ANDERSON: I would argue that one half
19 would be regular with respect to in context because you
20 are hauling out regularly with every load. It's a
21 sliding scale. You have to look back and see why this
22 is in the rule-making context as all these good
23 questions come out. The terms we are gleaning from the
24 regulations are "primarily," "occasionally," "small."
25 Every one of them goes back to the Supreme Court's

0171

1 definition of pornography. You know when you see it.

2 There isn't an objective measure in here, and
3 that's why in many ways this proceeding has languished.
4 The regulations haven't kept up with the reality of the
5 marketplace, and the rule-making process is attempting
6 to do that, and we are offering an alternative to the
7 Commission spending its time to deal with each
8 individual recycler in the state of Washington trying
9 to make sense out of something that is really a
10 statutory or rule-making function.

11 CHAIRMAN GOLTZ: So that's the same question,
12 Mr. Thompson. If one of the Respondent companies every
13 day transports a load to a dump for disposal, that
14 would be allowed under the settlement agreement.

15 MR. THOMPSON: Yes. As long as overall it's
16 smaller in relation.

17 CHAIRMAN GOLTZ: So therefore, would we be
18 called upon to ignore the rule that would seem to imply
19 that a regular transport is not occasional?

20 MR. THOMPSON: Conceivably, to the extent
21 that you think that's the case. I guess what we are
22 asking for is a waiver or a different sort of
23 interpretation than that definition.

24 CHAIRMAN GOLTZ: In other words, you wouldn't
25 say, We accept the settlement agreement, but you are

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1 still subject to the rule, whichever is more stringent.

2 MR. THOMPSON: It sounds like you are
3 suggesting the rule is more stringent.

4 CHAIRMAN GOLTZ: I am.

5 MR. THOMPSON: We don't think that the
6 temporal definition in the rule she apply.

7 CHAIRMAN GOLTZ: I think it would cover some
8 things that the settlement doesn't and probably vice
9 versa.

10 COMMISSIONER OSHIE: Back on follow-up.
11 Mr. Anderson, this is brief follow-up on Mr. Wiley's
12 representation to the Bench that RCW 38.50.060, the
13 ownership transfer statute, at least in part, would
14 really make it as representation is that the ownership
15 never does transfer to your clients, and I guess my
16 question to you is one, do you agree with that, and
17 two, if that's true, then how does your business work,
18 because if you don't own it, arguably, you couldn't
19 sell it.

20 MR. ANDERSON: There is some things of value
21 in there, and if they are of value, they are not waste,
22 and the question really arises in the context of what
23 is sorted out. Some is waste; some is not because it
24 has value, and there is also a point where I frankly
25 haven't researched it. Maybe that that changes at the

0173

1 MRF. Even with respect to a statutory definition, I
2 don't think that's been an issue that's been resolved.

3 I would agree in part with your
4 characterization. This is a two-step process, and the
5 real question, I think, that has been raised by the
6 WRRRA in their challenges to the industry and the
7 condition of this case is whether picking a load up
8 that has a high enough percentage of unrecyclable
9 material and material that isn't recycled, and moving
10 that to an MRF facility requires a G-certificate, and
11 when does diminimus kick in. That's a question for the
12 regulation.

13 The "small" really is a measure of that leg
14 of the transport. Coming out, we would argue that
15 that's our material going out, but that's when you know
16 how much is left, so you are using the second leg to
17 measure what's small in the first.

18 COMMISSIONER OSHIE: Thank, Mr. Anderson.

19 JUDGE TOREM: I think there is going to be a
20 few more questions, and we have been going over for
21 more than an hour, so let's take a break. Do you want
22 to come back at eleven? One thing I want to focus on
23 is to refocus back on the rule that's in place that
24 governs this case, not what the Commission might do,
25 and make sure that I understand that if we were not to

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1 adopt the settlement, remaining issues for hearing
2 under the rule here and exactly what outcome your
3 clients might be seeking there so we can reposition
4 this before we adjourn this morning onto the context of
5 what really is in not place, not for what we wish was
6 in place for these companies.

7 (Recess.)

8 JUDGE TOREM: I think I will turn it straight
9 back to the Chairman for some questions about the
10 context of how we are looking, whether a settlement or
11 the potential development of the record further in a
12 hearing.

13 CHAIRMAN GOLTZ: So my question is to
14 Mr. Wiley. Are you basically saying that before we
15 could adopt this settlement that the proponents of the
16 settlement should have put forth facts sufficient to
17 justify their position?

18 MR. WILEY: I'm not trying to evade the
19 question. I think I would frame it another way, which
20 is the settlement is premature because it doesn't
21 resolve all the issues posed by the complaint and the
22 only partial summary judgment order, and then the
23 question is how do we do that? How do we resolve those
24 issues, and that's where we get into the procedural
25 alternatives that I talked about.

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1 CHAIRMAN GOLTZ: I haven't looked at the
2 factual evidence that was filed in the context of the
3 motions, but I assume that if we think we need facts,
4 we could look to that factual record, and if there is
5 facts present there, we could use that supplemented by
6 any facts that are presented today.

7 MR. WILEY: I don't think you would be able
8 to accomplish that because those issues were carved out
9 by Staff on its motion, so it didn't present evidence
10 that was directed to holding out and transportation to
11 a disposal site and frequency thereof.

12 The issue that we were dealing with there was
13 the industrial waste stabilizer movement to
14 Weyerhaeuser, but I don't think it was broad enough to
15 address the remaining issues, and everybody assumed
16 there would be another form to address those issues, so
17 the big surprise now is we've got a settlement, and
18 those carved-out issues were never addressed.

19 CHAIRMAN GOLTZ: So this information you
20 raised, whether or not these companies are holding
21 themselves out as solid waste companies, and if they
22 are, they would need a certificate under 177.

23 MR. WILEY: Yes.

24 CHAIRMAN GOLTZ: You are saying there is no
25 holding out in the record so far?

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1 MR. WILEY: I really want to be careful about
2 representing what were in those declarations.
3 Mr. Anderson and Mr. Thompson may know better than I.

4 CHAIRMAN GOLTZ: But if for example in the
5 record it said there is evidence that said, We are not
6 holding ourselves out as a solid waste company,
7 wouldn't the opportunity for you to rebut that be this
8 morning?

9 MR. WILEY: Not necessarily, Chairman Goltz,
10 because the Staff in its proposed settlement has said
11 that the reason holding out is not an issue is solely
12 based on the advertising of the Respondents. In a
13 hearing context, what you would do is potentially call
14 in some customers, potentially the intervenors have
15 lost, formerly solid waste customers, hypothetically,
16 that were now solely customers of this entity, these
17 respondent entities. You would see if there is an
18 enforcement officer who did the investigation and what
19 they found.

20 You would not look solely at advertising
21 because the Commission has said in past cases that
22 that's just one of a number of one holding out, and
23 that's all we've got right now is the Staff concluding
24 based on its review of discovery on advertising that
25 holding out is not an issue.

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1 CHAIRMAN GOLTZ: But is that enough for us,
2 absent contradictory evidence, isn't that enough for us
3 to conclude that they are not holding out, and
4 therefore, it would be incumbent on you to put forward
5 evidence that they were?

6 MR. WILEY: I think that's where we get into
7 the current settlement rule and that sort of conundrum
8 that we have here where you always have a record in
9 front of you, at least in terms of prefiled testimony
10 or cross-examination or exhibits. We don't have that
11 here, and that's why I don't think this is an adequate
12 enough forum to develop that.

13 JUDGE TOREM: Mr. Wiley, I'm looking back at
14 the original order that instituted a special
15 proceeding. It's December 28th, 2007, and it's Order
16 01, and in that, the first paragraph suggests that the
17 Commission was instituting the proceeding under Docket
18 TG-072226 to determine whether these companies were
19 operating a solid waste collection company, hauling
20 solid waste for compensation without the necessary
21 G-certificate, and then it cites to a couple of
22 statutory and regulatory schemes as it now stands, and
23 the Commission alleged specifically in Paragraph 5 of
24 that order that the Respondent companies were engaged,
25 at least in part, in the business of collecting and

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1 transporting recyclable materials, and they generally
2 hold themselves out as such, transporters of recycling.

3 Secondly, that the CDL waste that they
4 collect at that time contained more than an incidental
5 or accidental amount of solid waste. Third, that they
6 transported that nonrecyclable solid waste to the
7 Weyerhaeuser facility in Longview, Washington, and
8 fourth to the extent they transported that to
9 Weyerhaeuser, they are not collecting recyclables
10 within the meaning of the statute. Instead they were
11 operating as noncertificated haulers.

12 So that was the basis of the allegations we
13 had over two years ago. In Order 06, we looked at the
14 statutory and regulatory scheme and broke out the main
15 what-are-they-doing question, and the determination
16 that I think everybody wants the Commissioners to adopt
17 today is yes, what they were doing is now officially
18 disposal, despite cross-talk from the Staff, and that
19 yes, it could be because it had a higher use in the
20 landfill, and now it's disposal. Whether it's used for
21 structural material or not, it's discarded material,
22 it's disposal.

23 So we've addressed the "what" issues, and the
24 remaining issues that were held out in Order 06 were
25 hearing over settlement, or again, the how often, what

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1 frequency, and how do they do that, but the end result
2 of why the Commission, and Mr. Thompson and
3 Mr. Anderson, you can clarify this for me, the end
4 result is they were seeking a cease and desist order on
5 going to the Weyerhaeuser with the industrial waste
6 stabilizer. At this point, the Commission has got that
7 part of the bargain it initially set out to obtain.

8 The real question is whether or not you would
9 require these companies, Mr. Thompson, to obtain a
10 G-certificate to continue the rest of their operation,
11 and if I understand the purpose of the settlement
12 today, you characterize it as punting, and maybe that's
13 fair in this case given the context of the parallel
14 rule-making, but Mr. Thompson is taking the position
15 with Mr. Anderson that you've come to an agreement, the
16 Commission and the companies, that we are no longer
17 hauling this industrial waste stabilizer and pretending
18 it's recycling. We can't do that anymore under
19 Order 06, but we are not going to try and get into and
20 quantify too much more than we would back in 2007 the
21 rest of their operation and litigate this out under the
22 current rule perhaps because the rule is going to
23 change and be clarified, and whatever the Commissioners
24 would hear in June or thereafter would become moot by a
25 rule-making that hopefully would come out soon after

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1 that.

2 So I think that's what Mr. Thompson's
3 suggestion is of the utility of the settlement here is
4 acknowledging that the status quo is a difficult one
5 under this rule, and spending a whole lot of Commission
6 time and resources litigating this might be a good
7 direction setter for the rule-making, but it would
8 still be a result that's only good for a very limited
9 period of time, and when the new rule comes out, not
10 only would your clients have to operate under it, but
11 so would Mr. Anderson's, and so whatever rule of the
12 case comes out here may not be the same as the
13 rule-making, and that's why we put this on hold for so
14 long.

15 So in one sense, we've gotten the result we
16 need regarding Weyerhaeuser, and it's the main "what"
17 of the case, but we are going to put off the "how" and
18 the "why" as in the public interest not to spend our
19 resources further on this and have the Commission spend
20 them on a rule that the Commissioners will later take
21 up and adopt and be the rule for everybody going
22 forward. Mr. Thompson, does that adequately describe
23 procedurally what's happening this morning?

24 MR. THOMPSON: Yes.

25 JUDGE TOREM: Mr. Anderson?

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1 MR. ANDERSON: Yes.

2 JUDGE TOREM: I think we are acknowledging if
3 we adopt the settlement, we may not be that much
4 farther down the road than where we were in 2007 but
5 for the specific rulings in Order 06 and then rewording
6 the morass that's out there now in 480-70-016 into the
7 context of these companies having a specific agreement
8 and understanding using different ambiguous words in a
9 settlement.

10 Am I misstating that at all, Mr. Thompson, or
11 is that just too plain, exchanging one ambiguity for
12 another?

13 MR. THOMPSON: I think the settlement
14 basically tracks the, generally speaking, the rule as
15 it stands today.

16 JUDGE TOREM: Except for that whole frequency
17 issue we talked about before the break.

18 MR. THOMPSON: Yes.

19 JUDGE TOREM: So Mr. Wiley, that's not
20 acceptable to where the companies are, but what would
21 you get out of litigating this and then also presenting
22 vigorously your position at the rule-making and getting
23 perhaps something different there?

24 MR. WILEY: I'm not sure we are in
25 disagreement. What we object to is a forced settlement

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1 that we believe is premature pending resolution of the
2 remaining issues through the rule-making. We don't
3 want to give up the right that those issues would be
4 resolved if the rule-making doesn't dispositively
5 establish them.

6 To your point about the existing rules and
7 the complaint, I feel fairly strongly that the existing
8 rules are favorable to a determination that the
9 intervenors under the old rules would support, which is
10 that the front end and the back end require solid waste
11 certificate operation. That's what we would advocate
12 under the existing rules, but I agree that the academic
13 nature if those rules are going to change.

14 That's why we supported the continuance, Your
15 Honor, and I don't think we should be forced to some
16 sort of schedule in this case just because the case has
17 been prolonged. None of us are responsible for that.
18 It's just this separate universe going on. I would
19 recommend that we just continue this case pending the
20 rule-making.

21 JUDGE TOREM: One question I have for you
22 procedurally, you keep referring to resolving the
23 outstanding issues of this docket in another docket
24 that's a rule-making, and I'm confused as to what basis
25 you think the outcome of the rule-making would be at

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1 all binding on the facts of this case which started
2 prior to the rule-making.

3 MR. WILEY: I agree with you, and I've raised
4 the issue about the historic treatment of complaints,
5 which by the Commission's articulations is a year prior
6 to filing the complaint. If there is a rule-making
7 that's going to change the law under which the
8 complaint was file, it does seem to be a considerable
9 expense to the parties to litigate an issue under an
10 old rules regime. I'm not yet convinced the rules are
11 going to change. That's going to be up to the
12 Commissioners.

13 The reason we are here is we believe we are
14 forced to an election of remedies. Go to hearing or
15 accept a settlement that we don't think has solved all
16 the issues. We think there is alternatives, which is
17 continue this proceeding pending the outcome of the
18 rule-making and see if those rules resolve the issues.
19 Whether they do it prospectively or not, we will accept
20 it, but we are not here to waste resources of the
21 regulating companies or the Commissioners or Staff, but
22 we don't think we need to accept the settlement now.

23 JUDGE TOREM: Mr. Thompson, even though there
24 are additional issues that could be litigated, the
25 Sub "f" and the Sub "g" of the seven-part multifactor

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1 balancing test in the regulation, the Commission is
2 essentially stating by putting forth Staff's agreement
3 with Respondent companies that it's satisfied with what
4 was litigated thus far and is willing --

5 I don't know what other relief is there. The
6 cease and desist order has essentially been agreed to.
7 They are not going to require them to get a
8 G-certificate. Mr. Wiley is right there are potential
9 to delve into T&T Recovery, Hungry Buzzard, or Glacier
10 Recycle's operations, but the Commission staff doesn't
11 want to at this point anymore.

12 MR. THOMPSON: Right, and we are not seeking
13 penalties here, and there is very little value to
14 deciding what the companies have done historically does
15 or does not fit within the rule. The point is what
16 should they do prospectively, or what's permissible
17 without having a solid waste certificate, and that's
18 the objective of both of the classification statute and
19 the rule-making. They both seem they are aimed at
20 prescribing what is acceptable without a solid waste
21 certificate.

22 CHAIRMAN GOLTZ: Let me ask one thing, and I
23 guess I would like to get the witness panel up here,
24 and one of the questions I'm going to ask the witnesses
25 is what is happening now? What is the status quo?

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1 What are the settling Respondent companies doing with
2 regard to hauling either to the Weyerhaeuser facility
3 or in general, and related to that, would it be
4 possible in Commission staff's eyes for us to approve
5 the settlement analogous to an interlocutory order or
6 preliminary injunction that just allows that status quo
7 to continue during pendency of this case and then
8 coupled out with Mr. Wiley's suggestion to -- merits to
9 after the rule-making.

10 So you basically say we accept the Company's
11 settlement, or the Company and Staff's settlement as
12 governing the behavior of the companies during the
13 pendency of this case which then should be deferred
14 either for time certain or until the rule-making is
15 completed.

16 MR. ANDERSON: Chairman, I believe that
17 defeats the purpose of the settlement in that our
18 clients need to have this resolved. This is a cloud
19 hanging over their head. It's a continued expense, and
20 the same thing is accomplished with the settlement.
21 If they are engaging in conduct that requires a
22 G-certificate, an enforcement action or classification
23 action, or enforcement can be brought by the Commission
24 after this proceeding has concluded. If the new rules
25 governing their conduct are inconsistent with their

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1 practices, a proceeding could be brought.

2 Their intent is to comply with the new rules
3 to the extent there are any and to develop their
4 industry. It's extremely unfair to have this hanging
5 over the head of the small businesses trying to survive
6 with the business impediments that come with this
7 action pending. It's interesting that counsel notes
8 that -- I wrote it down here so I could be accurate.
9 "We are not here to waste the resources of the
10 regulated companies." They are wasting the resources
11 of my clients by pushing this forward, and they are
12 wasting the resources of the rate-payers because their
13 resources are ultimately tied to the rates, which is an
14 advantage we don't have as the competitor.

15 CHAIRMAN GOLTZ: I was suggesting that
16 approving the settlement, and it's sort of a technical
17 matter not finalizing this case. In any event, I
18 assume, unless you tell me otherwise, that if we
19 approve your settlement, and after the rule-making
20 comes out, whether that be six months or two years or
21 whenever, that whatever the regulatory regime is in
22 that final rule, your clients, no matter what the
23 settlement says, would now be subject to that new
24 rule-making machine.

25 MR. ANDERSON: Absolutely.

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1 CHAIRMAN GOLTZ: Why wouldn't you accept a
2 settlement that allows them to do what you are
3 suggesting in the settlement on an interim basis until
4 that's ultimately decided?

5 MR. ANDERSON: The fact that there is a
6 pending proceeding here with the intervenors especially
7 driving all sorts of allegations of improper conduct is
8 a significant business impediment, whether they are
9 trying to cite a facility, solicit business, or other
10 elements of their operations. That's why they are
11 interested in settling the case. It's equivalent to
12 settling on some issues and dismissing the rest without
13 prejudice is essentially what you are doing in the
14 context of civil litigation.

15 JUDGE TOREM: Let me interrupt for a second,
16 because I think I understand what the Chairman is
17 asking a little differently. Chairman Goltz, are you
18 suggesting that the Commission could resolve the case
19 in a final matter for this time forward until a rule is
20 adopted by approving the settlement with or without
21 conditions, and then when you said "hold this case
22 open," perhaps have a compliance review after the
23 rule-making to determine what happens with these
24 companies under the new rule?

25 CHAIRMAN GOLTZ: No. All I was suggesting

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1 that basically we say, Okay, from this day forward or
2 until the date of the order that the settlement is
3 approved and this case is on an interim basis analogous
4 to a preliminary injunction. This case then is
5 deferred until the final resolution, until after the
6 rule-making, and I thought that gave you about 99.9
7 percent of what you are asking for, and apparently that
8 one tenth of one percent is objectionable.

9 MR. ANDERSON: It's quality, not quantity.
10 The quantity of the things we are asking for in the
11 settlement would be addressed. The small part that
12 would be left open is of such quality in that it has
13 such a detrimental impact that's more significant than
14 it might appear.

15 CHAIRMAN GOLTZ: Why don't we get on with it.

16 JUDGE TOREM: Let me call the witnesses if
17 they will come forward. We have Gene Eckhardt as a
18 witness for Commission staff. John Yeasting is here
19 for Glacier Recycle. For Hungry Buzzard, Marc
20 Christiansen is here, and for T&T Recovery, Troy
21 Lautenbach is here, and if necessary for a rebuttal
22 witness, Eddie Westmorland of Waste Connections is also
23 here.

24 I'm going to ask all five of you to come
25 forward and sit in the front row and take the oath of

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1 witness.

2

3 Whereupon,

4

THE WITNESSES,

5 having been first duly sworn, were called as witnesses

6 herein and examined and testified as follows:

7

8 JUDGE TOREM: Chairman Goltz?

9

10 CHAIRMAN GOLTZ: I'll address this to Mr. Yeasting, Mr. Christiansen, and Mr. Lautenbach.

11 How are you currently operating in relation to what is

12 proposed under the settlement agreement? What's going

13 on today?

14

15 MR. ANDERSON: Mr. Chairman, I think it would

16 be expeditious if each explained their operations

17 individually, because they all somewhat differ, rather

18 than trying to give a cumulative answer.

19

20 CHAIRMAN GOLTZ: Okay.

21

22 MR. YEASTING: My name is John Yeasting with

23 Glacier Recycle. Our business is both a recycling

24 hauler and a material recovery facility operator as

25 well as a recycler that converts a number of the

products that we recover through the MRF process into

transformed, finished products that go into industries

such as biofuels for the paper industry to burn for

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1 power, pulp chips to make paper out of, metals,
2 different grades, etcetera.

3 So we have a number of roll-off container
4 trucks. These are large dumpsters that we place at
5 construction sites around the region to source the
6 construction debris into our facility that we then
7 derive those materials that we need to produce these
8 end products into our facility, and in addition to
9 that, we have about a little over half of our volume
10 comes in through third-party haulers, other recycling
11 haulers that bring material into us to accept as an
12 MRF, and it speaks to that issue of it is a separate
13 step. There is the recycling, hauling step, and then
14 there is the MRF step. We happen to do both of those.
15 Not everybody in our industry does, and there is an
16 industry trade association that represents these folks
17 called the Construction Materials Recycling
18 Association. It's one of the few associations in the
19 construction industry that's going even in the economic
20 downturn because of green building and that sort of
21 thing.

22 Once the materials are into our facility, we
23 have an extensive sort line that we've invested in in
24 our facility that has typically about a couple of dozen
25 guys standing there, and it's not glamorous work, I

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1 assure you. It's something you expect to see Mike Row
2 on "Dirty Jobs" standing there. The stuff comes down
3 the line and is broken up by an excavator. It's fed up
4 a conveyor. It comes down this 105-foot long line, and
5 they are standing over big drop bays, and each guy is
6 trained to go for two different materials, so there is
7 a drop shoot on either side of them, drops that
8 material down, metals, wood, different grades of wood
9 depending on what product we are trying to make out of
10 it, and all the activity is happening. There is water
11 to keep dust down and that sort of thing.

12 What comes off that line at the end is what
13 we call the residual, and that's the stuff that's not
14 necessarily nonrecyclable. There is a lot of effort to
15 nail down, are you guys only taking stuff that's
16 recyclable? Well, there is a fraction after you get to
17 the obvious commodities that is in flux and growing.
18 This industry is only a little over ten years old
19 because there wasn't the technology to transform
20 construction debris into usable materials before that.
21 Most of this stuff was buried in the back of a job site
22 or burned on site historically, and now clean air
23 regulations stopped the burning. This industry rose
24 out of that need. A lot of it took a big step forward
25 when the North Ridge earthquake happened in 1994 and

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1 FEMA paid for the first commingled sorting activity in
2 LA after that.

3 So we are a derivative of that, and we are
4 using that technology to make these products. So
5 things like PVC pipe are technically recyclable, and
6 we've had markets at times, but sometimes those markets
7 don't pay enough to justify pulling that out, but that
8 doesn't mean we shouldn't be striving to get that
9 stuff. It doesn't mean that next year there won't be a
10 stabilized market for that.

11 So there is commodities on the fringe, and
12 that's what ends up in the residual in addition to
13 fines that stuff that breaks down ends up on the bottom
14 of the container adds up to even a small percent by
15 weight. That makes up the residual, and that runs
16 somewhere around 12 percent of our total facility
17 volume that we haul out for disposal.

18 CHAIRMAN GOLTZ: So using the PVC pipe
19 example, today, a length of PVC type is going down your
20 conveyer belt. A month from now if there is a market
21 for it, your instructions to your work crew would be to
22 pull that off.

23 MR. YEASTING: Absolutely. I've had a couple
24 of Vietnamese manufacturing companies in the past year
25 that can use it, but they are small operations and they

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1 can't take enough volume.

2 CHAIRMAN GOLTZ: So let me ask you this if
3 you know this and can quantify it. How many truckloads
4 of construction materials are brought into your site on
5 a daily or weekly basis?

6 MR. YEASTING: The easiest thing for me to
7 give you is the annual numbers for this past year. We
8 hauled in roughly 7,200 loads of material in our own
9 trucks to our facility and an additional 12,400 loads
10 came in from third-party haulers. Some of those tend
11 to be smaller than ours so the weight is closer to
12 fifty-fifty of total income and stuff.

13 CHAIRMAN GOLTZ: Compared to that, what's the
14 number of truckloads that would go for disposal?

15 MR. YEASTING: I think it was a little over
16 700 truckloads, 720 truckloads that were hauled out for
17 disposal purposes.

18 CHAIRMAN GOLTZ: Is it fair to assume based
19 on that that you have at least one, two, three
20 truckloads a day going out for disposal?

21 MR. YEASTING: Yes.

22 CHAIRMAN GOLTZ: Are those dump trucks? They
23 look like a regular garbage truck that I see?

24 MR. YEASTING: No. We usually use roll-off
25 trucks, similar trucks to what we haul in. We use

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1 those dumpsters to haul the material back out because
2 if we haul it for disposal, we dump that residual, and
3 then we will place those cans on customer accounts on
4 the way back. We try to limit our dead-head hauling.

5 CHAIRMAN GOLTZ: So right now, is this
6 material being hauled by you for disposal at a disposal
7 site or the Weyerhaeuser facility or both?

8 MR. YEASTING: Both. Actually, right now, we
9 haven't hauled any to Weyerhaeuser for a couple of
10 months.

11 CHAIRMAN GOLTZ: But right now as of the
12 status quo today is this residual debris is being
13 transported by your company on your own? You are not
14 using a certificated hauler.

15 MR. YEASTING: That's what we are doing. We
16 have used "G" hauler containers in the past for some
17 fraction of our volume, but right now, we have to go
18 with the best economics.

19 CHAIRMAN GOLTZ: Okay.

20 JUDGE TOREM: I wanted to clarify the
21 percentages. You said there was maybe as far as the
22 residual a small percent by volume that was greater by
23 weight, and you used the number 12 percent coming out
24 of the end of the line. Is 12 percent referring to the
25 volume or the weight?

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1 MR. YEASTING: The weight.

2 JUDGE TOREM: In rough numbers that you have
3 for truckloads coming in versus truckloads going out,
4 it would be 720 truckloads to go out versus
5 approximately just shy of 20,000 trucks coming in, and
6 the rough math says that's less than five percent of
7 truckloads if all of them were equalized.

8 MR. YEASTING: Sure, and the difference there
9 is explained in the fact that the loads going out are
10 consolidated. They are a little bit larger truckloads
11 that have densified.

12 MR. LAUTENBACH: My name is Troy Lautenbach
13 with T&T Recovery, Incorporated. I own a recycling
14 company out of Bellingham, or Whatcom and Skagit
15 County. I've been in the recycling business since
16 1991.

17 I do essentially the same thing as John but
18 on a much smaller scale. I'm also a demolition and
19 clean-up contractor. I have a general contract license
20 within the state of Washington, and we also do sorting
21 at our own yard. We do not allow third-party haulers
22 to haul to us. I haul my own material to my yard, and
23 we have a crew of sorters to sort through the material,
24 pulling all the recyclables out, and then we process
25 some of the materials ourselves for different various

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1 commodities like Mr. Yeasting, and we also consolidate
2 the recyclables and then haul those to various
3 recyclers throughout the state.

4 CHAIRMAN GOLTZ: Can you give us an estimate
5 also of the truckloads in and truckloads out?

6 MR. LAUTENBACH: Last year was about 5,200
7 truckloads that came in and then 115 that went out.

8 CHAIRMAN GOLTZ: When you say 115, that went
9 out for disposal.

10 MR. LAUTENBACH: Yes, about two percent.
11 That would also include my loads that were
12 self-generated, which would be demolition and job site
13 cleanup activities. All that material ends up back at
14 my yard for sorting purposes, so we sort through our
15 own material as well as our commingled boxes that go
16 for customers.

17 Let me also say that John, I think, kind of
18 passed over what I think you gentlemen would like to
19 hear about, and that would be our prescreening process
20 before we take someone on as a customer, and we abide
21 by the new Department of Ecology rules, the transport
22 rules that we all have to abide by that we cannot haul
23 to a landfill for disposal.

24 So my company, what we do is somebody that
25 wants to contract with us for recycling services has to

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1 abide by a contract that we provide to them, and it
2 states on our contract that they have to have a means
3 of controlling their solid waste that we cannot handle,
4 which would be your lunch sacks that were referred to
5 earlier in discussions and other various materials,
6 that they have to take care of that themselves, and
7 with the new ecology rules, it actually states in there
8 that the contractor or potential customer has to have a
9 solid waste receptacle. That hasn't been defined as to
10 what that solid waste receptacle is, but it could be
11 various different items.

12 Then my drivers are instructed to go to a
13 facility, which these are standards that we developed
14 with the UTC about five years ago, and then through the
15 Ecology where our drivers are instructed to go to the
16 job site, inspect the load before they tarp it up to
17 haul it back to our yard for recycling, and if there is
18 solid waste contained in a box, they are instructed to
19 contact the customer and pull that material out, and
20 then the customer has to take care of the solid waste.

21 CHAIRMAN GOLTZ: You said pursuant to Ecology
22 rules, your company enters into a contract with your
23 customers by which the customers do some resorting.

24 MR. LAUTENBACH: Correct.

25 CHAIRMAN GOLTZ: That's pursuant to a

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1 Department of Ecology requirement forced on your
2 customers?

3 MR. LAUTENBACH: No. That's my requirement
4 to my customers.

5 CHAIRMAN GOLTZ: Is that required on you by
6 the Department of Ecology, or is that just something
7 you do?

8 MR. LAUTENBACH: That's just something I do,
9 but Ecology has required us as transporters to inform
10 our customers that the law is that they as customers of
11 ours have to provide a solid waste receptacle on, say,
12 a construction site.

13 CHAIRMAN GOLTZ: In addition to the
14 receptacle for construction debris.

15 MR. LAUTENBACH: Recyclables, correct.

16 CHAIRMAN GOLTZ: That requirement then is a
17 requirement on them by the Department of Ecology?

18 MR. LAUTENBACH: Yes.

19 CHAIRMAN GOLTZ: Mr. Yeasting, do you have
20 the same arrangement with the contract as was just
21 described?

22 MR. YEASTING: Yes, sir.

23 JUDGE TOREM: Mr. Lautenbach, I had a copy of
24 the transport agreement that was attached to a
25 declaration, Exhibit C, of Jonathan Thompson at the

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1 summary determination stage. I believe you saw a copy
2 of that? Is that what you are referring to?

3 MR. LAUTENBACH: Correct.

4 JUDGE TOREM: I'm showing that to the
5 Chairman for further reference. My understand is you
6 have the customers do this so you don't obtain too much
7 solid waste and therefore have any reason to go to a
8 landfill that Ecology is prohibiting you from going to.

9 MR. LAUTENBACH: Correct.

10 CHAIRMAN GOLTZ: Maybe Mr. Thompson could
11 find a lawyer who represents the Department of Ecology
12 to provide us....

13 MR. THOMPSON: Yes. The transporter rules is
14 what we are talking about.

15 MR. YEASTING: WAC 173-345.

16 CHAIRMAN GOLTZ: So then anything else,
17 Mr. Lautenbach? I think I asked you everything I
18 wanted to get. So Mr. Christiansen, could you just --
19 again, I want to focus on the truckloads in and
20 truckloads out and if there is any operation in your
21 business that's different from the descriptions that
22 your two predecessors gave.

23 MR. CHRISTIANSEN: Thank you. Marc
24 Christiansen, Hungry Buzzard Recovery, one of the
25 managing members. Our situation is a bit different

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1 than both John and Troy's in that we do not operate a
2 material recovery facility at this time and have not
3 for the better part of about two-and-a-quarter years.

4 Our model is one of being pretty much just a
5 hauler where we pick up the material from the customer
6 and we will take it to a material recovery facility
7 similar to John. I'm actually a customer of Glacier as
8 I am to Waste Management or CDL in Seattle or other
9 permitted facilities around the market, so I do not
10 have a facility at this time.

11 CHAIRMAN GOLTZ: So your business, if I could
12 rephrase that, is your customers would be a contractor.
13 You would go to the site, pick up their containers, and
14 take the containers to perhaps T&T Recovery.

15 MR. CHRISTIANSEN: Not Troy specifically. As
16 he said, his site is private to his company, but to
17 John, who does take material from third party, I am a
18 customer of his.

19 CHAIRMAN GOLTZ: Then you also said you work
20 with Waste Management. How do you do that?

21 MR. CHRISTIANSEN: They also have facilities
22 that will take debris. So depending on where we are in
23 the market and routing of boxes of material, we will
24 either go to Glacier or Waste Management or to United
25 Recycling. They are all geographically spread

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1 throughout the market.

2 CHAIRMAN GOLTZ: Do you ever take a load
3 directly to a disposal site?

4 MR. CHRISTIANSEN: Never.

5 CHAIRMAN GOLTZ: Do you ever take loads to
6 the Weyerhaeuser facility?

7 MR. CHRISTIANSEN: We did at one time back in
8 2007. We did operate and sort, and we were sending
9 material then.

10 CHAIRMAN GOLTZ: But when you did that, you
11 also were engaged in the sorting operation.

12 MR. CHRISTIANSEN: That is correct.

13 CHAIRMAN GOLTZ: So now you never take
14 transport material for disposal to a disposal site.

15 MR. CHRISTIANSEN: That is correct.

16 CHAIRMAN GOLTZ: How many truckloads a year
17 do you transport?

18 MR. CHRISTIANSEN: We have eight trucks and a
19 couple hundred containers. Our total trips is in the
20 neighborhood of between eight and nine thousand per
21 year.

22 CHAIRMAN GOLTZ: I think that's all the
23 questions I have; thank you.

24 COMMISSIONER OSHIE: I have no questions of
25 the panel; thank you.

0202

1 COMMISSIONER JONES: Just a couple of
2 questions regarding what regulatory regime you operate
3 under. So Mr. Yeasting, this MRF facility, is it
4 subject to the Department of Ecology regulations?

5 MR. YEASTING: In our case, yes. There is a
6 line there where we are not far off of where some
7 facilities operate as exempt facilities, but we are
8 actually permitted as a material recovery facility
9 under the Ecology permitting system as administered by
10 our local health jurisdiction.

11 COMMISSIONER JONES: Are you a clean MRF or a
12 dirty MRF? Are there any other Ecology rules that you
13 operate under?

14 MR. YEASTING: As I think Troy outlined, the
15 WAC 173-345, I point out that that was a vigorous
16 rule-making process that these intervenors and others
17 participated in as stakeholders, and that entire
18 process occurred since this action was started and
19 addressed a lot of the same overlapping questions. I
20 think Jonathan takes some relevant experience with him
21 to his new post because both agencies are obviously
22 involved in this arena.

23 COMMISSIONER JONES: When was that
24 rule-making commenced? When did it start and end?

25 MR. YEASTING: It was commenced roughly two

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1 years and finished nine months ago or so.

2 COMMISSIONER JONES: It covers some of the
3 same issues we are hashing over today.

4 MR. YEASTING: Yeah. It provides that all
5 transporters have to register with Ecology as
6 transporters of recyclables, and that includes the
7 non-G subsidiaries of the intervenors who compete with
8 us daily and sets forth rules under which we can't call
9 from a customer to a transfer station for disposal and
10 that they have to have that separate bin.

11 We go to the extent, and this is in -- I
12 provided this with Jonathan. I don't know if he
13 submitted that, but we have a form that has a map of
14 the Puget Sound region and each garbage company that
15 has the "G" permit for that area with the phone number
16 on it, and it says state law requires you to have a
17 separate bin for garbage and here is the phone number,
18 and it's your responsibility.

19 It's in our interests, and it's in the
20 interests of all recyclers to not have garbage in those
21 boxes. We pay more to dispose of every ton of residual
22 we charge to accept the recyclables. So it's a losing
23 proposition to serve as a bulk transloader of debris to
24 circumvent the "G" disposal system.

25 COMMISSIONER JONES: Mr. Lautenbach, same

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1 questions for you. If you just want to echo his
2 remarks, are you subject to both on your MRF and the
3 transporter rules, you are subject to the same Ecology
4 rules?

5 MR. LAUTENBACH: Correct. The only thing I
6 would like to add is that the transporting rules from
7 Ecology is that part of that rule states that we have
8 to keep recordkeeping for, is it maybe two years or
9 three years. I'm not quite sure the length of time,
10 but anyway, if Ecology requests to see those records as
11 to the activities of our company, they have the right
12 and ability to come in and examine our books to verify
13 that we are not going to a transfer station or landfill
14 for disposal direct.

15 COMMISSIONER JONES: In the settlement
16 agreement -- this is for all three of you -- there is
17 that requirement that you've agreed to to submit the
18 Department of Ecology annual reports to the Commission
19 so that our staff can look at that as well. You
20 obviously are comfortable with that. What sort of
21 process do you envision that being, and if a problem
22 arose, how would you deal with it?

23 MR. YEASTING: This is a little bit touchy
24 because that report actually identifies end customers
25 for our materials, and I went ahead, and just to give

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1 the Commission a clear understanding of what that
2 report entails included our 2008 report to Jonathan.
3 We would ask that it be subject to a protective order
4 so that if it were shared, the names of customers were
5 redacted, but it's a pretty comprehensive report that
6 outlines where the materials are going.

7 JUDGE TOREM: We do have a protective order
8 that was entered on February 29th, 2008, so that's
9 still in effect.

10 COMMISSIONER JONES: So then, Mr. Thompson,
11 that is covered under a protective order, those annual
12 reports with confidential customer information.

13 MR. THOMPSON: They are designated as such.

14 COMMISSIONER JONES: That's all the questions
15 I have; thank you.

16 JUDGE TOREM: Let me turn back to Chairman
17 Goltz.

18 CHAIRMAN GOLTZ: I have one question for
19 Mr. Eckhardt. You heard the testimony of Mr. Yeasting
20 and Mr. Lautenbach regarding the percentages of
21 residual debris that's transported to a disposal site,
22 and I believe Mr. Yeasting talked about 12 percent by
23 weight and five percent of the truckloads,
24 approximately, and Mr. Lautenbach talked about maybe
25 two percent by trucks. Do you recall that?

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1 MR. ECKHARDT: Yes.

2 CHAIRMAN GOLTZ: In your view, would those
3 percentages under the proposed settlement agreement be
4 considered small in relation to the overall amount
5 collected by those respective companies?

6 MR. ECKHARDT: The numbers themselves
7 certainly I would consider to be small. I don't have a
8 full understanding of what the materials transported to
9 the disposal site represent. As an example, what we
10 are trying to focus on is what is actually transported
11 to the disposal site in its entirety. As an example,
12 the industrial waste stabilizer, which is Commission
13 Order No. 6 in this proceeding, determined to be
14 disposal was considered by the transporters and
15 Weyerhaeuser as a beneficial use and therefore not
16 disposal.

17 As a matter of fact, Mr. Anderson referred to
18 that, that the industrial waste stabilizer had a
19 beneficial use, and at some point this morning, someone
20 mentioned that we have lots of terms here and there is
21 some complexity, and in fact, "beneficial use" is
22 defined by the Department of Health through both
23 statute and law, and there are only six items that have
24 been designated for beneficial use, all of them in
25 regards to soil amounts.

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1 CHAIRMAN GOLTZ: I think they testified that
2 they aren't taking it to the Weyerhaeuser facility, so
3 assuming it just goes to a disposal site, my question
4 is simply is the 12 percent, five percent, two percent
5 numbers they testified to, would you envision those to
6 be "small" in relation to the overall amount collected
7 by those respective companies?

8 MR. ECKHARDT: Yes, if that includes all the
9 materials the companies transport to disposal sites,
10 including any alternative daily cover.

11 CHAIRMAN GOLTZ: Including alternative daily
12 cover.

13 MR. ECKHARDT: Yes.

14 CHAIRMAN GOLTZ: Let me ask the panel, does
15 any of that include alternative daily cover, the amount
16 you said was being transported out of your facility?

17 MR. YEASTING: In our case, it includes all
18 materials that weren't going to a recycling market. We
19 didn't provide any alternative daily cover. If we did,
20 it would have been in there. The industrial waste
21 stabilizer, which we consider as equivalent to
22 alternative daily cover, was counted in that number,
23 yes.

24 CHAIRMAN GOLTZ: Mr. Lautenbach, when you
25 said two percent leaves your facility, does that

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1 include some for alternative daily cover, or is there
2 some in addition to that that is used for that purpose?

3 MR. LAUTENBACH: My residuals all go to the
4 Weyerhaeuser facilities currently, and I don't have any
5 ADC or any other type of residual market. We now
6 consider, since Judge Torem's ruling, that industrial
7 waste stabilizer is disposal. Going to a transfer
8 station is disposal, and ADC in our last rule-making
9 that came out from Staff, they also included ADC as
10 disposal, and so when we included the numbers for you
11 on trips for disposal, it would encompass all of those
12 things.

13 CHAIRMAN GOLTZ: Mr. Eckhardt, in your view
14 of the settlement agreement when it says, "the amount
15 of residual material disposed of," in your view, that
16 includes material that is used for alternative daily
17 cover.

18 MR. ECKHARDT: Yes.

19 JUDGE TOREM: It's now noon. We have an
20 afternoon session reserved if necessary. Let me ask
21 the Commissioners what more information they are
22 seeking from other witnesses available now or from
23 counsel. I'm not seeing any strong desire to ask a
24 whole lot more questions this afternoon.

25 COMMISSIONER OSHIE: I don't have any further

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1 questions of the panel or of counsel here, and so from
2 my perspective, the record is complete.

3 CHAIRMAN GOLTZ: That's mine as well.

4 COMMISSIONER JONES: Same.

5 JUDGE TOREM: So the Commissioners have what
6 they need, but the witnesses are here subject to
7 potential cross-examination. So let me ask
8 Mr. Thompson, do you have any questions you wanted to
9 pose to the Respondent companies' witnesses that had
10 testified this morning?

11 MR. THOMPSON: No, I don't.

12 JUDGE TOREM: Mr. Anderson, did you have any
13 questions you wanted to ask Mr. Eckhardt?

14 MR. ANDERSON: No.

15 JUDGE TOREM: Mr. Wiley, if you want to, we
16 can come back after lunch, and I'm not trying to
17 discourage it by asking the question. You and
18 Mr. Sells have combined your presentation. We can stay
19 until about ten after and accommodate some other
20 commitments that I know exist. If that's not going to
21 be sufficient, then we can also come back later this
22 afternoon.

23 MR. WILEY: Not a good position to be in. I
24 deferred mainly to Mr. Sells on the panel questions.
25 To begin with, that's how we divvied it up.

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1 JUDGE TOREM: Mr. Sells?

2 MR. SELLS: I guess I had one question. I'll
3 tell you what it was, or Mr. Eckhardt, if he had any
4 insight on the progress of the rule, and if so, he
5 could share it with the parties here. I had maybe one
6 or two questions at the most for probably two of the
7 panel, maybe not all three.

8 JUDGE TOREM: Let's see what we can get done
9 by ten after and see what we need to do. Mr. Eckhardt,
10 did you hear the question? Can you give a short
11 summary of where we are in the rule-making?

12 MR. ECKHARDT: The status of the rule-making
13 is that Staff has received and reviewed comments on the
14 second draft that we sent out, and we are discussing
15 internally additional changes and will consider how to
16 proceed, including whether additional stakeholder
17 meetings are required, comment periods, or whether we
18 can meet with Commissioners to recommend a CR-102.

19 I think everyone is aware, I'm painfully
20 aware of the length of time this rule-making has taken,
21 and I gave up predicting time periods a long time ago.

22 JUDGE TOREM: Mr. Sells, any follow-up?

23 MR. SELLS: No.

24 JUDGE TOREM: Mr. Wiley?

25 MR. WILEY: Mr. Eckhardt, could you just

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1 explain the iterational change in the Staff's proposed
2 draft rule between March and November that I addressed
3 in the narrative settlement where the MRF, the original
4 draft proposal from the Staff was to require
5 G-certificate haulers or city contract haulers to
6 transport the material from the MRF, and then in the
7 second round of proposed rules, that language was gone,
8 and there was a focus on the MRF and a 25 percent
9 residual threshold. Can you give us any insight now as
10 to what happened there?

11 MR. THOMPSON: I want to object to that as
12 beyond the scope of the proceeding.

13 JUDGE TOREM: I'm going to leave that for
14 further discussions or comments. I watched the
15 rule-making myself with interest and it's outside the
16 scope of this proceeding. I'm sure that will be
17 addressed to the Commissioners when there is a CR-102
18 presented. Let's go to the next questions, and which
19 witness did you want to ask?

20 MR. SELLS: Mr. Yeasting, you may have said
21 this, but which counties or county are your operations
22 in?

23 MR. YEASTING: Our MRF facility is in King
24 County, and our collection operations, I would have to
25 looked at our Ecology report, but I think it included

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1 materials picked up from six different counties, King,
2 Pierce, Snohomish, Kitsap, Thurston.

3 MR. SELLS: All in Western Washington, Puget
4 Sound, basically?

5 MR. YEASTING: Yes.

6 MR. SELLS: You described 720 loads of
7 disposal. To where do they go? Where are you taking
8 the residual?

9 MR. YEASTING: During calendar year 2009
10 included Weyerhaeuser's special purpose landfill.
11 Cayton, C&D Landfill, or Inert Waste Landfill in
12 Eastern Washington and Yakima and Naches, and then I
13 believe some to Waste Management.

14 MR. SELLS: Are you aware of any local solid
15 waste management plan rules that would require you to
16 retain that disposal within the county, Skagit, for
17 example, Snohomish, King?

18 MR. YEASTING: I am aware of rules that fall
19 under the definition of "float control", which has been
20 the subject of constitutional debate since Carbone
21 decision in 1984 and the more recent Oneida case which
22 narrowed the results of Carbone and the float control
23 ordinance that's on the books in my county is not
24 constitutional under Carbone, according to
25 Mr. Anderson's opinion.

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1 MR. SELLS: Is that why you feel it's
2 appropriate to transport your disposal to Yakima?

3 MR. ANDERSON: I would object. This is
4 beyond the scope, and it's an entirely different, as
5 you can see, constitutional issue as to the validity of
6 the King County ordinance.

7 JUDGE TOREM: I will sustain the objection.
8 Mr. Sells, if you are getting to the what, that's
9 great, but the why, that's not in the scope of this
10 proceeding.

11 MR. SELLS: Mr. Lautenbach then, same
12 questions, at least the first same question, where is
13 your disposal sites?

14 MR. LAUTENBACH: My disposal sites is a site
15 which is Weyerhaeuser. I currently haul my residuals
16 there as industrial waste stabilizer.

17 MR. SELLS: So all of your residual disposal
18 is still going to the Weyerhaeuser site?

19 MR. LAUTENBACH: Correct, with no direct
20 shipments, including my own generated material.

21 MR. SELLS: By no direct shipments, I think I
22 recall meaning in a declaration that that means to you,
23 anyway, no direct shipments from the customer's site?

24 MR. LAUTENBACH: Correct.

25 JUDGE TOREM: Mr. Sells, if I understand

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1 correctly, you are collecting at your site in
2 Bellingham and transporting into Weyerhaeuser in
3 Longview?

4 MR. LAUTENBACH: Correct. It's Skagit
5 County, not Bellingham, Burlington.

6 JUDGE TOREM: But you are still transporting
7 all of that after the MRF process, the residual goes
8 down south to Longview.

9 MR. LAUTENBACH: Correct, and then we have
10 another haul that comes back, so it's an economic type
11 thing. I still hold out to the truth that IWS is
12 better than just going to the landfill, but that's just
13 part of my recycle hat, I guess.

14 JUDGE TOREM: When you are saying they have
15 another load coming back, that's a customer whose
16 material you are picking up for sorting.

17 MR. LAUTENBACH: No, not for sorting. It's a
18 recycle activity that is a contract haul for customer.

19 JUDGE TOREM: So instead of a recycling issue
20 point to point, that brings your truck back north.

21 MR. LAUTENBACH: Correct. That's how the
22 economics work.

23 JUDGE TOREM: We are seven minutes after.
24 Mr. Wiley, Mr. Sells, were there other questions for
25 any of the witnesses?

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1 MR. SELLS: I have none, Your Honor.

2 MR. WILEY: None.

3 JUDGE TOREM: Counsel, any other questions
4 you wanted to raise? Commissioners? Then you've
5 indicated you have all the information you need to
6 evaluate the settlement, and we will hope by the end of
7 next week, week after to have something out to the
8 parties indicating the Commission's position on whether
9 they will approve in whole or in part the settlement.

10 CHAIRMAN GOLTZ: Probably not next week.

11 JUDGE TOREM: Hopefully by the end of the
12 month. We had a target date I know because of the
13 scheduled hearing. If the publication date of the
14 order causes us to need a continuance on the hearing, I
15 will let you know if that becomes necessary.

16 Anything else? Thank you all for being here.

17 We are adjourned.

18 (Settlement conference adjourned at 12:08 p.m.)

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