

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

In re the Matter of Determining the Proper)	DOCKET TG-072226
Carrier Classification of)	
)	ORDER 09
GLACIER RECYCLE, LLC;)	
HUNGRY BUZZARD RECOVERY, LLC;)	SUPPLEMENTAL ORDER
AND T&T RECOVERY, INC.)	CLOSING DOCKET
)	
.....)	

BACKGROUND

1 **PROCEEDING.** Docket TG-072226 involves a special proceeding instituted in December 2007 under Revised Code of Washington (RCW) 81.04.510 by the Washington Utilities and Transportation Commission (Commission) on its own motion to determine whether three companies holding motor freight common carrier permits under RCW 81.80 (Respondent Companies) were operating as solid waste collection companies, hauling solid waste for compensation without the necessary certificates required by RCW 81.77.040 and Washington Administrative Code (WAC) 480-70-016.

2 **RELEVANT PROCEDURAL HISTORY.** On July 9, 2010, the Commission entered Order 08, *Final Order Approving and Adopting MultiParty Settlement Agreement Subject to Condition; Authorizing and Requiring Compliance Filings*. Among other things, Order 08 granted Respondent Companies a temporary exemption to WAC 480-70-016(1) that was to expire 30 days after the effective date of the final adoption resolution in the Commission’s solid waste rulemaking, Docket TG-080591. *See* Order 08, ¶ 36.

3 On December 9, 2010, in response to Executive Order 10-06 directing state agencies to suspend non-critical rulemakings, the Commission closed the solid waste rulemaking in Docket TG-080591 without taking further action. The Commission then scheduled a status conference to determine the impact, if any, of terminating that rulemaking on this docket.

4 **PARTY REPRESENTATIVES.** Donald L. Anderson, Eisenhower & Carlson, PLLC, Tacoma, Washington, represents Glacier Recycle, LLC (Glacier), Hungry Buzzard Recovery, LLC (Hungry Buzzard), and T&T Recovery, Inc (T&T) (collectively “the Respondent Companies”). James K. Sells, Ryan Sells Uptegraft, Inc. P.S., Silverdale, Washington, represents the Washington Refuse and Recycling Association (WRRRA). Polly L. McNeill, Summit Law Group PLLC, Seattle, Washington, represents Waste Management of Washington, Inc. (Waste Management or WMW). David W. Wiley, Williams Kastner & Gibbs PLLC, Seattle, Washington, represents Murrey’s Disposal Company, Inc. (Murrey’s), Island Disposal, Inc. (Island), Waste Connections of Washington, Inc. (Waste Connections or WCW), Lynnwood Disposal d/b/a Allied Waste of Lynnwood (Lynnwood Disposal), and Eastside Disposal d/b/a Allied Waste of Bellevue (Eastside Disposal). Sally Brown, Senior Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).¹

PARTY POSITIONS AND RECOMMENDATIONS

5 **CONFERENCE.** The Commission held a status conference on Tuesday, February 8, 2011, before Administrative Law Judge (ALJ) Adam E. Torem. The Commission sought the parties’ positions on (a) whether the temporary exemption granted in Order 08 remained in effect and (b) how the Commission should proceed in this docket given the termination of the solid waste rulemaking in Docket TG-080591.

6 Glacier Recycle explained that Waste Management has purchased Glacier Recycle’s operations, including its material recovery and recycling facility (MRF) in Auburn, Washington. As a result, Glacier Recycle no longer has any interest in maintaining the temporary exemption granted in Order 08.

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 7 Hungry Buzzard stated that it no longer hauls construction, demolition, and land clearing (CDL or C&D) materials to the Weyerhaeuser Company facility in Cowlitz County or to any other site for disposal. Consequently, Hungry Buzzard also is no longer interested in maintaining the temporary exemption granted in Order 08.
- 8 T&T represented that it continues to operate and maintain its sorting facility in Bellingham, Washington. T&T sorts its incoming waste stream and continues to haul some C&D debris off-site for disposal. T&T initially stated its belief that it would benefit from continued operation of the temporary exemption granted in Order 08, but T&T said that it would not object to the Commission terminating that exemption and that the company would work with Commission Staff to ensure T&T's ongoing operations are in compliance with all applicable statutes and rules.
- 9 Commission Staff took the position that the temporary exemption had already expired on or about January 10, 2011, 30 days after the Commission closed the rulemaking docket, in accordance with the terms of Order 08, ¶ 36. Further, Staff indicated that it was not seeking to pursue another rulemaking and is no longer interested in pursuing the classification action against any of the Respondent Companies. Staff recommended that the Commission terminate this proceeding.
- 10 The Intervenors (WRRRA, Waste Management, Murrey's, Island, Waste Connections, Lynnwood Disposal and Eastside Disposal) generally concurred with Commission Staff regarding the termination of the temporary exemption granted in Order 08. All intervenors also noted the importance of the Respondent Companies conforming their ongoing operations to existing law. In addition, WRRRA and Waste Management asked that the Commission seek to address the "residual haul" issue that was not resolved by the closed rulemaking.² Finally, Waste Management requested confirmation that Order 08's formal endorsement and adoption of Order 06³ remains undisturbed by the closure of the solid waste rulemaking docket. All intervenors also agreed with Commission Staff's recommendation that the Commission terminate this proceeding.

² See Order 08, ¶ 38, note 11.

³ See Order 08, ¶¶ 27-28.

- 11 The Respondent Companies opposed Commission Staff's interpretation of Order 08 with regard to the expiration of the temporary exemption to WAC 480-70-016(1). However, the Respondent Companies supported Staff's recommendation that no further proceedings were necessary in this docket and joined in the recommendation to close this docket.

COMMISSION DECISION

- 12 The parties agree that no further proceedings are necessary in this docket. None of the Respondent Companies seek to continue the temporary exemption granted in Order 08. Accordingly, by this order we expressly terminate that exemption and do not reach the issue of whether the exemption previously expired by its own terms as Staff contends.
- 13 We further observe that the closure of the solid waste rulemaking in Docket TG-080591 without adoption of new solid waste rules did not change our endorsement and adoption of Order 06. The findings of fact and conclusions of law, as well as the underlying rationale set out in Order 06, retain their full force and effect.

REMAINDER OF THIS PAGE INTENTIONALLY BLANK

ORDER

THE COMMISSION ORDERS That:

- 14 (1) The temporary exemption from the requirements of WAC 480-70-016(1)
granted in Order 08 is no longer in effect.
- 15 (2) Docket TG-072226 is closed.

Dated at Olympia, Washington, and effective February 18, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.