

ATTACHMENT A

Sharon Hendricks

From: Wiley, Dave <dwiley@williamskastner.com>
Sent: Tuesday, June 9, 2020 10:10 AM
To: Kenefick, Andrew
Cc: Fassburg, Blair
Subject: [EXTERNAL] Your Nippon Paper Letter and February, 2011 Informal UTC Staff Opinion

Hi Andrew: We've (particularly Blair) have looked at your January, 2011 letter on TOFC for Nippon Paper and Atlas Trucking and the cases you rely upon therein. Do you have time to discuss it today? We have a mediation all-day tomorrow and Thursday's bad but other than a 2:00 today we have time and would like to talk. Please advise and thanks.

Dave W. Wiley

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WASHINGTON OREGON



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

February 10, 2011

Andrew M. Kenefick, Senior Legal Counsel
Waste Management of Washington, Inc.
801 Second Avenue, Suite 614
Seattle, WA 98104

RECEIVED
FEB 15 2011
WM WESTERN GROUP
LEGAL OFFICE

RE: Atlas Trucking, Inc./Nippon Paper Industries USA

Dear Mr. Kenefick:

Staff of the Washington Utilities and Transportation Commission (commission) reviewed the information you provided in response to its January 19 request.

Based on staff's review and the analysis of our attorney general staff, we believe the transportation of solid waste-filled containers by Atlas Trucking from Nippon Port Angeles to the Olympic View Transfer Station in Port Orchard is exempt Trailer On Flat Car/Container On Flat Car (TOFC/COFC) service under 49 C.F.R. §§ 1090.1 and 1090.2, and is preempted from regulation by the commission.

Under 49 C.F.R. § 1090.1, highway transport of freight is defined as TOFC/COFC if, among other things, the container is not unloaded before the freight reaches its final destination. The information you provided indicates that the containers are not unloaded between Nippon Port Angeles and the Columbia Ridge landfill in Oregon.

Under 49 C.F.R. § 1090.2, motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are considered exempt. Based on the information provided, Waste Management Disposal Services of Oregon (WMDSO) is the receiver. WMDSO owns the containers but does not transport them, and arranges for their transportation from Nippon to the Columbia Ridge landfill in Oregon. WMDSO arranges with Atlas for motor carrier TOFC/COFC pickup and delivery services immediately before a TOFC/COFC movement provided by Union Pacific Railroad.



This letter states the informal opinions of commission staff, offered as technical assistance, and is not intended as legal advice. We reserve the right to amend these opinions should circumstances change or additional information be brought to our attention. Staff's opinions are not binding on the commission.

Thank you for your timely response and cooperation. Staff now considers this matter closed. If you have any questions, please contact Betty Young, Compliance Investigator, Transportation Safety. Ms. Young can be reached at (360)664-1202, or by e-mail at byoung@utc.wa.gov.

Sincerely,

A handwritten signature in black ink that reads "David Pratt". The signature is written in a cursive style with a large initial "D".

David Pratt
Assistant Director, Transportation Safety

cc: Bruce Swenson, Atlas Trucking, Inc.