

**Docket Nos. TG-220243 and TG-220215 (Consolidated) -
Vol. II**

**In re: Jammie's Environmental, Inc. / Basin Disposal v.
Jammie's Environmental**

November 15, 2022



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the) Dockets TG-220243 and
Application of) TG-220215
) (Consolidated)
))
JAMMIE'S ENVIRONMENTAL, INC.,))
))
))
For Authority to Operate as a)
Solid Waste Collection Company)
in Washington)
))
))
BASIN DISPOSAL, INC.,))
))
Complainant,))
))
v.))
))
JAMMIE'S ENVIRONMENTAL, INC.,))
))
Respondent.))
))

VIRTUAL EVIDENTIARY HEARING
VOLUME II
ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

(All participants appeared via videoconference.)

DATE TAKEN: NOVEMBER 15, 2022
REPORTED BY: ROSE DETLOFF, RMR, CRR, CCR #21036100
LAURA OHMAN, RPR, CCR #3186

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2 ADMINISTRATIVE LAW JUDGE:

3 MICHAEL HOWARD

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10 ALSO PRESENT:

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13 KURT THORNE
14 CHARLIE DIETRICH
15 DARRICK DIETRICH
16 KATHRYN MCPHERSON
17 RYAN SMITH
18 BRAD LOVAAS
19 GREG HAMMOND

20 * * * * *

1 LACEY, WASHINGTON; NOVEMBER 15, 2022

2 9:33 a.m.

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

5

6 JUDGE HOWARD: Good morning, everyone.

7 Let's be on the record.

8 Today is Tuesday, November 15th, 2022, and the
9 time is 9:33 a.m. This is a hearing in consolidated
10 Dockets TG-220243 and TG-220215.

11 These dockets are captioned respectively, "In
12 the Matter of the Application of Jammie's Environmental,
13 Incorporated, for Authority to Operate As a Solid Waste
14 Collection Company in Washington," and Basin Disposal,
15 Incorporated, versus Jammie's Environmental,
16 Incorporated.

17 My name is Michael Howard, and I'm an
18 Administrative Law Judge with the Commission presiding
19 over today's hearing. Let's start by taking appearances
20 from the parties, and then we'll talk about our plans
21 for today's hearing.

22 Can we hear first from Jammie's Environmental?

23 MR. STEELE: Good morning, Your Honor.

24 David Steele with Perkins Coie on behalf of Jammie's
25 Environmental.

1 MS. BARNETT: Donna Barnett appearing as
2 co-counsel.

3 JUDGE HOWARD: Thank you.

4 Can we hear from counsel for Basin Disposal?

5 MR. FASSBURG: Yes. Good morning, Your
6 Honor. Blair Fassburg and Dave Wiley of Williams
7 Kastner representing Basin Disposal.

8 JUDGE HOWARD: Thank you.

9 Is Staff entering an appearance at the hearing
10 today? I don't believe I see Staff, but I'm just
11 checking.

12 MS. MCPHERSON: This is Kathy McPherson. I
13 am not appearing today. I'm just observing.

14 JUDGE HOWARD: All right. Thank you.

15 Could we have an appearance for Packaging
16 Corporation of America or PCA?

17 MS. BLANCAFLOR: Good morning, Your Honor.
18 My name is Dawn Blancaflor appearing for Packaging
19 Corporation of America.

20 JUDGE HOWARD: Thank you.

21 Could we have an appearance for Washington
22 Refuse and Recycling Association or WRRRA?

23 MR. WHITAKER: Good morning, Your Honor.
24 This is Rod Whitaker, in-house counsel for the
25 Washington Refuse and Recycling Association appearing

1 today for the association.

2 JUDGE HOWARD: Thank you.

3 Since we are doing this hearing over the phone
4 and Zoom, I'm going to ask that the parties be aware of
5 background noise and that you mute your microphone when
6 you are not speaking. I would ask that observers be
7 mindful of this as well.

8 If you need to object or raise an issue, please
9 identify yourself when you are speaking. And we should
10 make an effort to not talk over each other so that the
11 court reporter can make a clear record of our hearing
12 today.

13 Let's talk about our plans for this hearing.

14 I'm sorry. Was there a question? Okay.

15 Hearing none.

16 This is a consolidated proceeding where we are
17 considering Jammie's application and Basin's formal
18 complaint in the same proceeding. So first, let's
19 discuss our plans in the event that we'll -- I just want
20 to give you a roadmap here at first.

21 First, I want to discuss our plans for the
22 hearing possibly going long today. Then I want to
23 discuss the admission of evidence. Then we will discuss
24 opening -- we will allow for opening statements, and
25 then we will allow for cross-examination following the

1 parties' proposed order of witnesses, and this would
2 mean our first witness today would be Jammie Scott.

3 So that was in terms of a brief roadmap. So
4 let's talk about our plans for today in the case that
5 the hearing takes more than a normal hearing day and
6 goes long.

7 The parties have estimated that there's a total
8 of nine hours and 15 minutes of cross-examination.
9 Since we normally take a brief midmorning break, a lunch
10 break, and a brief midafternoon break, let's suggest we
11 may not finish today.

12 So if we come to the end of the day or we
13 approach the end of the day this afternoon and we are
14 not finished, are the parties able to propose another
15 date to finish the hearing?

16 I have been informed that PCA is unavailable
17 tomorrow, and in an earlier e-mail to the parties, I
18 raised the possibility of continuing into the evening.
19 Right now, I am generally leaning against that approach
20 because I'm not sure of the availability of the parties
21 and the court reporter and anyone from the Commission
22 who is assisting with actually running the logistics of
23 this hearing.

24 So could I turn first to Jammie's?

25 MR. STEELE: And, Your Honor, just to be

1 clear, is your question about going on later into the
2 day today or a different date altogether if we run past
3 today?

4 JUDGE HOWARD: I would like to hear your
5 preferred course of action between those. We can, of
6 course, hold this over for the afternoon and see where
7 we're at. I just did not want to be, you know, at 4:45
8 in the afternoon trying to identify another day for a
9 hearing or not being able to before we have to adjourn.

10 So I would be curious in Jammie's preferred
11 course of action.

12 MR. STEELE: Well, we are -- we are prepared
13 and are able to try to finish out the hearing today. I
14 know that Jammie and Owen Scott came from Longview up to
15 Bellevue, so they are -- they did drive and are spending
16 the night up here. So I think that their preference is
17 to try and finish today as well.

18 If it does extend beyond today and going later
19 is not an option, we're happy to consider a different
20 date to try to finish the hearing, you know, at the
21 Commission's availability.

22 JUDGE HOWARD: Okay. So perhaps we could go
23 past 5:00, if that was okay?

24 MR. STEELE: Yeah. We have no restrictions
25 on that from that perspective.

1 JUDGE HOWARD: All right. Thank you.

2 Could I hear from Basin?

3 MR. FASSBURG: Yes, Your Honor. If we were
4 to be close to finishing the hearing at 5:00 and we
5 thought we could actually wrap up within a short while
6 after that, I might prefer that we finish the hearing
7 today. I know that Mr. Dietrich is here despite his
8 wife being home with their newborn, and I'd like to be
9 able to get him home rather than keeping the parties
10 here late into the evening.

11 So if we are going to go much past 5:00, it
12 would be my preference for Basin that we find another
13 day. I currently have a couple of calendar conflicts on
14 Thursday. None on Friday. So if the availability of
15 the other parties was to finish it later this week, I
16 could either move my Thursday meetings or do it on
17 Friday.

18 JUDGE HOWARD: All right. Great. Thank
19 you.

20 I will just note, so the parties are aware, I
21 can make myself available on Thursday and Friday because
22 I would prioritize this over internal meetings.

23 Could I turn to PCA?

24 MS. BLANCAFLOR: Your Honor, we are here and
25 available to stay into the evening should the hearing

1 continue past 5:00. That is, we have no time
2 constraints on this side for this evening. And we will
3 be willing to pick another date if it comes to that, but
4 I need to let you know now that PCA is not available
5 Thursday or Friday of this week.

6 JUDGE HOWARD: Okay. All right. Thank you.
7 Could I hear from WRRRA?

8 MR. WHITAKER: Yes. Thank you, Judge
9 Howard. We'd be good to continue on into the evening as
10 well today or work around the main parties' schedule for
11 a future hearing.

12 JUDGE HOWARD: Okay.

13 Well, given where we are at, and we are not
14 sure if the hearing will go long today, I would just
15 encourage the parties to be mindful of their use of
16 time, and we'll try to proceed as efficiently as
17 possible today.

18 If we need to, we can arrange for the hearing
19 to continue later. We can go past 5:00 briefly. I am
20 mindful of our witness with a newborn baby and not
21 keeping them late into the evening. That would seem
22 unreasonable to me. So we'll see where we're at, but I
23 did want to address that issue.

24 All right. So let's turn to the admission of
25 exhibits. I received cross exhibits and an exhibit list

1 from Jammie's, Basin, and PCA. If I recall correctly, I
2 did not receive any cross exhibits from WRRRA.

3 And I've circulated an exhibit list to the
4 parties reflecting all the prefiled testimony and
5 exhibits. This is up to and including Jammie's proposed
6 cross exhibit SR-23X, which was filed on November 11th.

7 Do the parties -- are the parties able to
8 stipulate to the admission of all the prefiled testimony
9 and exhibits up to and including the November 11th
10 SR-23X exhibit, or do the parties wish to make any
11 evidentiary objections now or reserve certain
12 objections?

13 Could I hear Jammie's position?

14 MS. BARNETT: Your Honor, we have no
15 objections to any of the exhibits on the exhibit list.

16 I would just point out, I think an exhibit -- a
17 document that's been identified as a cross-exam exhibit
18 for Jammie Scott, No. JDS-22X, is a docket notice. We
19 have no problem with that being admitted or -- but I
20 think it's probably more appropriate that the Commission
21 take judicial notice or official notice of that rather
22 than having that be a cross-exam exhibit from Ms. Scott
23 because it's an official Commission notice rather than
24 anything that the parties drafted.

25 But with that, we have no objections with any

1 of the exhibits.

2 JUDGE HOWARD: All right. Thank you. I
3 would agree with your reasoning on that. I would -- if
4 the parties are willing to stipulate to all the
5 exhibits, though, I would still be willing to admit that
6 as a cross exhibit even though it's something we might
7 normally just take notice of.

8 MS. BARNETT: That's fine.

9 JUDGE HOWARD: Could I hear from Basin?

10 MR. FASSBURG: Your Honor, we don't have an
11 objection to any but one of the exhibits, and the
12 objection to testimony that we have would be twofold.

13 First, I'd like to renew our motion to strike
14 the testimony that we moved to strike previously. I
15 want to make sure that our argument is in the hearing
16 record on this point, specifically that both PCA and
17 Jammie's argued in response to our motion to strike that
18 Basin had agreed to the procedural schedule that
19 included PCA as an intervenor testifying in the response
20 phase, and because there is no right to apply
21 automatically, we didn't want to burden you, the judge,
22 prior to the hearing, with too many motions and replies
23 and responses. We did not move to reply to that
24 specific argument.

25 But the hearing transcript for the prehearing

1 conference reflects only an agreement as to the dates of
2 direct testimony and response testimony, not that the
3 intervenors would testify in the response phase.

4 And so we continue to urge the Commission to
5 give Basin Disposal its due process rights and an
6 opportunity to respond to that testimony through
7 something other than merely cross-examination and
8 discovery because it did not have an opportunity to
9 present its own witnesses on what I think are critical
10 disputed facts.

11 And I would also raise, with respect to the
12 limited grounds that Basin had for disputing this
13 response testimony -- which was basically
14 cross-examination and discovery -- the discovery that
15 was produced by PCA in this case, with respect to its
16 response testimony, was incomplete. There was no time
17 between the time it was produced and this hearing date
18 to file a discovery motion based on the Commission's
19 procedural schedules or rules, and so this is not
20 something we were able to previously address.

21 With that, I served a data request to PCA
22 asking for all of its communications with Jammie's
23 after -- I believe it was March 3rd, 2022. And what I
24 received in response were two invoices and an objection
25 that all of their communications were subject to

1 attorney-client and/or work-product privilege on the
2 basis that they are privileged communications under the
3 common interest doctrine, but I don't believe that's an
4 accurate response.

5 Jammie's Environmental produced in response to
6 Basin's requests quite a few e-mails that were exchanged
7 between those two parties during the same time period
8 that we requested information for. Without complete
9 discovery responses from PCA, this is not an adequate
10 response for Basin.

11 JUDGE HOWARD: Thank you, Mr. Fassburg.
12 What was the data request number that you just referred
13 to?

14 MR. FASSBURG: And I believe that is one of
15 the cross-examination exhibits. I believe it was Data
16 Request No. 25. I can confirm that, if you'll give me a
17 moment.

18 JUDGE HOWARD: Okay.

19 MS. BLANCAFLOR: Your Honor, it's Data
20 Request No. 5.

21 JUDGE HOWARD: Thank you.

22 Well, Mr. Fassburg, I can appreciate -- I can
23 appreciate Basin's need to make a record and to
24 articulate its positions.

25 In terms of my view of this, I've already

1 issued a ruling on Basin's motion to strike and on
2 Basin's interpretation of the procedural schedule, and
3 as far as I'm concerned, that ruling still stands, and I
4 don't need to hear a response from Jammie's on that at
5 this time.

6 To the extent that Basin is suggesting that
7 Jammie's has failed to fully respond to a discovery
8 request --

9 MR. FASSBURG: Excuse me, Your Honor. It's
10 PCA who failed to respond.

11 JUDGE HOWARD: Oh, PCA. I'm sorry. Thank
12 you for the clarification.

13 To the extent that Basin is arguing that PCA
14 failed to fully respond to a data request, Commission
15 rules normally contemplate that the moving party for
16 such a motion would include the data request itself and
17 any responses, and this enables me to more fully
18 consider it. And I'm very hesitant to make any such
19 finding based on an oral motion right now when it could
20 have been brought earlier.

21 So I would invite Basin to make a motion if it
22 feels that there's a discovery issue that was -- but I'm
23 not granting an oral motion at this time.

24 MR. FASSBURG: I understand, Your Honor.

25 JUDGE HOWARD: Thank you. Would Basin

1 stipulate to the admission of the exhibits beyond those
2 objections?

3 MR. FASSBURG: We do have one additional
4 objection. There is an objection specifically to
5 testimony offered in the response phase by Jammie Scott
6 on Page 10, lines 11 through 16, wherein specifically
7 she speculates as to what she thinks Basin Disposal may
8 have done in terms of communications with Finley Buttes
9 Landfill.

10 I mean, she admits she's speculating as to what
11 she thinks happens, and she admits an exhibit where
12 she's communicating with Kathryn McPherson. This is not
13 evidence that supports her speculation or corroborates
14 it in any way, and this is inflammatory testimony.
15 She's accusing my client improperly, without evidence,
16 of interfering with its ability to dispose of waste at a
17 landfill.

18 JUDGE HOWARD: Please give me a moment.

19 MR. STEELE: Can you say the page cite
20 again?

21 MR. FASSBURG: I may have written it down
22 incorrectly, but my note says Page 10, lines 11 to 16,
23 in Exhibit JDS-17.

24 I think that's the incorrect page. Let me find
25 the correct page.

1 JUDGE HOWARD: I am seeing it on Page 10,
2 line 11 on.

3 MR. FASSBURG: Okay. That is correct. Yes.

4 JUDGE HOWARD: And, Mr. Fassburg, you are
5 maintaining that JDS-19, the exhibit being cited here,
6 provides no support whatsoever for this assertion?

7 MR. FASSBURG: It supports that Jammie's
8 meets the same speculative allegation. It doesn't
9 maintain in any way that it actually occurred.

10 JUDGE HOWARD: Would Jammie's like to
11 respond?

12 MS. BARNETT: Your Honor, I think this is --
13 while it's presented as an objection to evidence, this
14 is just a renewal of a motion to strike the testimony,
15 and I think this has already been addressed.

16 To the extent that this is a -- that there's an
17 objection to this particular testimony, Mr. Fassburg can
18 certainly question the witness about her understanding
19 of it. And if an objection is warranted at that time,
20 I'm sure you'll rule on that, and we will all be heard.

21 But I think it's inappropriate to object to
22 testimony at this time. This is testimony, not a
23 specific cross exhibit, and we've already addressed this
24 issue.

25 JUDGE HOWARD: I agree right now with

1 Jammie's position on this. I'm going to decline to
2 strike these portions of JDS-17.

3 The Commission does not operate on the basis of
4 a jury trial system, so we're not easily prejudiced by
5 hearing a witness's suspicions or views about something,
6 and we can give it the weight that it deserves based on
7 the evidence. And Basin is free to cross on that point
8 and to make that argument.

9 Okay. Any other objections from Basin, or is
10 Basin otherwise willing to stipulate to the admission of
11 the exhibits setting aside those objections?

12 MR. FASSBURG: Yeah. Aside from the
13 specific portions of testimony to which we maintain our
14 objections, we would stipulate to the admissibility of
15 all other testimony and all other exhibits.

16 JUDGE HOWARD: Thank you.

17 Would PCA stipulate to the admission of all the
18 prefiled testimony and exhibits as I've described?

19 MS. BLANCAFLOR: Yes, Your Honor. PCA
20 stipulates to all the admission of the exhibits and
21 cross exhibits.

22 JUDGE HOWARD: Thank you.

23 And WRRRA?

24 MR. WHITAKER: Yes. WRRRA will stipulate as
25 well. Thank you.

1 JUDGE HOWARD: Thank you.

2 In that event, all the prefiled testimony and
3 exhibits as identified on the exhibit list up to and
4 including SR-23X filed on November 11th are admitted
5 into evidence, and I have -- as I've already explained,
6 I have overruled Basin's objections at the hearing
7 today, although Basin is free to cross as I've indicated
8 on that point.

9 I want to note as well, while we are talking
10 about the evidence, that some of the cross exhibits have
11 been marked confidential. If you plan to ask a witness
12 specifically about information marked confidential, or
13 if the witness will need to refer directly to
14 confidential information to answer your question, then
15 we'll need to take certain steps to maintain that
16 confidentiality in the hearing today.

17 So please let me know if you anticipate that
18 will be an issue when you start your examination for
19 that particular witness.

20 So next, let's turn to opening statements. I
21 indicated that these would be available to the parties,
22 and I asked that they be limited to 15 minutes each.

23 Would any of the parties like to provide an
24 opening statement?

25 MR. STEELE: Yes, Your Honor. Jammie's

1 would, and we're happy to go in any order you would
2 prefer.

3 JUDGE HOWARD: I would begin with Jammie's,
4 and we would follow the order of presentation, the same
5 order of presentation given on the witness list. Thank
6 you. You may proceed when you are ready.

7 MR. STEELE: Thank you, Your Honor. Just
8 kind of sliding a little closer, if it will catch up.

9 Good morning, Your Honor. 23 years ago, Jammie
10 Scott started Jammie's Environmental in Longview,
11 Washington with little more than a vacuum truck and a
12 few employees. Today, by building a company whose core
13 principle is helping customers solve problems through
14 excellent customer service, Jammie's has grown
15 exponentially, serving customers across the western
16 United States, including the pulp and paper industry,
17 shipyards, the railroads, the steel industry, chemical
18 plants, and refineries.

19 Jammie's core business is providing industrial
20 cleaning and cleanup services to large industrial and
21 commercial companies. When these customers have a
22 unique or difficult-to-manage waste problem, they call
23 Jammie's.

24 When these -- whether it is cleaning up a
25 railroad car mess, pumping out an oily waste tank,

1 hydroblasting and disposing of waste from plugged lines,
2 or just dealing with a challenging waste issue, Jammie's
3 is part of a class of companies in Washington that
4 dispose of industrial waste incidental to other services
5 they provide customers. These companies are, in most
6 cases, not regulated by the Commission.

7 Let me be clear what Jammie's is and what it
8 isn't. Jammie's is a fully certified industrial waste
9 cleaning company that disposes of various types of waste
10 incidental to cleaning or cleanup services. Prior to
11 this case, Jammie's has never been investigated by the
12 Commission, and no party or person has ever asserted
13 that Jammie's needed a solid waste certificate for any
14 of its services.

15 Jammie's is not, however, nor does it seek to
16 be, a solid waste collection company. It does not seek
17 to be a competitor to BDI or any company currently
18 holding a solid waste certificate. It is only applying
19 for a solid waste certificate in this proceeding because
20 Commission Staff recommended that Jammie's do so.
21 Jammie's services are separate and distinct from
22 regulated garbage collection services provided by
23 entities like BDI.

24 So why are we here? We are here because, in
25 this case, Jammie's did what it does best: Solve

1 problems. Whether BDI chooses to acknowledge this or
2 not, Jammie's resolved the OCC rejects problem for its
3 customer, PCA. That is a fact. BDI was given the
4 opportunity to solve this problem for PCA, and they
5 failed. Jammie's succeeded.

6 The evidence in this case already demonstrates,
7 and what will be further established today is, one, that
8 Jammie's hauling and disposal of OCC rejects for PCA is
9 exempt from regulation under WAC 480-70-011, Subpart 1G
10 or 2.

11 If the Commission determines regulation is
12 needed, then Jammie's meets the requirements for a class
13 C certificate under RCW 81.77.040 and applicable
14 regulations.

15 I'll start with the exemption. Jammie's
16 transportation and disposal of rejects is exempt from
17 regulation because Jammie's hauling is incidental to a
18 small fraction of its overall business for several
19 reasons.

20 First, Jammie's hauling and disposal of rejects
21 is directly tied to the onsite services it provides PCA
22 to manage the OCC rejects' waste stream, which was PCA's
23 critical need in this case.

24 Second, before Jammie's even became involved in
25 disposing of the OCC rejects, Jammie's already worked in

1 PCA's OCC plant providing a variety of industrial
2 cleaning services, many of which also generate rejects
3 as waste tanks are cleaned and lines are cleared.
4 Indeed, Jammie's was providing services in the OCC plant
5 before the plant was even up and running, and Jammie's
6 continues to provide those services today.

7 Further, OCC rejects is a small piece of the
8 comprehensive services Jammie's provides PCA at the
9 mill, and rejects are a minuscule part of Jammie's
10 overall business.

11 Jammie's does not hold itself out to be a solid
12 waste hauling disposal company. Instead, Jammie's
13 performs waste hauling disposal only to the extent that
14 this serves as part of its overall industrial cleaning
15 business.

16 BDI contends that Jammie's cannot meet the
17 exemption because of the volume of rejects hauled. This
18 is a red herring. It is true, Jammie's hauls rejects to
19 a landfill every week, but this is not a dispositive
20 fact for at least two reasons.

21 First, the rejects are incredibly wet, which
22 makes them heavy. As has been well-documented in this
23 case, there were times BDI could not haul because their
24 containers were too wet -- too heavy with wet rejects.
25 The fact that Jammie's is hauling tons of very wet and

1 heavy material does not alone make this a regulated
2 service.

3 Second, it is important to put the rejects in
4 context. The mill is a massive industrial operation
5 where everything is big. Everything is on a larger
6 scale. It uses millions of gallons of water every day,
7 and there are literally mountains of wood chips and wood
8 materials piled up around the mill.

9 So while compared to normal garbage services,
10 the rejects -- they seem like a lot. For the mill, the
11 rejects are a tiny, tiny piece of what is otherwise a
12 massive industrial operation.

13 This may explain why PCA was so frustrated with
14 BDI's service. While the disposal of rejects should
15 have been an afterthought managed by a contractor, it
16 became an unwanted and unnecessary distraction to PCA's
17 business.

18 The question is, is Commission regulation
19 necessary for Jammie's disposal of one unique industrial
20 waste stream for one customer? We submit that the
21 answer to that question is no and that the Commission
22 should find that Jammie's OCC reject services to PCA are
23 exempt from regulation.

24 If the Commission decides that regulation is
25 indeed necessary, the good news is, the Commission has a

1 mechanism for that. Class C certificates, which are
2 for, quote, a solid waste collection company that does
3 not provide traditional residential or commercial solid
4 waste operations. This class includes specialized
5 carriers generally hauling specific waste products for
6 specific customers or providing only on-call or
7 nonscheduled service.

8 Class C certificates are available for the
9 exact scenario presented here, where waste disposal is
10 needed that the incumbent company is unable to provide.
11 We submit that evidence demonstrating that Jammie's
12 should be granted a Class C certificate is overwhelming
13 as follows.

14 First, BDI did not provide service to the
15 satisfaction of the Commission. BDI has provided
16 self-serving testimony that it did everything it could
17 to meet PCA's needs. That is, it was PCA's fault as to
18 why BDI failed. Incredibly, BDI engages in
19 finger-pointing at its only customer in this case, but
20 refuses to admit that maybe -- just maybe -- this was a
21 waste stream it wasn't well equipped to haul.

22 BDI claims that PCA rejected its ideas, that it
23 never gave BDI a fair chance to haul the waste, and that
24 PCA too quickly transitioned to Jammie's, but this
25 testimony doesn't make sense. It conflicts with BDI's

1 own evidence as rejected by PCA.

2 PCA reached out to BDI first for help on this
3 issue months before the plant began operating. PCA
4 trusted that BDI could help solve the OCC rejects
5 problem and asked for its ideas on how to do so. The
6 parties had meetings and communications before the plant
7 started running, giving BDI every chance to meet PCA's
8 need.

9 Once the plant started running in March 2021,
10 PCA allowed BDI for months to take control and resolve
11 the problem, and it never did. The notion that BDI
12 didn't get a fair shake is simply not supported by the
13 evidence.

14 How long should PCA have to tolerate BDI not
15 doing its job? BDI only began to change its behavior
16 when it saw someone else on the job: Jammie's.

17 In the fall of 2021, months after the rejects
18 started, BDI proposed to perform nearly the exact
19 process Jammie's had already successfully implemented.
20 But by that point, Jammie's had solved the monthslong
21 problems with PCA, and PCA did not trust that BDI could
22 provide the service nor did BDI have the equipment,
23 workers, or tariffs in place to do the work. It still
24 doesn't.

25 BDI may emphasize that it is the Commission's

1 satisfaction, not PCA's, that matters here. While it is
2 true that the standard is the Commission's satisfaction,
3 as BDI has pointed out, the customers' perspective is
4 critical. This is especially true in this case.

5 PCA is a unique customer. The mill is not your
6 typical residential or business customer where the task
7 is picking up garbage cans or dumpsters. Rather, the
8 management and disposal of OCC rejects is a small but
9 critical part of PCA's massive industrial operation, and
10 we submit that PCA knows better than everyone else in
11 this case what needs to be done. No one knows better
12 what its needs are and what will or won't work.

13 The fact that PCA tried BDI but ultimately
14 switched to Jammie's, cobbled with the overwhelming
15 testimony from PCA, should be sufficient evidence that
16 BDI's service was unsatisfactory.

17 Second, there can be no question about Jammie's
18 fitness to provide the service to PCA. Of the factors
19 identified in RCW 81.77.040, BDI only contended in its
20 motion to dismiss that the first and fourth were not
21 satisfied. The fourth, of course, is independent
22 evidence from PCA on its need for the service. In this
23 case, PCA has expended considerable resources and
24 provided abundant evidence of its dissatisfaction with
25 BDI and its need for Jammie's.

1 The first factor is evidence against financial
2 help to provide its service. Here, Jammie's has
3 provided the financial information requested by the
4 Commission in its form application. To date, Staff has
5 not suggested that the financial information submitted
6 in Jammie's application is incomplete. However, if the
7 Commission has questions about the financial condition
8 of Jammie's or the cost of service, Ms. Scott is happy
9 to address those questions today or can provide any
10 additional financial information the Commission needs.

11 Jammie's application also meets all of the
12 requirements under WAC 480-70-091. The only additional
13 information Jammie's needs to provide is an amendment to
14 its contract with PCA to include the information
15 required in WAC 480-70-146. If the Commission
16 determines a certificate is needed, PCA and Jammie's
17 will immediately execute an amendment to their contract
18 reflecting those terms.

19 I'd like to briefly address a few points in
20 Mr. Dietrich's response testimony. Mr. Dietrich states
21 that, based on his analysis, if BDI provided the same
22 service in which Jammie's provided PCA, BDI could
23 actually do it cheaper than Jammie's.

24 This is a remarkable statement by Mr. Dietrich
25 because he ignores that it was Jammie's that implemented

1 the OCC rejects disposal process that was far more
2 efficient and cost-effective than what BDI was providing
3 PCA. It was competition that drove BDI to try to match
4 Jammie's' service.

5 The fact that Mr. Dietrich admits that BDI
6 could have implemented a far more cost-effective option
7 for PCA from the start but instead implemented its more
8 expensive container option is telling, and for PCA,
9 upsetting.

10 Mr. Dietrich also suggests that Jammie's'
11 manufactured add-on services like cleaning, onsite
12 management, and loading was to artificially qualify
13 under the incidental exemption. This is false. The
14 record is abundantly clear that Jammie's has been
15 providing a host of onsite services to PCA for years,
16 including work in the OCC rejects plant before it was
17 asked by PCA to assist with hauling and disposing the
18 rejects.

19 Second, Mr. Dietrich's dismissal of the OCC
20 rejects management services prior to loading and hauling
21 again reveals that BDI still does not grasp what service
22 was really needed here. PCA didn't simply need a truck
23 that could run to the landfill. It needed onsite help
24 that BDI never provided and apparently still does not
25 believe is necessary.

1 Finally, BDI leans heavily by its status as the
2 incumbent certificate holder. All this certificate
3 provides is certain privileges: To haul solid waste.
4 That certificate is not a blank check. It is not
5 without limitations.

6 As discussed in the Stericycle case, the
7 Commission and Court of Appeals have made clear that
8 while having an exclusive service provider may make
9 economic and public policy sense, quote, in the context
10 of neighborhood solid waste collection, end quote, those
11 reasons may not be justified in other contexts.

12 We submit that one of those contexts is a large
13 industrial generator located miles away from other
14 customers with a unique waste stream, who has
15 determined, based on their experience and business
16 judgments, that the incumbent cannot provide service to
17 their satisfaction or, I might add, has been charging
18 more than it should have all along.

19 In conclusion, Jammie's respectfully requests
20 that the Commission allow Jammie's to continue providing
21 PCA the OCC rejects service, either as an unregulated
22 service or under a limited class C certificate. Finding
23 otherwise would ignore customer need and would reward
24 BDI for providing unacceptable service to PCA.

25 Thank you, Your Honor.

1 JUDGE HOWARD: All right. Thank you,
2 Mr. Steele.

3 I would allow Basin an opportunity for a
4 15-minute opening statement, if it wishes.

5 MR. FASSBURG: Yes. Thank you, Your Honor.
6 And I'll hopefully -- in the interest of moving this
7 proceeding along today, I hopefully will not take a full
8 15 minutes.

9 As you yourself indicated, Your Honor, this
10 proceeding involves two key issues or rather two
11 different burdens of proof. Basin Disposal filed first
12 a formal complaint against Jammie's Environmental for
13 violation of RCW 81.77.040: Providing solid waste
14 collection service without a certificate issued by the
15 Commission. Jammie's, days later, filed an application
16 to provide that service.

17 The issues do intertwine, but there is one core
18 issue that is overlapping in both, that these do present
19 two different sets of facts and two different issues
20 that the Commission needs to consider.

21 With respect to Basin's formal complaint, there
22 is really only one issue, and it's really based on
23 undisputed facts. The question is whether the service
24 Jammie's provides to PCA at the mill near Wallula,
25 Washington qualifies as solid waste collection service.

1 The facts in that regard are undisputed.

2 RCW 81.77.040 prohibits anyone from operating a
3 solid waste collection company without first having
4 obtained, from the Commission, a certificate. The
5 positions by Jammie's and PCA in this case do not align
6 with the Commission's jurisdiction or with its
7 regulations.

8 Jammie's contends that its service is different
9 and unique because it provides services that are not
10 within the definition of solid waste collection.

11 RCW 81.77.010 defines a solid waste collection company
12 as every person or as lessees, receivers, or trustees
13 owning, controlling, operating, or managing vehicles
14 used in the business of transporting solid waste for
15 collection or disposal or both for compensation over a
16 public highway in the state as a common carrier or
17 contract carrier. I'm paraphrasing.

18 Jammie's admits that, in vehicles for
19 compensation over public highways in the state, it is
20 transporting solid waste from PCA. The evidence that is
21 undisputed demonstrates that it is doing this nearly
22 every single day of the week, and it is doing this in
23 large volumes every day of the week.

24 The only defense Jammie's presents to its
25 violation of RCW 81.77.040 is that this service is an

1 incidental adjunct to other services that it provides
2 the mill. The evidence on those points is also clear
3 and relatively undisputed. The services Jammie's claims
4 its solid waste transportation is incidental to are
5 services that are unrelated to the solid waste that it
6 collects.

7 It claims that, because it provides a myriad of
8 services to the mill, it should also be allowed to
9 provide services that, by definition, makes it a solid
10 waste collection company. There is no Commission
11 precedent that is anywhere close to what Jammie's
12 alleges should apply to here that would justify its
13 blatant violation of the law that has been ongoing for
14 months.

15 Jammie's became aware of the Commission
16 regulation months ago and took no action to seek
17 Commission permission until it was forced to by Basin's
18 actions. Until Basin sent a cease and desist letter,
19 Jammie's did not consider seeking a Commission opinion
20 with respect to whether or not its services were exempt.
21 When it did, it sought only an informal opinion.

22 Upon hearing from Ms. McPherson that, in fact,
23 upon consultation with the Attorney General's Office,
24 this service did require them to obtain a certificate,
25 rather than ceasing their violations of Washington law,

1 they continued that operation claiming that it was good
2 faith, claiming that, because they had sought an
3 application, this was -- and that this was somehow
4 incidental, they could continue on a daily basis to
5 violate Washington law.

6 The other significant issue in this case is
7 whether or not Jammie's qualifies for that certificate
8 that it has applied for. There's a number of factors
9 that you, Your Honor, understand will be considered with
10 respect to Jammie's application, and I don't need to
11 address them all.

12 But linking this back to the formal complaint,
13 operational fitness is a very considerable factor -- or
14 an important factor the Commission has to consider.

15 As I mentioned, the evidence is undisputed.
16 Jammie's violated Washington law on hundreds of
17 occasions. Only when forced to by Basin did it take
18 action to seek permission from the Commission. Rather
19 than asking for permission in the first place, it's
20 asking for forgiveness and excusing away its hundreds of
21 violations based upon the premise that, because it
22 provides other services, it should be legal, despite the
23 fact there is no Commission precedent that supports
24 their position.

25 Now, satisfactory service, I believe, will

1 ultimately be the most dispositive issue in this case,
2 although I think there are a number of dispositive
3 issues. This is ultimately the reason why Jammie's
4 application should be denied.

5 Despite the passion with which Jammie's and PCA
6 argue Basin failed to provide satisfactory service, the
7 evidence reflects and will continue to reflect that all
8 of the complaints that were made by PCA and by Jammie's
9 do not relate to solid waste collection.

10 As I indicated, the statute in the Commission's
11 jurisdiction is over the collection and transportation
12 of solid waste over public highways for compensation.
13 The issues in this case don't relate to those services.
14 What this case is really about is whether or not Basin
15 was asked to and was responsible for finding solutions
16 to the moisture contents of the OCC rejects that were
17 generated by PCA at its mill.

18 The evidence that will be presented today will
19 demonstrate that PCA, not Basin, began the plan for the
20 operations of its mill in 2019. They considered a
21 number of options for how to transport its solid waste
22 or how to dispose of it.

23 Initially, PCA considered burning its OCC
24 rejects. They received estimates for and considered
25 using a pneumatic tube system to transport its OCC

1 rejects to what is a hog fuel burner and ultimately
2 dispose of its OCC rejects via incineration. As an
3 alternative option, it considered landfill disposal.

4 When PCA did this analysis, it considered two
5 different options for landfill disposal. Number one, it
6 considered whether it should use a particular type of
7 dumper that is sold with a Sebright press, one of the
8 pieces of equipment there in its mill. It also
9 considered whether it should use 20-yard or 30-yard BDI
10 dropboxes, with which it was familiar because it already
11 used those at the mill.

12 After two years of planning with only a couple
13 months to go before it began operations, PCA contacted
14 BDI, and it asked it for pricing information and for
15 weight capacity information so that it could price out
16 what it would cost PCA to transport the OCC rejects
17 either via this Sebright compactor or via BDI dropboxes.

18 Then, just about ten days before it began
19 production at its mill, PCA invited Basin Disposal out
20 to the mill to tour the mill in a brief tour and
21 consider some alternatives for transportation and
22 disposal. Being that PCA had already selected BDI
23 dropboxes as its method for transportation, and it had
24 already priced out that method, and it had already
25 ordered these dropboxes, PCA chose to go with the

1 dropboxes and commenced its service.

2 On the first day of service, BDI discovered
3 that its dropboxes were full of water. And it consulted
4 PCA about this issue, and it advised it, we cannot
5 legally haul dropboxes that are going to leak water over
6 the public roadways, and we can't take these dropboxes
7 from you. We're going to have to leave them until they
8 are dry enough that it can be legally transported.

9 Now, in the beginning phases of the mill and
10 its operations, there wasn't enough volume at the mill
11 for this to create a problem, and apparently PCA didn't
12 take that seriously enough to do anything about the
13 water contents, and they continued the load of OCC
14 rejects that were coming out of its mill. And I believe
15 the evidence will show those OCC rejects contained as
16 much as 40 percent water and projected to contain as
17 many as 22 tons a day or more of water placed into BDI's
18 dropboxes.

19 Despite the fact that BDI advised PCA that it
20 was producing too much water and putting too much water
21 into these dropboxes, PCA continued to load the
22 dropboxes with wet materials. Rather than looking for
23 solutions to reduce the water content, it simply urged
24 BDI to haul the boxes more quickly.

25 BDI did everything it could to move those boxes

1 as soon as they could be moved, and I believe the
2 evidence reflects they moved as many as ten containers a
3 day for PCA. But that wasn't enough because PCA
4 increased its production, and it continued to increase
5 its production, and it did that without taking any
6 effort -- or not significant efforts to reduce the water
7 content of its OCC rejects or to find a way, a system,
8 by which it could reduce that water content before it
9 placed the solid waste into BDI's dropboxes for
10 disposal.

11 By April 26th, just six weeks after the mill
12 began operations -- or close to two months -- BDI
13 received a written communication -- and the only written
14 communication from PCA -- saying, we think you're
15 falling behind. The mill is increasing its production.
16 We'd like you to increase your hauls from our currently
17 scheduled five to six per day to seven to eight per day.

18 The response from BDI said, we're happy to do
19 that. We're hiring additional drivers. Whatever it
20 takes. We want to work with you guys.

21 And PCA's response was, it sounds like we're
22 both working out the kinks in our systems. Looking
23 forward to it.

24 Of course, I'm paraphrasing.

25 This was the only complaint -- the only written

1 complaint PCA made. Just a few weeks later, without any
2 additional attempts by PCA to find solutions to the
3 wetness problems of its OCC rejects that would resolve
4 this issue, PCA started using Jammie's to haul its OCC
5 rejects instead.

6 Despite the fact that PCA looked to Jammie's --
7 and by the way, BDI was not aware that PCA had already
8 looked to Jammie's to provide a solution -- BDI, on May
9 21st, 2021, proactively reaches out to PCA and says,
10 hey, we'd like to meet with you guys and find out what's
11 working and what's not.

12 That request falls on deaf ears. So
13 Mr. Dietrich repeats his request a few days later. That
14 also falls on deaf ears. Throughout the months of June,
15 BDI is repeating its request: PCA, we'd like to work
16 with you guys. This is a long-term relationship we'd
17 like to see work. What can we do to help find
18 solutions?

19 And there are no responses until July. When
20 Basin finally meets with PCA in July, it proposes to
21 build a bunker and haul this material from the bunker
22 where it can be dried via a tractor-trailer. Instead of
23 listening to that option, PCA insisted it needs to use
24 its Sebright compactors, rejecting BDI's proposal and
25 sending BDI on a wild goose chase to analyze what it

1 would look like to haul this via a Sebright compactor
2 rather than using a long-haul tractor-trailer and a
3 bunker to dry the material.

4 When BDI comes back with a written proposal in
5 August proposing to provide the service via
6 tractor-trailer, they are basically sent away. Look at
7 the compactor issue.

8 So BDI looks at the compactor issue, and what
9 they propose is, here's what you asked for. We would do
10 this service via compactor if that's what you want. And
11 in addition to bringing down your cost, we're proposing
12 to use a tractor-trailer and to build a bunker and to
13 haul most of your rejects via that method. And, again,
14 they are sent away.

15 They proposed that same system again without
16 the compactor in September. They propose, we are
17 willing to provide a solid waste collection and
18 transportation that will provide you a better cost and a
19 more efficient service. That is not accepted once
20 again.

21 BDI continues to make proposals in January and
22 March, and these proposals are not accepted. Now, PCA
23 and Jammie's, through exaggeration and misstatements,
24 claim that they repeatedly -- or that Jammie's
25 repeatedly implored BDI to find a solution to its

1 problems.

2 The issues that are presented in this case are
3 not issues of solid waste collection for transportation.
4 These are issues of generator management. PCA, as the
5 generator, is the party legally responsible to ensure a
6 safe and proper disposal of its solid waste collection.

7 What it's looking to do is say, BDI wouldn't
8 take responsibility. BDI wanted to wash its hands. BDI
9 wasn't willing to step up and help. But first, BDI has
10 to be asked to provide that service for help for it to
11 be able to do that. And as the evidence will show, BDI
12 was turned away at every opportunity.

13 Second, for this to have worked in the first
14 place, the OCC rejects needed to be dried. This was
15 something that PCA refused to acknowledge or do anything
16 about.

17 So when Jammie's and PCA argues that BDI
18 failed, the real question is, is it a failure to comply
19 with the law and refuse to haul a container that is so
20 wet that transporting it over the public highways could
21 result in a misdemeanor offense at the worst or an
22 infraction at minimum? Is that a failure?

23 Or did BDI comply with exactly the requirements
24 that it should have by providing the service safely and
25 legally in the way that was originally requested by PCA

1 and ultimately volunteering and offering at every
2 opportunity to take efforts that would help PCA both in
3 terms of resolving the problem with the moisture content
4 of its OCC rejects and with respect to reducing the
5 price by providing a more efficient service?

6 If the Commission were to conclude BDI was in
7 fact failing to provide solid waste management service
8 that was requested by PCA, which is the major contention
9 of Jammie's and PCA in this case, that would still not
10 demonstrate Basin failed to provide service to the
11 Commission's satisfaction because the service that is
12 subject to the Commission's regulation is solid waste
13 collection service, not pre-collection management.

14 So although there are additional details that I
15 think will be revealed through this hearing, we believe
16 the evidence will ultimately reflect that the
17 allegations made by Jammie's and PCA with respect to
18 Basin's service are nothing more than exaggerations and
19 misstatements unsupported or corroborated by any
20 objective evidence. They are nothing more than
21 self-serving attempts to support Jammie's application so
22 that PCA's preferred choice of hauler might be given
23 that opportunity by the Commission.

24 At the end of this case and in our briefs,
25 we're going to ask for specific things that the

1 Commission will do. First, we're going to ask that you
2 find that Jammie's is providing solid waste collection
3 service as what is defined by statute.

4 Second, we're going ask you to find that
5 Jammie's has failed to present sufficient evidence to
6 demonstrate its financial fitness. And although
7 Jammie's repeatedly offers to cure that defect through
8 additional supplemental late-filed testimony, Basin will
9 maintain its objection that that is evidence that should
10 have been submitted at a time that could be assessed by
11 all parties and analyzed at the hearing.

12 Third, we will ask the Commission to find that
13 Jammie's is not operationally fit and not regulatorily
14 fit to provide solid waste collection service due to its
15 hundreds of violations of RCW 81.77.040.

16 We're going to ask that you will find that
17 Basin did and will provide service to the Commission's
18 satisfaction, and ultimately, we're going to ask that
19 you both deny Jammie's application and order it to cease
20 and desist providing solid waste collection service.
21 Thank you.

22 JUDGE HOWARD: All right. Thank you.

23 Would PCA like to provide an opening statement?

24 MS. BLANCAFLOR: Yes, Your Honor. Thank
25 you. Thank you for the opportunity to present PCA's

1 position this morning at the hearing.

2 For PCA, this case is simple. It is about
3 PCA's need to have a reliable, responsive, and a
4 flexible contractor capable of providing the services
5 that PCA needs and has requested so that it can run its
6 operations safely and in compliance.

7 PCA is a very large, complex manufacturing
8 operation operating in Wallula. We make boxes, and
9 these boxes, they're used here regionally and throughout
10 the country. We have over 400 employees here at the
11 mill. We operate 24 hours a day, seven days a week.
12 During COVID, we were deemed an essential business
13 sector because of the products we produce and their
14 impact on the economy.

15 Having a competent, dependable, and safe
16 contractor is critical to the success of our operation,
17 and having a say as to who and which contractor that is
18 and which ones are capable of providing the service that
19 PCA needs is exactly why PCA intervened in this case.

20 Your Honor, you're going to hear today, as
21 you've already heard in opening statements, several
22 interactions characterized differently by all the
23 parties. You'll hear clarification from Jammie's as to
24 the service they provide and how they provide it.
25 You'll hear comments and clarification from BDI on the

1 services that they did provide and what they're willing
2 to provide going forward but didn't provide.

3 But to both of these parties, let's be clear.
4 This case is about one of their customers amongst a
5 portfolio of many customers. But to PCA, the stakes are
6 much higher. The outcome of these consolidated cases
7 has a direct and material impact on how we operate.

8 You'll likely hear from BDI that they tried to
9 work with PCA in offering solutions and that PCA
10 actually refused to listen to BDI. But that, Your
11 Honor, simply is not true.

12 As early as December of 2020, we reached out to
13 BDI to contact them for a plan for managing and
14 disposing our OCC rejects. Let's be clear on that, too.
15 This was not just a hauling question. This was a
16 management and hauling question.

17 We invited BDI to the mill site so that we can
18 brainstorm and come up with ideas for the best options
19 for hauling our OCC rejects. We toured -- we gave them
20 a tour of the plant. We went through the site
21 footprint. We showed them where things were going to be
22 generated. We talked about the nature of the rejects.

23 And during that meeting, PCA very clearly, very
24 specifically, asked BDI for their opinion and for their
25 thoughts on the best way to manage and haul the OCC

1 rejects.

2 But BDI -- this was in -- we had an initial
3 meeting in December, then another meeting in February,
4 and BDI did not come back to PCA with any sort of
5 options or methods for hauling until -- until BDI saw
6 Jammie's doing the very thing that they were supposed to
7 be doing for PCA.

8 To PCA, it seemed that BDI, at the time, was
9 very comfortable with just proposing their option for
10 disposal using their typical method of handling and
11 hauling solid waste, and that is with their 20-yard
12 roll-off boxes.

13 In the beginning, PCA was willing to try that
14 option because we didn't know what other options would
15 work at the facility. But after startup, it became very
16 clear that these roll-off boxes were not going to work.
17 And the reason they weren't going to work is because the
18 OCC rejects -- they are a very different waste stream
19 than any of the other waste streams generated at the
20 mill.

21 The OCC plant uses millions of gallons of water
22 every day to convert old boxes into fiber to make new
23 boxes. The nature of this process generates a waste
24 material that is very wet. That is the process. That
25 is how it works. That fact alone makes the OCC rejects

1 a very different waste stream than any of the other
2 waste streams generated at the mill, which, by the way,
3 BDI services.

4 But it became very visibly clear after startup
5 that hauling the OCC rejects in the same method that BDI
6 hauls all of the other waste streams generated at the
7 mill wasn't going to work. PCA complained numerous
8 times to BDI via phone shortly after startup that this
9 wasn't working and we needed to have a different method.
10 We needed to have a different solution to this problem.
11 The rejects clearly needed an additional method of
12 handling them onsite and then disposal.

13 We complained to BDI the piles were out of
14 control. We continued to request that BDI offer
15 different options for management and disposal. But to
16 PCA's frustration, BDI was nonresponsive. They showed
17 no interest whatsoever in collaborating with PCA in
18 finding different management and disposal options.

19 BDI's position, as you heard earlier, was that
20 this was a PCA waste stream, and it was a PCA problem to
21 solve. So PCA did. After months of trying to work with
22 BDI, the growing piles of OCC rejects was so bad and had
23 created safety issues for employees. It presented a
24 significant fire hazard for the mill that ultimately
25 could lead to a catastrophic event, and the piles were

1 getting so large that it actually jeopardized the mill's
2 ability to comply with its own environmental
3 obligations.

4 So what did PCA do? The only thing we could
5 do, and that was to look for other options. Jammie's
6 has provided industrial cleaning services to PCA for
7 years. They have operated on our site successfully and
8 collaboratively with PCA.

9 Jammie's noticed the growing problem and the
10 mess that was out there in the OCC plant yard, so they
11 actually offered to help clean up the mess. PCA did the
12 only thing it could do, and we said, yes, Jammie's.
13 Help.

14 And Jammie's did that very thing. They cleaned
15 up the mess. And today, Jammie's continues to provide
16 the services PCA wanted and had requested of BDI prior
17 to even the startup of the OCC plant. But BDI never
18 provided the services PCA requested. Jammie's did.

19 Jammie's was able to come in immediately and
20 work with PCA. Jammie's was responsive, they
21 communicated with PCA, and they came up with a different
22 method of handling and hauling the rejects.

23 Bottom line, Your Honor, they solved PCA's
24 problems. After months of struggling with BDI, in just
25 a very short time, Jammie's came in, they cleaned up the

1 massive piles, and they started providing an onsite
2 service of handling the OCC rejects and then hauling
3 them off in a timely fashion off PCA's site.

4 Your Honor, BDI might try to assert that BDI
5 was ready to perform, willing to perform, and they tried
6 to communicate with PCA, but PCA didn't allow them to.
7 That is not accurate. What is accurate is that BDI was
8 responsive to PCA only after Jammie's had come in and
9 started helping with the mess.

10 Only after was BDI responsive when they
11 realized that there was another contractor actually
12 helping PCA solve its problem. Not before. Not when
13 PCA was asking for BDI's help. The threat of losing
14 business is what motivated BDI, not helping PCA.

15 For PCA, this is simply a matter of selecting a
16 contractor that can perform the services PCA needs.
17 This is not a typical municipal solid waste issue. This
18 involves the operations of a very large, very complex,
19 multifaceted manufacturing operation.

20 For PCA, it's not a matter of the UTC's
21 jurisdiction over waste hauling activities. It is not a
22 matter of tariff rates. It is not about who has the
23 license to haul. It is about performance. It is about
24 reliability. It is about the ability to provide
25 services PCA needs to run its business.

1 We hope PCA's voice matters today. We tried
2 for months to work with BDI. Make no mistake. This is
3 not a case of PCA preferences. This is a case of PCA
4 needs, needs that were not met by BDI. Allowing BDI
5 another bite at the apple will reward a company who
6 frankly did not respond to the needs of PCA until
7 someone else did their job.

8 In conclusion, Your Honor, PCA respectfully
9 requests that the Commission allow PCA to choose what
10 contractor can provide the services it needs. PCA
11 respectfully requests that the Commission allow Jammie's
12 to manage and haul PCA's OCC rejects. Thank you.

13 Prior to the hearing, we had circulated a video
14 that we think, Your Honor, would be very helpful for you
15 and the other parties to see what PCA's operations look
16 like, and so we have that video now. And with your
17 approval, I'll go ahead and press play. All parties
18 have seen it prior to the hearing.

19 JUDGE HOWARD: All right. Thank you.

20 Are there any objections from any of the
21 parties to the video?

22 MR. FASSBURG: No objections from Basin
23 Disposal.

24 MR. WHITAKER: Or WRRRA.

25 MR. STEELE: Same with Jammie's, Your Honor.

1 JUDGE HOWARD: All right. I'm hearing no
2 objection from any of the parties.

3 Ms. Blancaflor, please feel free to show the
4 video.

5 MS. BLANCAFLOR: I think I can hit share.
6 There we go.

7 Here we go. Go ahead.

8 (Video played.)

9 MS. BLANCAFLOR: Thank you, Your Honor. PCA
10 has nothing further at this time.

11 JUDGE HOWARD: All right. Thank you.

12 Mr. Whitaker, would you like to give an opening
13 statement?

14 MR. WHITAKER: Yes. Thank you, Your Honor.
15 In the interest of time, I'll also attempt to be brief
16 and avoid as much repetition as possible.

17 I'd like to begin by saying that, decades ago,
18 in 1961, a very forward-thinking legislature envisioned
19 a system of solid waste regulation that -- regulation
20 for solid waste collection that culminated in RCW 81.77,
21 which governs the collection and transportation of solid
22 waste for compensation.

23 And by developing that system, similar to
24 utility regulation, Washington's regulated solid waste
25 system has endured the test of time and expanded to

1 include the collection of recyclables and composting as
2 well as municipal solid waste from all sources.

3 The Washington Refuse and Recycling Association
4 was founded by those regulated waste and recycling
5 service providers to help maintain the long-term health
6 and viability of Washington's regulatory system, and the
7 association views the issues before Judge Howard and the
8 Commission today as crucial to that long-term
9 sustainability and maintenance of that regulated system.

10 Commission precedent has long recognized the
11 overall risk -- the risk to the overall regulatory
12 system with the concept of cream skimming, that is to
13 say the practice of picking and choosing the largest,
14 most profitable generators without the requirement to
15 serve all customers within a territory like that of a
16 regulated solid waste collection company.

17 Washington solid waste regulation will be
18 significantly undermined if the largest waste generator
19 in Washington and industrial facilities are simply able
20 to opt out of the regulated system by using onsite
21 service providers to transport their municipal solid
22 waste.

23 And Jammie's here argues that it shouldn't
24 require a solid waste authority from the Commission.
25 The company claims transporting hundreds of tons of

1 municipal solid waste is somehow incidental because it
2 performs onsite cleaning and some waste handling
3 activities. Jammie's does not generate the waste, nor
4 is the waste generated by Jammie's onsite services. The
5 waste is generated by PCA's industrial production.

6 And both PCA and Jammie's have claimed that the
7 waste here is of a special character that necessitates a
8 special collection provider. This is despite the fact
9 that throughout -- that Basin has continued to transport
10 OCC rejects on behalf of PCA for disposal. This is
11 despite the fact that OCC rejects require no special
12 conditions or documentation for transport or disposal.
13 The materials can be transported like any other waste,
14 assuming they aren't so wet that the container leaks
15 while traveling down the road.

16 So here we have a regulated service provider
17 that did everything that was asked -- everything legal
18 that was asked of it to perform and more, and we have a
19 claim that hundreds of tons of material going for
20 disposal weekly is somehow incidental and should fall
21 outside the regulatory system.

22 WRRRA is here in full support of the complaint
23 by Basin Disposal and respectfully asks that Judge
24 Howard find that Basin provided service to the
25 satisfaction of the Commission and deny Jammie's the

1 application. Thank you, Judge Howard.

2 JUDGE HOWARD: All right. Thank you.

3 So we are at 10:45. We would turn next to our
4 first witness, Jammie Scott. I think before we do that,
5 we should maybe take a ten- or 15-minute break. How
6 about a ten-minute break, and then we reconvene at
7 10:55?

8 MR. FASSBURG: Thank you, Your Honor.

9 MR. STEELE: Sounds good.

10 JUDGE HOWARD: All right. Hearing no
11 objections, we are taking a ten-minute break. We are
12 off the record.

13 (A break was taken from
14 10:45 a.m. to 11:16 a.m.)

15 JUDGE HOWARD: Back on the record. We are
16 returning from a midmorning break that was slightly
17 extended because we needed to have a new court reporter
18 come in, so I appreciate everyone's understanding.

19 We left off with just beginning our
20 cross-examination, and we're going to turn first
21 Jammie's Environmental's witnesses.

22 Counsel for Jammie's, you may tender your
23 first -- introduce and tender your first witness for
24 cross-examination.

25 MR. STEEL: Thank you, Your Honor.

1 Good morning, Ms. Scott. Please state your name
2 and title and spell your name for the court reporter.

3 THE WITNESS: My name is Jammie D. Scott.
4 My title is owner and president of Jammie's
5 Environmental. My spelling J-a-m-i-e, D, S-c-o-t-t.

6 MR. STEEL: Ms. Scott, do you have before
7 you what have been marked for identification as exhibit
8 numbers JDS-1T through JDS-21 in Docket TG-220215 and
9 TG-220243?

10 THE WITNESS: Yes, I do.

11 MR. STEEL: Do these exhibits constitute
12 your pretrial direct and response testimony and related
13 exhibits in this proceeding?

14 THE WITNESS: Yes, they do.

15 MR. STEEL: Were these exhibits prepared
16 under your supervision and direction?

17 THE WITNESS: Yes, they were.

18 MR. STEEL: Do you have any corrections to
19 any of your exhibits at the time?

20 THE WITNESS: Not at this time.

21 MR. STEEL: Are your pretrial direct and
22 response testimony and accompanying exhibits true and
23 correct to the best of your information and belief?

24 THE WITNESS: Yes, they are.

25 MR. STEEL: Thank you.

1 Your Honor, Jammie's offers Exhibits JDS1-T
2 through JDS-21 into evidence and offers Ms. Scott for
3 cross-examination.

4 JUDGE HOWARD: Thank you, Mr. Steel.

5 We have admitted all of the pretrial exhibits
6 into evidence, so those are indeed admitted, excuse me.

7 Basin has indicated I believe it was 150 minutes
8 for the cross of this witness.

9 Basin, you may proceed.

10 I would note that we would probably plan on
11 taking a lunch break beginning at noon.

12 Go ahead.

13 MR. FASSBURG: Thank you.

14 CROSS-EXAMINATION

15 BY MR. FASSBURG:

16 Q. Good morning, Ms. Scott. My name is Blair
17 Fassburg. I represent Basin Disposal. I want to ask
18 you some questions today, starting with your initial
19 pretrial testimony, Exhibit JDS-1T. And I'll start with
20 questions that relate to the nature of your business.
21 If you don't understand any of my questions, please make
22 sure you ask me for clarification.

23 Now, you testified on page 4 of your pretrial
24 testimony, Exhibit JDS-1T, "Jammie's is not a waste
25 disposal company, but Jammie's will transport and

1 dispose of both solid and liquid processed waste,
2 hazardous waste, dangerous waste and/or special waste
3 incidental to Jammie's primary business performing
4 industrial cleaning."

5 Did I read that correct?

6 A. Yes, I believe so.

7 Q. To understand what you mean by your statement,
8 what do you consider to be a waste disposal company?

9 A. Well, I would consider anybody that hauls and
10 disposes of residential waste in the regular course of
11 business and that is their primary service they provide.

12 Q. So in your definition here, if a company
13 provides services that are not solid waste collection as
14 their primary business, it would not make them a solid
15 waste collection company?

16 A. No, I do not believe that would make them a
17 solid waste collection company.

18 Q. Okay. Now, in terms of what business is
19 Jammie's primary business, I believe you testified it
20 performs industrial cleaning and clean-up services.

21 What other services does Jammie's provide that
22 don't relate to solid waste collection and/or
23 transportation?

24 A. The majority of our services do not relate to
25 waste transportation and disposal. We provide

1 industrial cleaning services to a multitude industries
2 in our area.

3 Q. Okay. And would the same be true with respect
4 to PCA's mill near Wallula, that most of your services
5 don't relate to solid waste collection or
6 transportation?

7 A. Yeah, for sure.

8 Q. Now, with respect to facilities at which you do
9 provide any service to collect any recycled material
10 that's ultimately disposed of in a landfill, do you
11 collect materials that would constitute municipal solid
12 waste from facilities other than PCA?

13 MR. STEEL: I would just object to the
14 extent counsel is asking a question that would involve
15 legal definition or a legal conclusion.

16 MR. FASSBURG: Judge Howard, you're muted.

17 JUDGE HOWARD: Sorry. It was a brilliant
18 response.

19 I'm going to grant the objection because we've
20 not established that she's familiar with the legal
21 definition of municipal solid waste.

22 BY MR. FASSBURG:

23 Q. Understood.

24 Ms. Scott, you provide testimony here on page 4
25 that you will transport and dispose of solid and liquid

1 processed waste.

2 How do you define solid processed waste?

3 A. Well, it's not my job to determine what is a
4 solid -- not a solid processed waste, but in the -- in
5 what we do for our customers, we do multiple types of
6 cleaning where we will generate a waste, so basically, a
7 customer will have a specified waste. We will clean out
8 a vessel, a tank, whatever, and then all of that
9 material will come out of the tank, so we will generally
10 figure out how to manage this waste. A lot of our
11 customers do not -- a lot of our customers will handle
12 the waste themselves on their sides. We will just
13 separate it. Some will go here, some will go there. If
14 they do not have the capabilities of processing their
15 own waste, then we will find a proper home for it,
16 profile it, and haul it.

17 Q. So, Ms. Scott, my question was a little
18 different. I'm asking for a specific definition based
19 on the objection, and so I want to make sure we have
20 some definition of terms here based on your testimony.

21 You say that you will transport and dispose of
22 solid and liquid processed waste, and I'm asking, how do
23 you define solid processed waste?

24 A. Something that's gone through a process prior to
25 being disposed of and may need additional handling to

1 treat for hauling.

2 Q. Is that something that could be disposed of in a
3 municipal solid waste landfill?

4 A. At times, yeah, or some -- yes.

5 Q. Now, you say "and/or special waste" later on in
6 that same sentence.

7 Do you have an understanding of under Washington
8 law what constitutes special waste?

9 A. Yes. We do. I mean, we all know at this time.

10 Q. What is your definition of solid waste?

11 MR. STEEL: I'll just object again to the
12 extent he's asking for a legal answer here. Special
13 waste is a term under state law, and Ms. Scott is not a
14 lawyer, and so if that's what counsel's question is, you
15 know, that's --

16 MR. FASSBURG: You Honor, I'm trying to
17 understand her testimony. I asked for her definition.

18 JUDGE HOWARD: I am going to allow the
19 question. I am going to allow Basin to -- to try to --
20 try to establish that this is relevant. I am going to
21 observe, though, that Ms. Scott's understanding of
22 certain legal terms may -- may not be the most relevant,
23 weigh the item for my consideration today, so I would
24 urge you to show the relevance as you proceed through
25 this.

1 MR. FASSBURG: Sure. And, Your Honor,
2 sometimes when I ask questions, the sequence may not
3 always make sense. I'll say with respect to this one,
4 Ms. Scott provides a lot of legal testimony, testimony
5 with respect to interpretation of statutes, testimony
6 with respect to interpretation of Commission rules, and
7 as they pertain to how her testimony should be
8 understood, I think we need to establish ground rules of
9 what does she mean by the terms she uses, and so we
10 can't understand her testimony if she hasn't explained
11 how she's using these terms.

12 JUDGE HOWARD: And I -- just to be clear, I
13 generally do not grant objections on the basis that a
14 question calls for a legal conclusion if it's -- if it's
15 a -- what we would call a policy issue involving
16 Commission regulation, but -- but, again, I'm -- I'm
17 hoping -- I'm hoping that we focus on exactly what's
18 relevant for the Commission, so I'll give you some
19 leeway with that.

20 MR. FASSBURG: Thank you.

21 BY MR. FASSBURG:

22 Q. So, Ms. Scott, I'll repeat the question. How do
23 you define special waste here in your testimony?

24 A. I view special waste of anything that needs --
25 that goes through a process that prior to disposal needs

1 additional treatment or maintenance before you can
2 legally haul it.

3 Q. Would that include material that ultimately can
4 be disposed of in a municipal solid waste landfill
5 without restrictions?

6 A. Yes. That would include that.

7 Q. Now, you say that this is something you will
8 provide when asked to do to some of your customers.

9 Do I understand that correctly -- and actually
10 that was a poor question. Let me rephrase it.

11 The disposal of these wastes that you describe
12 is something that Jammie's Environmental will do when
13 asked by customers.

14 Did I understand that correctly?

15 A. In certain situations, yes. Not all the time.

16 Q. Are there any customers, other than PCA, at
17 which Jammie's has a haul that disposes of solid waste
18 as frequently as once a week?

19 A. No.

20 Q. Are there any facilities that you serve, other
21 than PCA, at which you're asked to dispose of these
22 types of waste materials as frequently as once a month?

23 A. No.

24 Q. Are there any other facilities at which Jammie's
25 Environmental collects these types of waste materials

1 for disposal in the quantities of tons as opposed to
2 small quantities?

3 MR. STEEL: I'll object to that as vague.
4 It's not clear what counsel means by "small quantities."

5 MR. FASSBURG: I'll rephrase the question.

6 JUDGE HOWARD: Thank you.

7 BY MR. FASSBURG:

8 Q. Ms. Scott, are there any facilities from which
9 Jammie's Environmental hauls for collection and disposal
10 of materials that fit the description within your
11 testimony here on page 4 on lines 11 through 14 in
12 quantities that exceed more than one ton?

13 A. Yes. There are instances where we dispose of
14 materials that are more than a ton.

15 Q. I understand that in your equipment, Jammie's
16 Environmental owns multiple drop boxes; is that correct?

17 A. Yes, we do.

18 Q. Do you spot those drop boxes at your customers'
19 facilities to collect solid waste?

20 A. Incidental to projects that we're doing, yes, we
21 do.

22 Q. And so can you describe for me what types of
23 projects that might include?

24 MR. STEEL: Your Honor, I'm going to object
25 here on relevance. And counsel is asking questions

1 about Ms. Scott's -- the company's broader services, not
2 about the waste at issue in this case. And in interest
3 of time, exploring that all that Jammie's does seems
4 irrelevant and beyond what this case is about.

5 MR. FASSBURG: Your Honor, if I may respond,
6 Jammie's has applied to receive a solid waste
7 certificate. It's regulatory and operational fitness
8 are direct questions in this case. If Jammie's is
9 hauling solid waste from other facilities, I think it's
10 important for the Commission to determine, is it doing
11 this under a genuine exemption, or is this actually
12 regulated activity that it's been doing in violation of
13 state law.

14 JUDGE HOWARD: I'm going to allow the
15 question for now, but I am concerned about the relevance
16 of a lengthy exploration of services for other
17 customers, but I'll allow the questioning for now.

18 BY MR. FASSBURG:

19 Q. So let me try to rephrase this to make sure
20 we're clear after the objection.

21 Ms. Scott, what other types of services are you
22 providing at these facilities at which you spot drop
23 boxes for collection of solid waste?

24 A. So just to be clear, I don't drop off drop boxes
25 just to collect solid waste. Generally, if I put a drop

1 box or vacuum box or any kind of containment for waste,
2 it is because I'm doing other work at a facility. Some
3 of these tanks that we clean have a lot of product in
4 it, so we do water blasting. We do a lot of other
5 services that will create waste that will need to be
6 stored and treated prior to disposal and transportation,
7 so I'm not exactly sure what you are asking. I mean,
8 if -- if you're asking if I provide just drop box
9 services to haul solid waste, no, that's not the case.

10 Q. No, I'm asking the types of services you
11 provide.

12 So can you give me one example of -- and you
13 don't have to identify the customer by name, but one
14 example of when Jammie's has provided the service to a
15 customer and also spotted a drop box for the collection
16 of waste that would not be considered hazardous or
17 dangerous and could be disposed of in a municipal solid
18 waste landfill?

19 A. Yeah, so I do a lot of work for chemical
20 facilities, roofing facilities that have giant tanks
21 full of asphalt that they mix to treat -- some of them
22 make roof shingles. So we will go in -- the service we
23 provide to our customers is hydroblasting, industrial
24 cleaning. We will go in and we -- they will shut down
25 their tank, which then we'll fill with solid asphalt.

1 We will go in and we will wash these tanks. We will
2 vacuum out the material inside of the tanks. We will
3 put this material from our vacuum truck into a box.
4 Then we will take our vacuum, dewater the water out of
5 the box so that it is acceptable to haul and transport
6 down the road. We will dispose of the asphalt at
7 multiple facilities we take asphalt, and then the water
8 will go to a separate facility that treats water. Is
9 that...?

10 Q. So in your example, is the asphalt material
11 being taken to a material recovery facility, a transfer
12 station, or a landfill?

13 A. It varies from customer. It will go to a
14 landfill. It will go to a -- generally a landfill by
15 the time we're done dewatering it.

16 Q. In these examples that you've given, have you
17 ever attempted to contact a solid waste collection
18 company to come pick up the drop box for disposal?

19 A. I have not, no. It's just kind of assigned to
20 the other services we provide.

21 Q. How many customers per year would you estimate
22 you provide a similar service to?

23 MR. STEEL: Your Honor, I continue to object
24 to this line. This is, like, a fishing expedition by
25 counsel, and I think it's outside the scope of the

1 issues in this case and a waste of issues in this case,
2 and I'm wondering how long we're going to keep exploring
3 everything about Ms. Scott's business. I think it's --
4 I think it's irrelevant.

5 JUDGE HOWARD: Mr. Fassburg, can you
6 articulate why it's relevant to this proceeding?

7 MR. FASSBURG: Sure. If Jammie's is hauling
8 solid waste that's already been placed in a drop box for
9 disposal, it could be hauled by a solid waste collection
10 company, either municipal or franchise -- sorry,
11 franchise or regulated hauler, and they're doing this
12 with regularity. It could indeed be violations of RCW
13 81.77.040 that are relevant to its application and the
14 Commission needs to hear details with respect to how
15 frequently this occurs. Mr. Steel wants to object this
16 is irrelevant, but it's directly relevant to the
17 operational of fitness of Jammie's under its
18 application.

19 And we attempted to get this information through
20 discovery, but we received vigorous objections and
21 refusal to respond and provide detailed information.

22 JUDGE HOWARD: I will allow the question.

23 THE WITNESS: Can you repeat the question?

24 MR. FASSBURG: Well, Ms. Court reporter, I
25 hate to do this to you, but would you mind reading back

1 my question?

2 (Question was read back.)

3 THE COURT REPORTER: Do you want me to read
4 the previous question to that?

5 THE WITNESS: No, I'm good. I just want to
6 know if you want to know every customer that has a --
7 that this may occur with or not, so I would -- it really
8 just varies for the customer's need and what work
9 they're doing at the facilities, maybe 15 to 20.

10 BY MR. FASSBURG:

11 Q. For clarity --

12 A. On an as-needed basis. I mean, if they have an
13 upset in their tank, if they have an upset with
14 production, so... (Pause.)

15 Q. For clarity, this is 15 to 20 customers per
16 year, not instances for hauling; correct?

17 A. Well, they're generally the same customers. I
18 mean, we provide a lot of the same services for the same
19 customers, so I would -- I mean, if you're looking for
20 specifics, I would need to go through and figure that
21 out for you.

22 Q. And I'm only asking for estimates. I'll ask I
23 think one more question, and hopefully I can move on
24 from this topic.

25 In your estimate, how many drop boxes of

1 materials that are disposed of without restriction in a
2 municipal solid waste landfill do you handle per year?
3 And I'm excluding PCA's facility in this question.

4 A. Maybe 30. Again, I would have to go back and
5 look. I mean, it really does depend on what year you're
6 looking at. So our business is different day-to-day,
7 so... (Pause.)

8 Q. Ms. Scott, on page 6 of your testimony, line 3
9 to 5, you testified that Jammie's has been performing
10 the same services in essentially the same manner for
11 over 20 years.

12 Did I read that correctly?

13 A. You have, yes.

14 Q. And so if I'm understanding your testimony
15 correctly, you've hauled a number of drop boxes in this
16 way every year for 20 years; is that correct?

17 A. I don't know that we initially had drop boxes
18 and vacuum boxes. Those were -- those had been added
19 after -- I mean, initially when I started 20 years ago,
20 I had one vacuum truck and four employees, so as our
21 company has grown, so have our services, so... (Pause.)

22 Q. To be clear, there is not a single other
23 customer at which you provide solid waste collection and
24 transportation services similar to the way you provide
25 them at PCA; correct?

1 A. That is clear. PCA is the managing of the waste
2 and the hauling is unique to PCA in this new operation
3 they have.

4 Q. Now, you discuss in your testimony the potential
5 impacts of the Commission's decision on your competitors
6 as well as Jammie's, and I would like to ask you just a
7 bit about those competitors to make sure I understand
8 what you're trying to say to the Commission here. So
9 I'll refer you to page 5 of your testimony.

10 Do any of your competitors that you've
11 identified on page 5 in lines 2 through 5 provide a
12 service that is in any way resembling the solid waste
13 collection service that you provide to PCA?

14 A. You know, I can't speak to my competitors'
15 services and what they do for their customers. I don't
16 have that knowledge. But, yes, in general, we all do
17 industrial cleaning.

18 Q. Do all of these other competitors spot drop
19 boxes for the collection and disposable of solid waste?

20 A. In the course of their other work, yes, they do.

21 Q. And to be clear, do any of them have a regular
22 haul wherein they haul multiple tons of solid waste on a
23 daily basis from specific customers?

24 A. I'm not aware of that, no. I mean, I don't know
25 what they do with their customers, so... (Pause.)

1 Q. Now, you talk about the impacts on those
2 customers, so I did want to ask you a couple of more
3 questions about that.

4 Do you know whether any of these -- I'm sorry.
5 I said customers. I meant competitors, so I'll rephrase
6 the question.

7 Do you know whether any of your competitors have
8 ever sought a petition for declaratory order from the
9 Commission asking whether the services they provide are
10 indeed exempt from regulation?

11 MR. STEEL: Your Honor, I'm going to object
12 to this question for Ms. Scott about a declaratory
13 order. I think that's far outside her testimony.
14 There's no foundation for that question, and it's
15 effectively a legal question.

16 JUDGE HOWARD: I believe Mr. Fassburg was
17 asking if she's aware, so with that -- with -- you know,
18 with reservations, I am going to allow the question
19 because we're asking about her awareness.

20 You may answer the question, Ms. Scott.

21 THE WITNESS: Okay. I just want to be clear
22 on the question. You're asking me if I know if any of
23 my competitors have sought to get a common carrier
24 permit or a certificate?

25 BY MR. FASSBURG:

1 Q. My question was a little different -- you know
2 what, just for your understanding, I'll back up just a
3 little bit.

4 Do I understand correctly that part of your
5 testimony is about policy impacts of the Commission's
6 decision on industrial cleaning companies?

7 A. Yes. I believe that is a big factor in this
8 matter.

9 Q. And your testimony is that if the commission
10 were to include that the solid waste certificate was
11 required to transport the material that's being
12 generated at the PCA mill, OCC rejects, this would have
13 an impact on the industrial cleaning operations of both
14 Jammie's and its competitors in that industrial sector;
15 correct?

16 A. I believe the waste in question, if this is
17 considered a regulated waste, because of the process it
18 has been through, because of the manage -- the
19 management of the waste that we do prior to hauling,
20 yeah, I do think it would impact other companies, yes.
21 Everybody needs a certificate to haul waste that's
22 generated through a cleaning process or incidental work
23 that we do.

24 Q. Okay. Now, you said that you've spoken to the
25 UTC over the years and you have never been told you

1 needed a certificate for the services you were
2 providing; correct?

3 A. That is correct.

4 Q. Did you ever ask the Commission for a
5 declaratory order concluding that your services to any
6 of your other customers were exempt?

7 A. I have in the past spoken to the Commission in
8 regards to whether or not common carrier permits were
9 needed in the services that we provide in the industries
10 that we provide. Generally, during insurance renewals,
11 I've questioned that and I have -- I've never needed a
12 common carrier permit or a certificate for the work that
13 we have done in the last 20 years, so... (Pause.)

14 Q. And perhaps you don't understand my question,
15 but I want to make sure you do.

16 Do you know what a petition for declaratory
17 order is?

18 A. I do not know what that is, no.

19 Q. Okay. And so you wouldn't know one way or
20 another apparently whether you have filed a petition for
21 declaratory order asking the Commission to rule on
22 whether any of these services were exempt?

23 MR. STEEL: Your Honor, I object. It's
24 argumentative and also I think misrepresents Ms. Scott's
25 testimony, I think... (Pause.)

1 JUDGE HOWARD: I'm going to grant the
2 objection. I believe she just testified she's not
3 familiar with this, this term.

4 BY MR. FASSBURG:

5 Q. You have no knowledge similarly as to whether or
6 not any of your competitors have ever sought a ruling on
7 this issue; correct?

8 A. I do not have knowledge of my competitors, no.

9 Q. I think you testified that outside one of your
10 competitors, none of them hold a G certificate from the
11 Commission; is that correct?

12 A. That is my understanding, yes.

13 Q. What is your understanding of the nature of
14 solid waste collection service Clean Harbors provides?

15 A. Clean Harbors is also a disposal company, so I
16 would imagine that's why they have a certificate,
17 because that, in my understanding, is something they do
18 on a regular basis, so... (Pause.)

19 Q. Do you know, when they perform that service on a
20 regular basis, is it to a single customer or multiple
21 customers?

22 A. Safe Harbor was a waste transportation and
23 disposal company which has gone around and purchased
24 numerous other industrial cleaning companies, so -- as
25 well as other companies like other waste companies, so

1 that doesn't... (Pause.)

2 Q. Do you have any personal knowledge of the nature
3 of any of the specific hauls they perform for their
4 customers?

5 A. I do not.

6 Q. Okay. I'll move on.

7 So I would like to ask you a little bit about
8 your work at PCA, and I'll start with what you're
9 providing currently.

10 It is my understanding that the solid waste that
11 is currently being transported from PCA by Jammie's is
12 being transported by multiple types of trucks and
13 equipment.

14 Can you describe for the Commission what types
15 of equipment is currently being used?

16 A. Can you clarify? Are you looking for the entire
17 mill specifically, or just for this OCC area?

18 Q. Well, let's start with the OCC rejects.

19 For OCC rejects, what type of equipment is
20 Jammie's using for transportation of OCC rejects?

21 A. We utilize a wheel loader and belt trailers.

22 Q. Is it only belt trailers right now?

23 A. Yes.

24 Q. Okay. Were those belt trailers made in a way or
25 are they modified in a way that would allow them to

1 transport liquid without leaking?

2 A. They are not, no.

3 Q. Okay. And so if OCC rejects were loaded into
4 those trailers with a large volume of water in them,
5 would you be able to haul those rejects safely over the
6 roadways in Washington?

7 A. We would not, no.

8 Q. What type of loader is currently being used?

9 A. A brand-specific? Size? I believe we have a
10 7 -- or a 5-yard wheel loader out there on site.

11 Q. Is there anything that was unique about the
12 wheel loader that allows it to eliminate water from OCC
13 rejects?

14 A. No. The wheel loader, itself, does not fix
15 their moisture problem.

16 Q. Okay. Now, do you still continue to use dump
17 trucks -- actually, let me rephrase that.

18 How long -- did you at one point use dump trucks
19 to haul OCC rejects from PCA's mill?

20 A. We did. We were initially assisting PCA in
21 removing the giant piles that were building up in that
22 area. Yes, we did provide a dump truck to transport the
23 waste.

24 Q. Was the dump truck specially built or modified
25 in any way that would prevent water from leaking out of

1 it, if they -- if it was loaded with wet OCC rejects?

2 A. No. It was just a normal dump truck.

3 Q. Are there any legal prohibitions that apply to
4 Jammie's that would prevent it from operating vehicles
5 on public roadways while leaking from the cargo
6 compartment, for lack of a better term?

7 MR. STEEL: Object that there's a legal
8 question there. Ms. Scott can answer if she knows, but,
9 Blair, also I didn't track the question. I'm wondering
10 if you could either read it back and state it again.

11 MR. FASSBURG: I'll be happy to rephrase it.

12 MR. STEEL: Okay.

13 MR. FASSBURG: I think it was worded poorly.

14 BY MR. FASSBURG:

15 Q. Ms. Scott, do you believe that it would be safe
16 for Jammie's to transport any material that's leaking
17 water out onto the roadways?

18 A. No. It would not be safe nor is it legal to
19 transport material dripping out of your vehicles.

20 Q. And so Jammie's, I imagine, has done its best to
21 ensure that when OCC rejects are loaded into its
22 vehicles, they would not be loaded in a way that would
23 leak water out onto the public roadways; correct?

24 A. That is correct, yes.

25 Q. Now, under the current process that Jammie's is

1 using, are there any restrictions on disposal of the OCC
2 rejects on a municipal solid waste landfill?

3 A. Not that I'm aware of.

4 Q. Does Jammie's take the OCC rejects to a plant or
5 facility of any kind prior to disposal?

6 A. We do not.

7 Q. So if I understand correctly, once these OCC
8 rejects are loaded into Jammie's vehicles, they are
9 taken directly to a landfill for disposal?

10 A. That is correct.

11 Q. Once they are loaded into Jammie's vehicles, are
12 OCC rejects treated in any way?

13 A. Once they are loaded in our vehicles, no, they
14 are not treated in any way.

15 Q. Once they are loaded into your vehicles, are
16 they processed in any way?

17 A. No. Once they're loaded in our vehicles, they
18 go to the disposal facility.

19 Q. And as far as you're aware, no one has ever
20 provided a special waste -- excuse me. I'm actually
21 forgetting the term. There has been no special
22 documents provided to you that would indicate the
23 material is special waste under state law; correct?

24 A. No.

25 Q. Has there been any change in the

1 characterization of the OCC rejects from the times that
2 Jammie's first started hauling them from PCA to the
3 present?

4 A. Are you talking waste characterization or the
5 material, itself?

6 Q. The waste characterization.

7 A. No, there's not any change.

8 Q. Okay. And so just to be clear, it's never been
9 hazardous waste; correct?

10 A. No.

11 Q. It's never been liquid waste?

12 A. No.

13 Q. It's never been dangerous waste?

14 A. No.

15 Q. Okay. I would like to direct you to what has
16 been marked as Exhibit JS-22X.

17 JUDGE HOWARD: To be clear, I believe I have
18 remarked this as JDS-22X.

19 MR. FASSBURG: Excuse me, yes, JDS-22X.

20 JUDGE HOWARD: Thank you, just to stay
21 consistent for with the initial use for the parties'
22 exhibits.

23 BY MR. FASSBURG:

24 Q. Ms. Scott, have you that docket notice in front
25 of you now?

1 A. I do now.

2 Q. Have you seen this docket notice before?

3 A. I have seen it, yes.

4 Q. When this was prepared by the Commission, was it
5 presented to you or anyone else at PCA in draft form?

6 A. I have not seen this until the last day of June.

7 Q. Okay. Do you know if anyone else at PCA was
8 interacting with the Commission during its application
9 about this docket notice?

10 A. I do not know that.

11 Q. All right. I will move on from that.

12 I would like to ask you some questions about how
13 OCC rejects are processed.

14 You, in your testimony, Exhibit JDS-1T on page
15 24, you state, starting on lines 24 -- are you there?

16 A. Yeah. I think.

17 MR. STEEL: You said 24, Blair.

18 BY MR. FASSBURG:

19 Q. Page 24, and beginning on line 24, your
20 testimony states, "Special processing, because of
21 volume, the OCC rejects must be quickly collected and
22 prepared for disposal. To reduce moisture content for
23 disposals, Jammie's built a bunker and developed a
24 process for mixing the OCC rejects to ensure the OCC
25 rejects can be loaded and disposed of without leaking?"

1 Did I read that correctly?

2 A. Yes.

3 Q. Instead of using containers bins, Jammie's 86
4 cubic yard belt trailer further allows the wet and dry
5 materials to be blended together so that the overall
6 moisture level is reduced. This is a time and
7 labor-intensive additional step in the processing and
8 handling of the materials that Jammie's employees
9 perform on a near daily basis.

10 Did I read that correctly?

11 A. Yes.

12 Q. Now, does any of this processing that you
13 describe here occur prior to loading?

14 A. It all occurs prior to loading or during the
15 process of loading, depending on the waste.

16 Q. Is there -- once the material is loaded into
17 Jammie's trailers, is there any additional processing
18 that occurs?

19 A. No.

20 Q. Would you agree with me that once that
21 processing occurs and the material is dry enough that it
22 can be safely transported over the public roadways, it
23 could be loaded into a dump truck as opposed to a belt
24 trailer?

25 A. If a customer chose to utilize a dump truck,

1 that would be their option.

2 Q. And there's nothing specific or unique about the
3 material at that point that means it has to be in a
4 specific container; is that correct?

5 A. Yeah, that would -- that would be correct.

6 Q. And so that -- if a customer were to choose,
7 that could include a drop box; correct?

8 A. I don't feel like that would be a very
9 cost-effective way to transport the solid waste, but
10 yes, they could totally utilize whatever they wanted to.

11 Q. And if there were a way to efficiently transport
12 that material, it could be transported via any solid
13 waste vehicle that is used to transport any other waste
14 once it's been dried sufficiently to be safely loaded;
15 correct?

16 MR. STEEL: I mean, that was a vague
17 question and there's a lot packed in there, so --

18 MR. FASSBURG: I'll rephrase.

19 MR. STEEL: Okay.

20 MR. FASSBURG: I'll rephrase.

21 BY MR. FASSBURG:

22 Q. Ms. Scott, there's no prohibition at that point,
23 no reason it can't be loaded in a 20-yard drop box;
24 correct?

25 A. At that point, once the material has the correct

1 moisture content, you can load it into a garbage can. I
2 mean --

3 Q. Yeah, yeah. So it could be a 20-yard drop box,
4 it could be a 30-yard drop box, it could be a front-load
5 container, it wouldn't matter as long as it could be
6 safely loaded so it wouldn't leak out onto the roadways;
7 correct?

8 A. Correct, yes.

9 Q. On the next page, you talk about special
10 handling. You state, "Once mixed, the OCC rejects are
11 loaded using a 5-yard wheel loader that Jammie's
12 provides. This replaces the smaller Bobcat loader that
13 PCA was using before Jammie's began providing it
14 service."

15 Did I read that correct?

16 A. Yes.

17 Q. And if I understand correctly, there's nothing
18 special about the 5-yard wheel loader that was designed
19 specifically for OCC rejects; correct?

20 A. Well, I -- the wheel loader was not designed
21 specifically for OCC rejects. We've had the wheel
22 loader and we use it on other applications of our
23 business, but correct.

24 Q. Are there other types of loaders that could be
25 used to load OCC rejects into a drop box?

1 A. Yes. I would imagine you can load drop boxes
2 with many types of mechanical devices.

3 Q. And is it correct that the reason why the loader
4 that Jammie's is providing is being used is so that it
5 can reach up into the belt trailer to load the trailer?

6 A. Well, we utilize the loader to mix and sort the
7 material as well. And when it is properly mixed and the
8 moisture content is such that it's safe to transport and
9 not leaking out the back of the belt trailer, yes, then
10 we utilize the wheel loader and load our belt trailers.

11 Q. Sure. And I want to get something else here
12 too.

13 The Bobcat can't reach your trailers; it
14 can't -- it's not tall enough to load the OCC rejects
15 into your trailer; is that correct?

16 A. That is correct.

17 Q. So a different piece of equipment was needed
18 based on the vehicle that was selected versus something
19 unique about OCC rejects; correct?

20 A. Can you repeat the question? I'm not sure
21 what... (Pause.)

22 Q. Sure.

23 If a different container was used to haul OCC
24 rejects, a different loader could be used; correct?

25 A. Yeah, yes, you could use whatever you wanted to

1 on material.

2 Q. Following that, on page 25, you stated, "Special
3 transportation, to keep up with volume, the OCC rejects
4 were transported in real time using 86-cubic-yard belt
5 trailers, which takes the waste directly to landfills.
6 This allows Jammie's to efficiently load, haul, and
7 dispose of OCC rejects and return with an empty trailer
8 for further loading. Jammie's currently uses two belt
9 trailers to transport and dispose of the OCC rejects."

10 Did I read that correctly?

11 A. Yes.

12 Q. Now, you -- when you say "in real time," do I
13 understand what you mean is you load the trailer and
14 then it is immediately hauled to the landfill?

15 A. Well, it definitely varies for the customer's
16 needs. And I guess it would vary at times. We have
17 loaded the trailer and it's a Friday night, so we don't
18 haul to the landfill. We would wait until Monday to
19 actually transport because the landfill has operating
20 hours.

21 Q. And so you try to transport it immediately, but
22 you don't always?

23 A. Really it just varies for time and day and day
24 of the week, so... (Pause.)

25 Q. Now, if the reason it needs to be hauled quickly

1 is to ensure there's more capacity for OCC rejects to be
2 removed from the mill, would it matter if it is removed
3 in real time via a 50-foot trailer versus multiple drop
4 boxes moved in quick succession?

5 A. So for us, to keep up with the waste that this
6 process produces, yeah, I mean, it is a pretty --
7 there's a lot of waste that gets generated through this
8 operation, so I can't tell you how many yards or 20-yard
9 boxes it would take to do what we do with our belt
10 trailers on a daily basis, so... (Pause.)

11 Q. So but my question is a little bit more
12 hypothetical.

13 If you lined up three 20-yard drop boxes and
14 loaded them and hauled them straight to the transfer
15 station, there's nothing special about the OCC rejects
16 that requires the use of a belt trailer; correct?

17 A. Correct.

18 Q. And then going back to page 24, you talk about
19 the special quantity.

20 If I understand correctly, the quantity that's
21 generated at PCA varies based on their own production;
22 correct?

23 A. That is correct, yes.

24 Q. And there have been days where you haven't had
25 to haul from PCA because there wasn't sufficient

1 quantity to haul; correct?

2 A. I would imagine, yes.

3 Q. And the issue with respect to OCC rejects at PCA
4 specifically is specifically the material needs to be
5 moved in a way that doesn't create a danger outside
6 their plant; correct?

7 A. Yeah, I would say that's correct.

8 Q. And if it were being moved via a different
9 container type, because it had been sufficiently dried
10 so it could be loaded, as long as the material is being
11 moved out quickly enough to prevent a danger, it does
12 not matter how it is loaded or how -- or what container
13 it is loaded into; correct?

14 A. I would disagree with that. I mean, we do spend
15 time processing the material, mixing the material,
16 making sure that -- making sure that the wet and the dry
17 are mixed together to where it's -- the moisture content
18 is such that you can load and transport it safely down
19 the road. I mean, that is a big part of our process
20 that we do for PCA.

21 Q. And my question was a little different, so maybe
22 it was a poor question.

23 Once it's been mixed in a way that it could be
24 safely loaded, it does not matter how much material
25 there is if it's being moved in a quick enough time

1 frame to prevent a danger from occurring by it piling up
2 at the facility; correct?

3 A. Yes. That would be correct.

4 Q. Now, if the material had been sufficiently dried
5 so it could have been loaded without leaking, this same
6 OCC reject waste stream from PCA could hypothetically be
7 moved via drop boxes; correct?

8 A. Yes. I think we've said that the material, when
9 it's dry, can be moved in a drop box.

10 Q. And there's no reason in terms of special
11 quantity, processing, special handling, or
12 transportation, that as long as it is dry enough, Basin
13 Disposal also could have also hauled this material from
14 PCA; correct?

15 A. That is correct.

16 MR. FASSBURG: Okay. Judge, I think I'm
17 done with this specific line of questions. I know you
18 wanted to take a break around noon, so if now would be
19 good for you, now would be fine for me.

20 JUDGE HOWARD: Yes. Thank you. I think
21 this would be a good stopping point, if that works for
22 you. Let's return at let's say 1 p.m.

23 Does that -- is that adequate time, or is that
24 too much time? Do people -- do people have any concerns
25 with that?

1 MR. STEEL: That works for us, Your Honor.

2 JUDGE HOWARD: All right. I'm hearing no
3 concerns. Let's plan on returning at 1 p.m.

4 (A break was taken from
5 12:08 p.m. to 1:02 p.m.)

6 JUDGE HOWARD: So let's be back on the
7 record. It's 1:03 p.m., we're returning from our lunch
8 break. We paused in the middle of the cross-examination
9 of Jammie Scott. I have -- I neglected earlier to swear
10 in the witness. I do apologize for that. Ms. Scott, I
11 will swear you in now, and I will ask that you affirm
12 your earlier testimony.

13 Would you please raise your right hand.

14

15 JAMMIE SCOTT, having been duly sworn by the
16 Arbitrator, testified as follows:

17

18 JUDGE HOWARD: Thank you.

19 Mr. Fassburg, you may continue.

20 MR. FASSBURG: Thank you, Your Honor.

21 BY MR. FASSBURG:

22 Q. Ms. Scott, I may skip around a little bit today,
23 so I'll try to give you an explanation if you don't
24 follow me, but I'll start by going back to some topics
25 earlier or at least one. I realize there's one question

1 I didn't ask you.

2 With respect to the drop boxes you spot for
3 customers at various industrial facilities around the
4 state, are there materials placed in those drop boxes
5 for disposal that are not collected on site and
6 processed on site by Jammie's?

7 A. No. In fact, when we are providing a drop box
8 to a customer, the customer can't even put stuff in the
9 box, I mean, from everything I produced from the
10 projects we've been doing or working with.

11 Q. Okay. Now, at PCA, Jammie's provides services
12 inside the OCC plant that are cleaning services, if I
13 understand; is that correct?

14 A. Yes. We do industrial cleaning in the OCC
15 facility.

16 Q. And if I understand your response testimony
17 correctly, your cleaning inside the facility does
18 ultimately remove some OCC rejects from the facility; is
19 that right?

20 A. That is correct.

21 Q. Back when Basin Disposal was providing primary
22 OCC rejects service to the mill before Jammie's was
23 involved in transporting it for disposal, what was
24 happening with the OCC rejects removed by Jammie's from
25 inside the mill?

1 A. Well, it really just kind of varies on the
2 services we're providing. I mean, if we're cleaning a
3 stock tank or a chest, then that's quite a bit of
4 material being removed, so I'm assuming it just was
5 pushed out into the area and loaded into BDI's boxes.

6 Q. Were you on site to observe this yourself?

7 A. I personally was not, no.

8 Q. Did, at that time, Jammie's provide drop boxes
9 or any other container for collection of OCC rejects?

10 A. No.

11 Q. If you would, please look to exhibit -- and let
12 me make sure I get you the right number JDS-24X.

13 And for everyone following along, I'll probably
14 refer to the file numbers in the native format files if
15 you have those available because those have our date and
16 timestamp. If you need me to reference the other
17 ordering of them, I certainly can try.

18 And I'll refer you first to the file that has
19 file -- or the digital file has Label 0001.jpeg.

20 MR. STEEL: Blair, do you by chance have the
21 page number? We just have the printed PDF one with the
22 timestamp that Basin provided.

23 MR. FASSBURG: Yeah, so I'm going to try to
24 find that for you because I want everyone on the same
25 literal page. Unfortunately, I don't have that opened.

1 Let me get to it.

2 MR. STEEL: We may pull it up too.

3 MR. FASSBURG: And for purposes of these
4 questions, it may be simpler to work from that document
5 because I'm not concerned with the dates from these
6 documents so let me just open it up and use those
7 numbers.

8 Okay. Let's start with page 26. And just let
9 me know when you're there, Ms. Scott.

10 THE WITNESS: I'm here, I think.

11 MR. STEEL: So, Blair, this is the PDF set
12 where BDI, I think you guys superimposed the date and
13 time or the other --

14 MR. FASSBURG: So perhaps I -- so the set
15 that has the superimposed date and time didn't get page
16 numbers and they were served in native format, so those
17 I would reference specifically by their file name.

18 JUDGE HOWARD: Mr. Fassburg, I understand
19 you to be referring to page 26 of JDS production.

20 Am I right there?

21 MR. FASSBURG: Yes.

22 So for clarity for everybody, these were
23 produced to us I think the date before the deadline, and
24 we scrambled to try to get them filed, but we wanted
25 them in native format with date and timestamp shown so

1 we don't have to look at the file properties to
2 determine when the pictures were taken, so we have two
3 different sets of the same pictures. One has page
4 numbers, and one is in native format and would only have
5 a file label as opposed to a page number.

6 MR. STEEL: Does it has a picture of a
7 ladder on it?

8 MR. FASSBURG: The one I'm looking at is a
9 Bobcat with a motor bucket laying on the ground.

10 MR. STEEL: Okay. All right.

11 BY MR. FASSBURG:

12 Q. Ms. Scott, is this Bobcat that is in that
13 particular page 26 of Exhibit JDS-24X, is this a piece
14 of equipment that Jammie's operates?

15 A. Jammie's does not operate this Bobcat.

16 Q. Okay. And is it your understanding this Bobcat
17 is used by PCA to remove OCC rejects from the mill?

18 A. That is my understanding, yes.

19 Q. Okay. And I believe if you look to page 27, the
20 next page, there's a picture of a person. It appears to
21 be a person inside a BDI drop box.

22 Are you on that page?

23 A. Yes, I am, and that is what it is.

24 Q. Would this have been a Jammie's employee
25 removing OCC rejects from that bucket?

1 A. That is not a Jammie's employee, no.

2 Q. Okay. And if you'll turn to page 28, this --
3 what is this picture? Do you know?

4 A. That is part of the process, the OCC rejects
5 process.

6 Wait, are you talking about the orange clamp?

7 Q. Well, I'm asking you what it is. Do you know?
8 That's the correct page. What is that device?

9 A. That is part of the OCC processing system.

10 Q. Okay. And is that piece of machinery operated
11 by Jammie's or PCA?

12 A. PCA.

13 Q. And is that piece of equipment used to removed
14 solid waste from the junk tower?

15 A. Yes. I believe so.

16 Q. And is that solid waste removed from the OCC
17 plant by PCA?

18 A. Yes. PCA is operating this piece of equipment.

19 Q. Okay.

20 A. As part of the process.

21 Q. So with respect to the other components of their
22 process, the -- what about the Sebright; do you operate
23 the Sebright in any way?

24 A. We do not.

25 Q. Did you remove the OCC rejects that are ejected

1 from the Sebright from the facility?

2 A. We do not.

3 Q. What about the sedamater (phonetic), if I'm
4 saying that name correctly, does Jammie's operate that
5 piece of equipment?

6 A. We do not.

7 Q. Does Jammie's operate any of the equipment
8 inside the mill by which OCC rejects are generated?

9 A. We do not operate any of that equipment.

10 Q. And all of that equipment generates the vast
11 majority of the OCC rejects that are generated at PCA;
12 correct?

13 A. That is my understanding, yes.

14 Q. And so the OCC rejects that are removed from the
15 mill by Jammie's cleaning inside the mill, do you have
16 any quantification as to what percentage of the total
17 rejects that creates?

18 A. Well, that's kind of a two-part question. It
19 depends on how the process is running. When we're in
20 there assisting the customer, their process is generally
21 not running properly, so I don't -- I couldn't tell you
22 how much material, when we clean the chest or we unplug
23 a line or we vacuum out an area, that it would vary on
24 any given project in there.

25 Q. If I understand you correctly, is Jammie's not

1 inside the OCC plant on a daily basis?

2 A. We are in the OCC facility, yes, on a daily
3 basis. We do not provide cleaning services in the OCC
4 facility on a daily basis. We do it as needed when the
5 customer needs it.

6 Q. You supplied in your response testimony or with
7 your response testimony some invoices for your cleaning
8 services. Let's see if I can find that exhibit number.

9 JUDGE HOWARD: I believe we're looking at
10 JDS-20?

11 MR. FASSBURG: That is correct, Your Honor.
12 Thank you. That's what I was just about to say.

13 JUDGE HOWARD: Great.

14 BY MR. FASSBURG:

15 Q. Are you there, Ms. Scott?

16 A. I'm there.

17 Q. Do I understand correctly that Jammie's invoices
18 its cleaning services to PCA on a monthly basis?

19 A. Some projects, yes. Some on a project basis,
20 some on a -- it really just depends on the project.

21 Q. So in page 1 of Exhibit JDS-20, would this be
22 your invoice for the entire month of August?

23 A. In my opinion, this would be an invoice for this
24 particular job we were doing for the customer, which is
25 just specifically cleaning the OCC building slumps and

1 drains.

2 Q. In this Exhibit JDS-20, did you produce all of
3 your invoices for cleaning for the date range that these
4 represent?

5 A. Can you please repeat your question? I'm not
6 sure what you're --

7 Q. Sure. So if we flip through these pages,
8 starting on page 1, these invoice dates start August
9 2020, and on page 26, it ends on April 15th, 2022.

10 Does this exhibit represent all of your invoices
11 for cleaning between those two dates?

12 And let me be clear, cleaning OCC plant at PCA.

13 A. Cleaning the OCC plant, well, I don't see the
14 April one. I see my last one is through March 10th, but
15 yeah, this is all different work we do inside the
16 facility.

17 Q. And is this all of the invoices in that date
18 range?

19 A. I would assume, yes.

20 Q. Okay.

21 A. I produced everything, so... (Pause.)

22 Q. So if we start on the first page, it appears
23 that -- actually, you know what, let's skip forward a
24 little bit to when they were actually operating the
25 plant.

1 If you'll turn to page 9.

2 Actually, we can back up a little bit. Let's go
3 to page 5.

4 Do I understand reading this invoice correctly
5 that you provided cleaning services on March 5th, 6th,
6 and 7th of 2021?

7 A. Correct.

8 Q. And then the next date on which you provided
9 services was March 12th?

10 A. Yes.

11 Q. And then it appears there are several more days
12 in a row that you provided cleaning in March; is that
13 correct?

14 A. Yes.

15 Q. Okay. Now let's move forward.

16 I'm sorry. Let me stop back there.

17 What types of cleaning services were you
18 providing in March of 2021?

19 A. According to the invoices, there was a couple of
20 different services we were providing. We had a vacuum
21 truck in there. We had a vacuum truck in quite a bit.
22 It looks like we had cleaning up stock. It looks like a
23 lot of miscellaneous vacuum services.

24 Q. You would agree with me --

25 A. It looks like we -- wait. This was before we

1 were actually up and running, videoing lines to make
2 sure they were unplugged.

3 Q. I think we can stop there for now.

4 A. Pressure washing areas.

5 Okay.

6 Q. Do any of the services you've just described
7 generate significant quantities of OCC rejects?

8 A. We're not generating the rejects; we're removing
9 the rejects from the areas that we're cleaning.

10 Q. Okay. Thank you.

11 And do you have any idea of what the quantities
12 are of those rejects that you're removing from the areas
13 that you're cleaning?

14 A. I couldn't tell you right off the top of my
15 head, no.

16 Q. Then I'll move on just a little bit.

17 When Jammie's was first asked to provide any
18 service relating to transportation of OCC rejects at the
19 mill, do you have any understanding of who had been
20 removing all of the OCC rejects from the building in
21 terms of the actual generation as opposed to the
22 cleaning?

23 A. So I'm assuming you're asking me, yes, PCA
24 pushes the material out from the building. Is that what
25 you're --

1 Q. Well, that's what I'm asking; is it PCA that's
2 removing the material from the building?

3 A. Yes. PCA pushes the material out of the
4 building.

5 Q. And at that time, Jammie's -- when Jammie's was
6 cleaning the interior or cleaning various components of
7 the building, did you -- did Jammie's actually remove
8 the material from the building, or did PCA?

9 A. That would be a better question for Owen. He's
10 generally on site. I'm not generally on site, so...
11 (Pause.)

12 Q. When the material was removed from the building,
13 who loaded it into BDI containers at that time?

14 A. PCA loaded it into the containers.

15 Q. When Jammie's first started working at PCA, via
16 what type of equipment did Jammie's transport OCC
17 rejects?

18 A. When we first provided a dump truck to assist in
19 removing the piles; is that what you're asking, or...?

20 Q. If that's the first time you started providing
21 transfer of OCC rejects.

22 A. Yes. That is what we provided to remove the
23 material, to assist in removing the material.

24 Q. And do you know who was removing the material
25 from inside the facility at that time?

1 A. PCA was pushing the material out of the
2 building.

3 Q. And who was -- who was loading Jammie's dump
4 trucks?

5 A. PCA loaded our dump trucks initially.

6 Q. Do you recall the date on which you first
7 started providing that service?

8 A. Late May.

9 Q. Do you know when PCA started -- or I'm sorry.
10 When did Jammie's start loading the material,
11 itself?

12 A. Late June, beginning of July.

13 Q. Do you recall the reason why Jammie's started
14 providing the loading as opposed to PCA?

15 A. Well, I believe at that time is when we started
16 managing the material for PCA. We would mix it, make
17 sure that the moisture content was that it could be
18 transferred without making a mess and safely down the
19 road.

20 Q. So when PCA started -- I'm sorry. When Jammie's
21 started, as you called it, managing the OCC rejects,
22 loading it, did you also load BDI's drop boxes?

23 A. We did not. Not to my knowledge, no.

24 Q. So was it PCA that continued to load BDI's drop
25 boxes at that point in time?

1 A. That is my understanding.

2 Q. Is there any reason you would not have loaded
3 BDI's drop boxes at that time?

4 A. They're not my boxes to load, so... (Pause.)

5 Q. So if I understand correctly, Jammie's mixed the
6 materials and loaded its own vehicles, but PCA continued
7 to load BDI's drop boxes, is that what you're saying, at
8 that point in time?

9 A. That would be a better question directed to PCA.
10 It's not -- to my knowledge, we loaded our equipment.
11 We mixed the material and load it into our haul
12 trailers.

13 Q. Is there any -- other than whatever reason PCA
14 may have, is there any -- let me rephrase that.

15 Is there anything special about the material
16 itself for the process Jammie's was using that would
17 have meant could not have gone into BDI's drop boxes at
18 that time?

19 A. Not that I know of.

20 Q. I would like to move on a little bit.

21 You provided testimony in your initial testimony
22 about reaching out to the UTC staff and the e-mail that
23 you received from Kathryn McPherson. I believe that
24 would be on page 33.

25 I'm sorry. That is not the correct page. I

1 apologize for the delay. I just want to make sure I get
2 you to the right page, Ms. Davis.

3 JUDGE HOWARD: Is it possibly page 31 of
4 JDS-IT?

5 MR. FASSBURG: Yes, I think that's correct.
6 Thank you, Your Honor.

7 BY MR. FASSBURG:

8 Q. Ms. Scott, you testified here that you reached
9 out to the Commission staff, and on line 7, you
10 testified, after discussing the work with Commission
11 staff, I was confident that Jammie's met the exemptions
12 under WAC 480-70-111(g), which staff confirmed.

13 Did I read that correctly?

14 A. Can you tell me what page you're on? I didn't
15 hear that.

16 Q. It's page 31, and it's beginning on line 7.

17 You testify there, "After discussing the work
18 with Commission staff, I was confident Jammie's met the
19 exemption under WAC 480-70-111(g), which staff
20 confirmed."

21 Did I read that correctly?

22 A. Yes, you did read that correctly.

23 Q. And when you receive Ms. McPherson's e-mail to
24 you, did you read the entire e-mail?

25 A. I did. The initial e-mail, or...?

1 Q. The e-mail you're referring to there which is in
2 Exhibit JDS-16?

3 A. Yes.

4 Q. So did you read the entire e-mail?

5 MR. STEEL: Blair, is there an exhibit you
6 want Ms. Scott to look at? I think if there's a
7 document, we should have the document up, so it seems --

8 MR. FASSBURG: And I just gave the exhibit
9 number. It's JDS-16.

10 MR. STEEL: All right. So would you like
11 her to turn there?

12 JUDGE HOWARD: Are we actually discussing
13 JDS-15, Mr. Fassburg?

14 MR. FASSBURG: Well, it may also be in
15 JDS-15, but I see what I'm looking for in JDS-16.

16 JUDGE HOWARD: Okay. Sorry.

17 MR. FASSBURG: So, Mr. Steel, just to make
18 sure -- I think Judge Howard had a good point there. I
19 think the language I'm looking for is not the e-mail to
20 Ms. Scott. That was language in the e-mail but not the
21 e-mail to Ms. Scott.

22 BY MR. FASSBURG:

23 Q. So yes, it is JDS Exhibit 15, if you'll please
24 turn to that.

25 A. Okay.

1 Q. And when you received these e-mails from Ms.
2 McPherson, did you read the entire e-mail?

3 A. I read both e-mails, but I'm not sure which one
4 you're referring to right now.

5 Q. Did you read all of the e-mail on January 20th?

6 A. Yes.

7 Q. Will you turn to page 3.

8 Did you read the language that states, "This
9 e-mail," slash, "letter states the informal opinions of
10 commissioned staff offered as technical assistance and
11 are not intended as legal advice"?

12 A. Okay. I probably did read that, but I can see
13 that now.

14 Q. And did you read at the time that it
15 additionally states, "We reserve the right to amend
16 these opinions should circumstances change or additional
17 information be brought to our attention"?

18 A. I understood. Yes, I see that.

19 Q. And did you read it at the time?

20 A. I'm sure I read it at the time. I mean, this is
21 all new to me, so... (Pause.)

22 Q. And you understood from her -- the last sentence
23 there in her e-mail, "Staff's opinions are not binding
24 on the Commission"; correct?

25 A. Well, actually, I was reading the content of her

1 e-mail more so than the signature there, but I guess --

2 MR. STEEL: I was just going to say, the
3 document speaks for itself, so... (Pause.)

4 MR. FASSBURG: My question was whether she
5 read it.

6 MR. STEEL: I think she said she did.

7 THE WITNESS: I did read it, of course. I
8 read the content of the e-mail.

9 MR. FASSBURG: Okay.

10 THE WITNESS: I didn't focus on the last
11 line for sure, no, but that's understood.

12 BY MR. FASSBURG:

13 Q. You understood at the time that the opinion was
14 rendered, that it may not be the final answer as to
15 whether or not Jammie's is operating under an exemption;
16 correct?

17 A. Correct. Yeah, I reached out to the UTC for
18 their advice. I never felt this would have been a
19 regulated waste, so... (Pause.)

20 Q. The reason you believed it was not a regulated
21 waste, you believe because you're providing a myriad of
22 services to PCA, that additional services to provide
23 solid waste collection are exempt; is that correct?

24 MR. STEEL: Object. I think that
25 mischaracterizes Ms. Scott's testimony. If there's

1 something you're pointing to --

2 BY MR. FASSBURG:

3 Q. Ms. Scott, will you please turn to page 3 of
4 your testimony. And this is Exhibit JDS-1, just to be
5 clear.

6 On page 3, starting at line 12, you testified,
7 "Lastly, while Jammie's is well qualified to provide the
8 service to PCA and I believe should be granted a Class C
9 certificate if the Commission deems a certificate is
10 necessary, Jammie's maintains its position that the OCC
11 reject service should be exempt from regulation under
12 WAC 480-70-111(g) because Jammie's transportation and
13 disposal of OCC rejects is incidental to and just one
14 component of the myriad of services it provides."

15 Did I read that correct?

16 A. Yes.

17 Q. And those myriad of services that it provides
18 that you're referring to there include services outside
19 of the OCC plant throughout PCA's mill; correct?

20 A. That is initially how I looked at the whole
21 situation, yes.

22 Q. Okay. In your opinion, under the Commission's
23 exemption rule, should a company be authorized to
24 collect and transport solid waste for disposal from any
25 industrial facility so long as it provides other

1 services unrelated to solid waste at the mill -- or I'm
2 sorry, at the industrial facility?

3 MR. STEEL: Your Honor, I object. That's an
4 awfully vague question, also calls for a legal
5 conclusion.

6 MR. FASSBURG: Your Honor, Ms. -- I'm just
7 asking Ms. Scott about her own testimony.

8 THE WITNESS: Can you repeat --

9 MR. STEEL: Please. Yeah.

10 JUDGE HOWARD: I will -- I will allow the
11 question.

12 You may need to repeat the question.

13 BY MR. FASSBURG:

14 Q. Ms. Scott, is it your testimony that if a
15 company provides solid waste collection and
16 transportation services to an industrial facility, that
17 activity would be exempt under Commission rule so long
18 as it provides other unrelated services to the same
19 facility?

20 A. I felt that the services we were providing was
21 incidental to the managing of the waste for the
22 customer.

23 Q. You just testified a moment ago that the myriad
24 of services included all of the services you were
25 providing, and I want to know, are those services ones

1 that make solid waste collection incidental?

2 A. No. Not in this case, no.

3 Q. So your testimony is that the cleaning services
4 that you provide and the managing services that you
5 provide are what make the solid waste collection
6 incidental?

7 A. In the OCC area or in the -- I mean, you're
8 asking specifically in this area; correct?

9 Q. I'm trying to understand your testimony. Is it
10 your testimony that the solid waste collection and
11 transportation is incidental to only the cleaning and
12 only the mixing of wet and dry OCC rejects at the
13 facility?

14 A. Yes.

15 Q. And so just for clarity, you're not including
16 any consideration of all of the other services you
17 provided to the mill when you opine that it is
18 incidental to the services you provide?

19 A. Can you repeat your question? I'm sorry. I'm
20 trying to understand where you're coming, you know.

21 Q. Did you understand my question?

22 A. No. Would you repeat it, please.

23 Q. So you -- when you talk about what is incidental
24 in your opinion, just to be clear, you do not believe
25 that it is incidental to the services you provide

1 outside of the OCC plant?

2 A. That is correct, yes.

3 Q. Now, with respect to the services that you
4 provide at the OCC plant and only with respect to those
5 services, is it true that you provided service to
6 collect and dispose of OCC rejects prior to the time you
7 provided mixing services?

8 A. That is correct. We -- in May, we provided a
9 dump pump to assist our customer in getting rid of the
10 vast amount of piles that were built up along the
11 building in the OCC area.

12 Q. And subsequent to that is when you started to
13 providing a loading service; correct?

14 A. Yes. After that.

15 Q. And it was only after that that you began
16 providing the service to mix the wet and dry OCC rejects
17 at PCA; correct?

18 A. Yes. That is correct.

19 Q. When in time did Jammie's start to provide the
20 service of mixing OCC rejects at PCA?

21 A. About the time we put the loader in there. I
22 want to say late June, beginning of July. I can go back
23 and look, but... (Pause.)

24 Q. And why is it that you began to mix the wet and
25 dry OCC rejects at that time?

1 A. First off, you couldn't haul the material as is
2 coming out of the process area. It was way too wet. So
3 we were trying to provide an effective solution to our
4 customer's needs. The amount of material coming out of
5 there is constantly changing, so we were just trying to
6 assist the customer in providing a service to help
7 maintain the material coming out of this area.

8 Q. Now, prior to the time that you provided that
9 service to mix the wet and dry OCC rejects, is it your
10 understanding that PCA was removing the material
11 straight from the plant and putting it directly into
12 Basin's drop boxes?

13 A. That is what it appeared to be, yes.

14 Q. And so if I understand you correctly, that
15 material was way too wet to be hauled when loaded into
16 BDI's drop boxes in that condition?

17 A. The material was wet for sure, yes.

18 Q. Sure. My question, just to be clear, is a
19 little bit more specific.

20 It was way too wet to be hauled after being
21 loaded in that condition by PCA into BDI's drop boxes;
22 correct?

23 A. In my opinion, yes. But I don't know of BDI's
24 capabilities on this matter, so... (Pause.)

25 Q. Well, you would agree that if it was too wet to

1 haul, it could not be legally hauled over the public
2 roadways by BDI after the material has been placed into
3 a drop box in that condition; correct?

4 A. I would not haul that material in the manner
5 that it comes out of the process area, no.

6 Q. If PCA were to decide tomorrow that it was going
7 to hire a different contractor to mix the wet and dry
8 OCC rejects, do you still believe that your service
9 would be incidental.

10 I'm sorry. Let me rephrase that.

11 Do you believe your transportation of OCC
12 rejects would be incidental?

13 A. So if PCA hired another -- a company to come in
14 and mix their waste, do I feel like us hauling would be
15 incidental? No, I do not. I feel like that's a big
16 portion of what we're doing for our customer, managing
17 their waste stream that's coming out of this process
18 area.

19 Q. And although you did not do it, you could, in
20 fact, provide a service to mix wet and dry OCC rejects
21 and then place them into Basin's drop boxes for
22 disposal; correct?

23 A. I don't see why. Yes, they can haul dry
24 material. I don't -- I feel like that would be very
25 ineffective for the customer, but that's for the

1 customer to decide, not me.

2 Q. But in terms of the overall process, there's
3 no -- no logistical reason why the company who does the
4 mixing also has to do the transportation; correct?

5 A. I feel that the company that does the mixing and
6 managing of the waste material is there on a regular
7 basis to determine what the customer needs. I don't
8 feel it would be effective for one company to mix, one
9 company to load, and one company to haul, but, I mean,
10 that's just my personal opinion.

11 Q. Is there any reason why the company that does
12 the mixing and the loading could not call a solid waste
13 collection company and advise them when containers are
14 full and ready to be hauled?

15 A. I feel like that would put the customer right
16 back in the situation they were in initially when the
17 piles were mounding up everywhere, but... (Pause.)

18 Q. My question is a little different.

19 A. Okay. I'm just trying to --

20 Q. No, no, I'll rephrase it.

21 A. Okay. Thank you.

22 Q. Irrespective of Basin Disposal in this case, is
23 there any reason why at PCA's facility, one contractor
24 couldn't provide a service to mix wet and dry OCC
25 rejects, load them into drop boxes, and then dispatch

1 the local solid waste collection company to haul them?

2 MR. STEEL: Your Honor, this is asked and
3 answered. Counsel has asked multiple versions of his
4 question now repeatedly.

5 MR. FASSBURG: That's not accurate. She
6 didn't answer my question. She answered that she didn't
7 think Basin could do it, and that's not the specific
8 question I'm asking.

9 THE WITNESS: I'm not --

10 JUDGE HOWARD: Sorry. You have to wait a
11 minute for my ruling.

12 THE WITNESS: Sorry, Your Honor.

13 JUDGE HOWARD: It's okay.

14 I do feel like this question is phrased slightly
15 differently, and I will allow this question.

16 THE WITNESS: So technically, yes, you could
17 have one company mixing the material. You could have
18 one company loading the material. And you could have
19 one company hauling the material.

20 BY MR. FASSBURG:

21 Q. Sure. And you could have one company that does
22 mixing, loading, and dispatching; correct?

23 A. You could definitely do that.

24 Q. How many times have you -- I'm sorry. Let me
25 start over.

1 How many times were you personally at the OCC
2 plant in the range of March to June of 2021?

3 A. I was not on site during that time.

4 Q. Do you have any personal knowledge of the issues
5 we have -- I'm sorry. Let me rephrase that.

6 Do you have any personal knowledge of how many
7 containers BDI supplied to PCA in March of 2021?

8 A. My knowledge of that is not from being on site.
9 It's from talking to customers and my other employers
10 that were on site, yes.

11 Q. Do you have any personal knowledge of what
12 planning went into how the OCC plant would start and how
13 PCA determined its waste disposal needs?

14 A. Through discovery, I gained that knowledge, yes.
15 Prior to that, I was unaware of the discussions between
16 PCA and the disposal facility.

17 Q. So all of your knowledge is based on reviewing
18 documents?

19 MR. STEEL: Objection; that mischaracterizes
20 testimony.

21 JUDGE HOWARD: I'm going to grant that
22 objection.

23 BY MR. FASSBURG:

24 Q. To be clear, Ms. Scott, did you have any
25 conversation with Basin in March 2021 regarding how many

1 containers it was providing?

2 A. Did I have a conversation with Basin? No, I did
3 not.

4 Q. Did you have a conversation with PCA at that
5 time regarding how many containers it was providing?

6 A. I did not.

7 Q. Did you have any conversations with either Basin
8 or PCA regarding who made the decision on how to haul
9 solid waste from PCA?

10 A. I was not involved in any of those
11 communications between PCA and the disposal facility, if
12 that's what you're asking.

13 Q. Did you have any part personally in cost
14 analyses for what would be the most cost effective way
15 for disposal prior to when the plant opened?

16 A. No, I do not.

17 Q. Did you have any personal involvement in
18 determining what size of container to use?

19 A. Can you rephrase that? I mean, I -- are you
20 talking between PCA and the disposal facility, BDI, or
21 myself and PCA?

22 Q. I'll make the question more specific.

23 Were you personally involved in any way in the
24 decision-making process for selecting a drop box
25 container size for hauling OCC rejects from PCA at the

1 time its operations started in March 2021?

2 A. I was not.

3 Q. Did you have any conversations with PCA in that
4 time frame regarding those decision-making processes?

5 A. I did not.

6 Q. Were you involved in planning the OCC reject
7 disposal in any way in 2021, prior to May?

8 A. I was not involved in the disposal portion of
9 that, no.

10 Q. Do you have any personal knowledge of what type
11 of equipment is available to Basin Disposal outside of a
12 single discovery request and answer?

13 A. Are you asking if I know what BDI has?

14 Q. Yes.

15 A. I don't know what all of it they have.

16 Q. Do you know anything about BDI's affiliates?

17 A. I'm sorry. I didn't hear the last part.

18 Q. Do you know anything about BDI's affiliated
19 entities?

20 A. Such as their transfer station, or...?

21 Q. At all.

22 A. Not really technically, no. I mean, I -- I know
23 what I see them doing. I see them on the road hauling.
24 I've been to their transfer station before.

25 Q. And so you don't know whether Basin's affiliated

1 entities have equipment like tractor trailers or belt
2 trailers available for lease to Basin Disposal, should
3 it need them for a specific customer; correct?

4 A. No. I don't know why I should know that
5 information.

6 Q. Well, and you don't know what kind of loaders
7 Basin Disposal has should they need them for a specific
8 customer; correct?

9 A. I do not.

10 Q. I would like to ask you some questions about
11 your testimony beginning on page 10 of JDS-1T.

12 Are you there on page 10?

13 A. I am, yes.

14 Q. Beginning on line 12, you were asked, "Describe
15 how BDI disposed of the OCC rejects?"

16 And you answer, "BDI followed the same approach
17 it uses for normal garbage services at the mill. BDI
18 would drop 20-yard container bins off at the mill for
19 PCA to fill with the OCC rejects."

20 Did I read that correctly?

21 A. Yes.

22 Q. You have no knowledge personally regarding who
23 determined that that would be the method that BDI would
24 use; correct?

25 A. Correct.

1 Q. Turning to the next page, page 11, you were
2 asked, "Was BDI able to adequately dispose of the OCC
3 rejects."

4 The answer: "Based on our observations and in
5 conversations with PCA, no. Shortly after OCC
6 production began and the OCC facility began generating
7 rejects, it was evident that BDI was having problems
8 keeping up with the OCC rejects due to large piles of
9 uncollected OCC rejects that were piled up against the
10 OCC buildings and scattered all over the OCC facility
11 yard."

12 Did I read that correctly?

13 A. Yes, you did.

14 Q. When did you first see OCC rejects piled up in
15 the yard?

16 A. When did I first see or hear about it? Because,
17 again, I was not on site during that time.

18 Q. When did you first see it?

19 A. Through pictures or through personally being on
20 site?

21 Q. When did you first see it in pictures?

22 A. I don't know. It built up quite fast. I mean,
23 I would say around the end of April. It was -- the
24 piles were pretty large.

25 Q. When did you first see them in person?

1 A. I did not personally see them. I was not on
2 site. Again, I have personal on site on a regular
3 basis, on a daily basis for the most part, so...
4 (Pause.)

5 Q. When did you first see OCC rejects inside a
6 Basin container?

7 A. I did not officially see OCC rejects inside a
8 Basin container personally.

9 Q. So you have no knowledge of how long OCC rejects
10 sat in the Basin container wet, drying, waiting to be
11 hauled at all; correct?

12 MR. STEEL: Objection, Your Honor. It's
13 mischaracterizing Ms. Scott's testimony.

14 MR. FASSBURG: I'm asking her a question.

15 THE WITNESS: I personally was not on site
16 at the facility -- oh, I'm sorry.

17 JUDGE HOWARD: Sorry, yes.

18 THE WITNESS: Sorry, Judge.

19 JUDGE HOWARD: It's okay.

20 I'm going to allow the question. Mr. Fassburg,
21 you might need to re-ask it, unless the witness recalls
22 it. Sorry.

23 THE WITNESS: Again, I personally was not on
24 site during this time to see any of the boxes.

25 BY MR. FASSBURG:

1 Q. And so you have no personal knowledge whether
2 dry boxes were sitting, waiting to be collected or if
3 the problem was purely that they were too wet to be
4 hauled, as we discussed earlier; correct?

5 A. Correct. I was not on site during that time,
6 so... (Pause.)

7 Q. Now, if -- if OCC rejects were being loaded into
8 Basin's drop boxes directly from the mill without a
9 process for mixing and drying them first, do you have
10 any idea of how long it would then take for that
11 material to dry before it could be hauled?

12 A. I do not have -- no.

13 Q. Do you have any personal knowledge of whether
14 there was any absorbent material available to PCA to mix
15 with its OCC rejects to dry out the material at that
16 time?

17 A. I do not.

18 Q. Do you know whether anybody made that
19 suggestion, PCA or Jammie's, to add an absorbent
20 material to the drop boxes at that time?

21 A. Well, during that time, we were not really
22 involved in any part of the OCC reject management or
23 transportation. We didn't become involved in that until
24 May-ish, so... (Pause.)

25 Q. Now, moving on, on page 11, starting on line 7,

1 you're asked, "What seemed to be the problem?"

2 And you say, "Based on Jammie's's experience on
3 handling industrial waste, our observations at the mill
4 and in conversations with PCA, I believe BDI could not
5 keep up with the OCC rejects stream for several reasons,
6 including, first, BDI's use of garbage bins -- garbage
7 container bins was a mistake. In my opinion, while
8 container bins are appropriate for normal garbage, they
9 were not appropriate for this type of waste which
10 requires specialized handling into the volume of OCC
11 rejects regenerated, and because the OCC rejects are
12 wet" -- I'm skipping a line here -- "the bins were not
13 large enough and because the OCC rejects were wet, BDI
14 could not load the bins filled with wet OCC rejects due
15 to the weight and leaking water. BDI did not seem
16 prepared for either of these factors."

17 Did I read that correct?

18 A. Yes.

19 Q. Now, this is your opinion not based on personal
20 knowledge of what occurred; correct?

21 A. That is correct. That's my opinion based on
22 what I heard the issues were.

23 Q. Now, do you have personal knowledge as to what
24 the agreement was between PCA and BDI as to who would
25 handle OCC rejects prior to loading?

1 A. I do not.

2 Q. But you understand PCA was, in fact, doing that
3 directly; correct?

4 A. Correct.

5 Q. And do you have any personal knowledge of the
6 agreement between PCA and BDI as to who would load BDI's
7 drop boxes?

8 A. Again, I was not involved in any meetings
9 between PCA and BDI in regards to this waste, so...

10 (Pause.)

11 Q. But you -- but you understand PCA was doing the
12 loading of BDI's drop boxes; correct?

13 A. I do understand that, yes.

14 Q. And you don't have any personal knowledge of
15 whether PCA asked BDI to take over the responsibilities
16 of removing the material, mixing it or loading it, do
17 you?

18 A. I do not. No, I don't know the communications
19 they had.

20 Q. Okay. Now, and you also don't know who -- we
21 covered this: You don't know who selected drop boxes
22 versus a different type of container; correct?

23 A. Correct. I was not involved in those meetings,
24 no.

25 Q. Okay. Now, if OCC rejects had been sufficiently

1 dried before being placed into BDI's drop boxes -- I
2 think we've covered this -- you agree there's no reason
3 a drop box is an inappropriate container for hauling
4 dried OCC rejects; correct?

5 MR. STEEL: Your Honor, I'll just object.

6 As counsel noted, I think this is asked and
7 answered. I think we've covered this ground.

8 JUDGE HOWARD: I'm going to grant it. I can
9 appreciate the need to make a transition, but we
10 don't -- I think that is asked and answered.

11 MR. FASSBURG: Okay.

12 BY MR. FASSBURG:

13 Q. Ms. Scott, if OCC rejects had been hauled by
14 Jammie's at that time using the same process, direct
15 haul -- or directly remove from the OCC plant and loaded
16 directly into Jammie's trailers by PCA, the material
17 could not have been moved any more quickly than it was
18 when it was loaded into BDI's drop boxes; correct?

19 A. As stated, that material was too wet to just
20 shovel out of the building and load into anything at
21 all.

22 Q. So do you agree that the real problem here in
23 terms of why the OCC rejects could not be removed from
24 that facility faster is they were being loaded directly
25 into a disposal container?

1 A. I'm not even sure how to answer that. I agree
2 that, yes, you couldn't have hauled this material wet.

3 Q. Okay. Now, starting on page 11, line 21, you
4 state, BDI is not picking up containers fast enough.

5 Did I read that correctly?

6 A. Yes.

7 Q. And you would agree that BDI could not pick up a
8 container faster than it would dry if it was filled with
9 OCC rejects; correct?

10 A. Yes. That is correct.

11 Q. And if BDI was not asked to do something that
12 would remove the water content of its containers,
13 there's nothing that it -- or let me rephrase that.

14 If nobody asked it to provide services, should
15 it have provided them anyway?

16 A. Well, in my line of work, yes, that is what we
17 do. I mean, we find solutions to a customer's problems,
18 so, again, I am not super familiar with BDI's operations
19 or what they can and can't do, so I really can't speak
20 to their choices on why they felt that this was the way
21 to handle the waste, so... (Pause.)

22 Q. In your work, do you just do the work that you
23 believe is necessary and bill for the customer for it
24 afterwards?

25 A. Most of the time, I have a conversation with my

1 customer throughout the project, yes, to find a solution
2 to whatever we're working on, so... (Pause.)

3 Q. In fact, in your work on PCA, you made written
4 proposals that were adopted and purchase orders were
5 issued before you provided specific services at the
6 mill; correct?

7 A. We generally do provide an estimate prior to
8 providing the service.

9 Q. And so if you haven't received a purchase order
10 authorizing the work, you wouldn't just perform work at
11 the mill and bill PCA for that, would you?

12 A. It would really depend on the situation and the
13 communications I had with the customer, so... (Pause.)

14 Q. You would need to have at least some expectation
15 that they had requested the work and that you could
16 prove that later as well; right? You wouldn't do that
17 purely on an oral conversation, would you?

18 A. You're right; I would not just walk in and do
19 work that wasn't requested.

20 Q. Okay. Thank you.

21 MR. FASSBURG: Judge, I need to take a
22 bathroom break.

23 Would now be an okay time to do that?

24 JUDGE HOWARD: Yes. Let's -- let's take a
25 ten-minute break and come back at 2:10.

1 MR. FASSBURG: Okay. Thank you.

2 (A break was taken from

3 2:00 p.m. to 2:10 p.m.)

4 JUDGE HOWARD: We're returning from a short
5 break and we're resuming with the cross-examination of
6 Jammie Scott.

7 BY MR. FASSBURG:

8 Q. Ms. Scott, referring back to JDS-1T on page 11
9 on line 25, you state, "BDI did not have the resources
10 to address other issues with the OCC rejects such as OCC
11 rejects that had too much moisture content."

12 Specifically, what resources are necessary to
13 address issues such as moisture content in your
14 testimony here?

15 A. Well, I guess we are making sure that the
16 material has the moisture content that is acceptable to
17 load and transport. So for our instance, we're using
18 our loader to mix the material on a regular basis to
19 make sure that it is suitable to haul.

20 Q. So is it your testimony that BDI did not have a
21 loader available to it to provide mixing, had it been
22 asked to do so?

23 MR. STEEL: Objection; mischaracterizes
24 testimony.

25 MR. FASSBURG: I'm asking her a question

1 about what her testimony says.

2 JUDGE HOWARD: I will allow the question.

3 THE WITNESS: I did not hear about BDI
4 changing its processes at all to manage the customer's
5 ways, so I don't know what they had available to them or
6 what they didn't have available to them at the time.

7 BY MR. FASSBURG:

8 Q. Thank you.

9 Now, you state on the last line of page 11,
10 moving on to page 12, "Because of this, it fell behind
11 and large piles of uncollected OCC rejects were piled up
12 against the OCC buildings and there was OCC reject waste
13 scattered all over the OCC facility. Below is a picture
14 of the OCC reject waste piled up at the OCC facility on
15 April 26th, 2021, prior to Jammie's's involvement.

16 Did I read that correctly?

17 A. Yes.

18 Q. Who took that photograph, by the way?

19 A. I don't know.

20 Q. Do you know what time of day this photograph was
21 taken?

22 A. I did not take the picture, so I do not know
23 that.

24 Q. And do you know whether those containers were
25 hauled that day or not?

1 A. I do not know this.

2 Q. You go on to state later on page 12, "As you can
3 see in the picture, the OCC rejects were piled up along
4 the OCC building with the OCC rejects scattered all over
5 the yard and several full uncollected BDI bins. This
6 was typical while BDI was managing the OCC rejects;
7 although, at times, I understand from my staff that the
8 piles of OCC rejects were so high that it nearly reached
9 the blue ink on the building."

10 Did I read that correctly?

11 A. Yes.

12 Q. I have a couple questions.

13 First, what's the basis of your statement that
14 BDI was managing the OCC rejects?

15 A. Well, they were the ones handling the material
16 at the time. They were flagging the drop boxes, they
17 were dropping the boxes, and they were removing the
18 boxes.

19 Q. And do you have any personal knowledge of
20 whether the OCC rejects there in the yard were scattered
21 there as a result of the removal from the building?

22 A. I do not.

23 Q. Do you have any knowledge as to whether those
24 OCC rejects were scattered as a result of the loading?

25 A. I do not.

1 Q. Do you -- so you don't know whether or not those
2 OCR rejects were scattered throughout the yard as a
3 result of an activity that PCA undertook or if that was
4 a result of an activity that Basin Disposal undertook;
5 correct?

6 A. Correct.

7 Q. But we do know the material was piled there by
8 PCA and not Basin; correct?

9 A. That is my understanding, yes.

10 Q. On page 13, starting on line 3, you state, "In
11 my business, leaving that amount of waste scattered and
12 uncollected would not be acceptable for any of my
13 customers."

14 Did I read that correctly?

15 A. That is correct.

16 Q. Do I understand correctly here that you are
17 implying Basin is providing unsatisfactory service
18 because of waste scattered throughout the OCC yard?

19 A. I'm not implying anything, sir. I'm just --
20 that was just what I thought or -- and what I heard was
21 happening, so... (Pause.)

22 Q. And so if there was OCC rejects scattered
23 throughout the yard as a result of activities in which
24 Basin was not engaged, those do not reflect on Basin's
25 satisfactory service; correct?

1 MR. STEEL: Objection, Your Honor.

2 That's -- I think that calls for a legal conclusion.

3 JUDGE HOWARD: I'm going to grant that one.

4 I think that's appropriate for counsel to argue later.

5 BY MR. FASSBURG:

6 Q. Ms. Scott --

7 A. Can you repeat your question, please?

8 MR. STEEL: No. He granted the objection.

9 BY MR. FASSBURG:

10 Q. You state, "BDI bins were also stored all over
11 the yard, creating traffic flow problems, safety
12 hazards, and rendering the yard effectively useless, as
13 it was completely occupied by piles of OCC rejects and
14 uncollected bins, the bins were constantly in the way.

15 Did I read that correctly?

16 A. Yes.

17 Q. And you were -- you were not there constantly to
18 make an observation as to where the bins were to be in
19 the way; correct?

20 A. Correct. I was not on site.

21 Q. And do you know who sited the bins -- or who
22 determined where the bins should be sited?

23 A. I do not.

24 Q. I would like to ask you to take a look at
25 another photograph. I can give you both a page number

1 and a file number. The page number will be 76 in
2 Exhibit JDS-24X, and the native image is 0051.jpeg.

3 MR. STEEL: What's the page again?

4 MR. FASSBURG: 76.

5 BY MR. FASSBURG:

6 Q. Have you found the page?

7 A. I have found the page, yes.

8 Q. Do you recognize this photograph?

9 A. Yes. I've seen this photograph.

10 Q. Now, does the version you're looking at include
11 the date and timestamp?

12 MR. STEEL: No.

13 BY MR. FASSBURG:

14 Q. So if you'll find the native version, which is
15 again 0051.jpeg, it will reflect this photograph was
16 taken on August 2nd, 2021, at 1:10 p.m.

17 A. Okay.

18 Q. By August 2nd, Jammie's was providing solid
19 waste collection at PCA; correct?

20 A. We were assisting in the management of the
21 files, yes.

22 Q. And does this picture look like it was of a
23 clean or messy yard?

24 A. This isn't -- just in my opinion, this isn't
25 terrible, no. I've seen it worse.

1 Q. Does this have a greater mess or a less mess of
2 the photograph on April 26th?

3 A. Which one are you referring to?

4 Q. The one in your testimony on page 12.

5 A. It appears to be the same picture, in my
6 opinion.

7 I'm sorry. Can you repeat the question? I have
8 both pictures in front of me now.

9 Q. Do you believe that the photograph taken on
10 August 2nd is less mess or more mess than the photograph
11 on April 26th?

12 A. I don't feel like there's a huge difference.
13 There's still full boxes and there's still -- you know,
14 a full pile.

15 Q. And there's a pile up against the wall, though;
16 correct?

17 A. Yes, in both pictures.

18 Q. Yeah, and now you say you you've seen worse.

19 When have you been out to the mill to seen
20 worse?

21 A. I'm sorry. I've seen worse than the pictures
22 provided, so... (Pause.)

23 Q. Now, Ms. Scott, the reason that you've seen
24 worse in part is because the removal of OCC rejects from
25 the plant and the handling of them, the processing them

1 at the plant and the loading of them is a messy process,
2 isn't it?

3 A. It is a messy process, yes.

4 Q. In fact, inside the plant and outside the plant,
5 there are OCC rejects scattered throughout the facility
6 in and out on a regular basis; correct?

7 A. It definitely varies for production, yes.

8 Q. But you would agree with me there is -- there is
9 a consistent mess in and out of this facility; correct?

10 A. Yes. I mean, yes.

11 Q. Now, you state -- I'd like you to look at page
12 15 of your direct testimony, starting on line 3.

13 You say, "Second, the OCC rejects piles created
14 unsafe conditions. As the uncollected OCC rejects piles
15 would dry out, they became a fire hazard for PCA."

16 Did I read that correctly?

17 A. Yes.

18 Q. How long does it take for OCC rejects, while
19 sitting in a pile to dry sufficiently, to become a fire
20 hazard?

21 A. I don't know. It would vary on the size of the
22 pile and the moisture content and the amount of the
23 waste.

24 Q. Do you have any kind of scientific approach for
25 determining just how long it could sit there before it

1 becomes a fire hazard?

2 A. I do not.

3 Q. Now, you say that -- you provide fire mitigation
4 clean-up for PCA of wood chips and other waste around
5 the mill there in your testimony; correct?

6 A. That is correct.

7 Q. And we saw in the demonstrative video that Ms.
8 Blancaflor showed for PCA earlier in this proceeding a
9 much -- much larger piles of wood chips and other
10 potentially combustible material at the mill at PCA's
11 facility; correct?

12 A. There are large piles of bark chips, yes.

13 Q. What does PCA do to avoid the fire hazard
14 associated with those piles?

15 A. That would be a question for PCA.

16 Q. So am I understanding that you don't have a good
17 answer for when a pile becomes a fire hazard or what to
18 do to prevent it from becoming a fire hazard?

19 MR. STEEL: Objection, Your Honor. That
20 mischaracterizes testimony.

21 MR. FASSBURG: Your Honor, I'm asking her a
22 question about her knowledge of the fire hazard that
23 she's testified to.

24 JUDGE HOWARD: I will allow the question.

25 THE WITNESS: So you're asking me how they

1 control the fire hazard around the pile of bark chips
2 they had around their mill?

3 BY MR. FASSBURG:

4 Q. My question is different, and I'll try to
5 rephrase it if you don't understand or I'm not being
6 clear.

7 You don't have knowledge of when a pile of
8 combustible material becomes a fire hazard or how it is
9 being controlled at PCA; correct?

10 A. I do not.

11 Q. Now, you say further down in your testimony,
12 starting on line 10, "Third, on windy days, which are
13 frequently in Wallula, the uncollected OCC rejects would
14 blow around the yard and sometimes off site which became
15 a significant environmental and air quality concern for
16 PCA. It also contributed to the fire concerns described
17 above.

18 Did I read that correctly?

19 A. That is correct.

20 Q. Have you been to Wallula on a windy day?

21 A. I have been to Wallula on a windy day.

22 Q. And have you been there when the OCC rejects
23 were blown across the yard and off site?

24 A. I was not. No, I have not personally been there
25 when they're blowing off site. Again, I don't get to

1 the mill a lot.

2 Q. And do you have any knowledge of when and in
3 what circumstances dried OCC rejects might become a
4 potential violation of PCA's clean air permit?

5 A. I do not have that specific knowledge, no.

6 Q. And you say, "Finally," beginning on line 14,
7 "Finally, I understand the piles and constant mess of
8 uncollected OCC rejects so significantly concerned PCA,
9 they began considering what they viewed as the last
10 option, slowing down OCC production until BDI could
11 dispose of the OCC rejects. This, however, would damage
12 PCA's business and was a primary driver in its decision
13 to ask Jammie's to help with its management of OCC
14 rejects."

15 Did I read that correct?

16 A. Yes.

17 Q. Now, had there been such great safety concerns
18 that these piles were creating a risk of violating clean
19 air permit or creating a fire or harming one of PCA's
20 employees or someone else, one of the options that PCA
21 did have available to it was slowing down its production
22 until it had figured out how to process OCC rejects so
23 that they could be placed into a container sufficiently
24 dry for transportation; correct?

25 MR. STEEL: Hang on. Your Honor, I'm going

1 to object. That was not a question. That was a lengthy
2 statement by counsel and vague, for sure.

3 MR. FASSBURG: Your Honor, I think he's
4 objecting to a leading question by adverse counsel,
5 which is always authorized.

6 JUDGE HOWARD: Yes, I'm going to allow the
7 question. He did ask it that was her understanding. He
8 did pose a question at the end of that.

9 THE WITNESS: So can you please repeat your
10 question?

11 BY MR. FASSBURG:

12 Q. One of the options that would have been
13 available to avoid the hazards that you've described
14 here in your testimony would be that PCA could have
15 slowed down its production until it figured out how to
16 load dry materials for collection; correct?

17 MR. STEEL: I'll object. That is -- that
18 mischaracterizes Ms. Scott's testimony.

19 MR. FASSBURG: Your Honor, I'm tired of
20 these disruptive objections when I'm asking questions
21 about her understanding. This is not a question about
22 what she said on the page.

23 JUDGE HOWARD: I'm going to deny the
24 objection. I can -- I can appreciate that Mr. Fassburg
25 is going through her testimony and -- and looking at the

1 bases for different claims that are being made here and
2 I'm going to allow this.

3 THE WITNESS: So PCA can do whatever they
4 want, but I don't think in this case it would have been
5 a very cost-effective solution for their issues, to shut
6 down their production so that they could deal with this
7 little portion of their operations, so... (Pause.)

8 BY MR. FASSBURG

9 Q. Fair. And I don't mean to suggest that PCA
10 would shut down its entire mill. PCA could slow down
11 its OCC productions to the point where its disposal
12 generation -- or its OCC reject generation can be dried
13 and disposed of when dry; correct?

14 A. I don't know. I don't know how fast or slow
15 they can run their production systems, so... (Pause.)

16 Q. And if this was a grave danger to human health
17 and safety, would it have been smarter to stop the
18 production of OCC rejects or pile them on the ground?

19 A. I don't know. I can't speak on behalf of the
20 mill.

21 Q. Ms. Scott, you're responsible for safety at
22 Jammie's, are you not?

23 A. Yup. Yes, I am.

24 Q. And if this were a decision Jammie's was forced
25 to make either stop an activity that it believes is

1 dangerous and might potentially violate clean air
2 permits or continue so that it can continue making money
3 and create a risk, wouldn't you stop production so that
4 you avoid the risk to human health and safety that PCA
5 cared to be so concerned about?

6 MR. STEEL: Your Honor, I object. I think
7 Mr. Fassburg's questions about the health and safety of
8 the mill is a question for PCA, not Ms. Scott.

9 JUDGE HOWARD: I'm going to generally agree
10 with that premise, but in this case, we have testimony
11 on this very page making a number of claims, and I'm
12 going to allow this question.

13 THE WITNESS: So if you're asking me if I
14 had to make a decision of somebody getting hurt or
15 slowing down production or changing production, I would
16 definitely stop production immediately and figure out a
17 better way to manage my processes, which is something we
18 do continually in our line of work, so... (Pause.)

19 BY MR. FASSBURG:

20 Q. Thank you.

21 Now, further down page 15, you're asked, "Did
22 PCA raise these concerns with BDI?" I'll stop there.

23 You don't have any personal knowledge of what
24 concerns PCA raised with BDI, do you?

25 A. I do not.

1 Q. You were not a party to phone conversations
2 between PCA's representatives and Basin Disposal's
3 representatives; correct?

4 A. That's correct.

5 Q. And the only information that you have been able
6 to review with respect to this specific subject are
7 e-mails that have been produced to you by PCA or through
8 discovery; correct?

9 A. And through employees being on site, I mean...
10 (Pause.)

11 Q. My question was about documents you've reviewed.

12 A. Yes. Through discovery, that's what I see in
13 these documents.

14 Q. And your employees on site weren't a party to
15 conversations with PCA and BDI; correct?

16 A. No.

17 Q. So in terms of what concerns PCA raised with
18 BDI, you wouldn't have personal knowledge of that
19 through either your firsthand observation or your
20 employees; you only know this because what was relayed to
21 you by others or what you have read; correct?

22 A. Can you please repeat that question? That was a
23 long one.

24 Q. With respect to concerns that you claim were
25 related by PCA to BDI, your knowledge is not firsthand

1 in any way; correct?

2 A. That is correct.

3 Q. To be clear, you lodge a number of allegations
4 against Basin with respect to its service at PCA here in
5 your testimony, and I want to understand generally
6 speaking with respect to whose responsibility is whose.

7 Do you believe a solid waste collection company
8 has the legal obligation to ensure that the material is
9 processed safely prior to being placed in the solid
10 waste collection company's container?

11 A. I am not a solid waste collection company, so,
12 again, I don't know.

13 Q. Okay. So if -- if you don't know and it were to
14 turn out that all of these activities that led to piles
15 that you claim created dangers, those activities that
16 were caused by -- I'm sorry. Let me rephrase this.

17 Because you don't know about whose legal
18 responsibility it is, if it were PCA that took these
19 steps and not BDI, would you agree with me that you
20 can't say that it was BDI responsible for the outcome of
21 those activities?

22 A. I can't -- I can't say that, yeah.

23 Q. Do you believe that to provide satisfactory
24 service, a solid waste collection company has to provide
25 environmental services in addition to solid waste

1 collection service?

2 MR. STEEL: Your Honor, I object. That
3 calls for a legal conclusion.

4 MR. FASSBURG: Your Honor, she provided
5 several pages about her opinions as to why Basin did not
6 provide satisfactory service. I think I should be
7 allowed to explore her opinions.

8 JUDGE HOWARD: Given the particular
9 circumstances and arguments being made in this case, I'm
10 going to allow that question.

11 THE WITNESS: Okay. Can you please repeat
12 the question then.

13 BY MR. FASSBURG:

14 Q. Do you believe a solid waste collection company,
15 in order to provide satisfactory service, also needs to
16 provide environmental services?

17 A. To a certain extent, yes, I believe they need to
18 be responsible environmentally for what they're doing.

19 Q. And would that include any activities prior to
20 the collection of a contaminant?

21 A. No.

22 Q. Do you believe in order to provide satisfactory
23 service, a solid waste collection company needs to
24 provide on site management of waste?

25 A. No. I believe we need to haul the boxes when

1 they haul them. Again, I don't believe this waste is a
2 very typical waste, so I... (Pause.)

3 Q. I think I have just a few more questions, and
4 then I can wrap up.

5 Ms. Scott, does PCA get charged by Jammie's for
6 the mixing activities that it engages in prior to
7 loading and transportation?

8 A. Jammie's bills PCA on a time and materials
9 basis.

10 Q. Does it include the time it charges for mixing
11 on its invoices for solid waste collection?

12 A. Yes.

13 Q. How does it code those bills -- or to be clear,
14 how does it code those services on its invoices?

15 A. On a time and material basis. Basically, my
16 operator shows up. His time is billed whether he's
17 hauling or mixing. It's all billed. It's all the same
18 rate, so it's all --

19 Q. When you say operator -- I'm sorry. When you
20 say your operator, is that your driver?

21 A. That is my operator, yes, my truck driver, my
22 operator, my motor operator, so --

23 Q. When they arrive, do I understand correctly they
24 mix the material, they load it, and then they transport
25 it?

1 A. That is what they do.

2 Q. Do you have different on-staff personnel who
3 provide the mixing as a service separately from the
4 loading at any time?

5 A. Are you asking if we just show up and mix the
6 material and don't haul it and load it, or...?

7 Q. I'm asking if at any time there's someone on
8 site who does just mix without loading and transporting?

9 A. Not that I'm aware of, no. Generally, it's a
10 one-stop shopping.

11 MR. FASSBURG: Okay. Your Honor, could I
12 take just a couple of minute break to review my notes
13 and make sure that I asked what I've needed to.

14 JUDGE HOWARD: A brief, a couple minutes,
15 yes.

16 MR. FASSBURG: Okay. Thank you.

17 (Pause in the proceedings.)

18 MR. FASSBURG: Okay. Thank you for that
19 break, Your Honor.

20 THE COURT REPORTER: And I'm all set.

21 JUDGE HOWARD: And we are still on the
22 record.

23 And do you have any further questions for this
24 witness?

25 MR. FASSBURG: No further questions, Your

1 Honor.

2 JUDGE HOWARD: Okay. Thank you.

3 Do we have any redirect?

4 MR. STEEL: We do, Your Honor. I just --
5 given the length of Mr. Fassburg's cross, we're just
6 putting together our notes, and so could we have a few
7 minutes to just put our notes together and then we'll
8 start as soon as possible?

9 JUDGE HOWARD: Certainly. Let's go off the
10 record for a few minutes.

11 (A break was taken from
12 2:42 p.m. to 2:45 p.m.)

13 JUDGE HOWARD: We'll begin the redirect of
14 Jammie Scott.

15 REDIRECT EXAMINATION

16 BY MR. STEEL:

17 Q. Ms. Scott, earlier Mr. Fassburg asked you about
18 using a belt trailer to haul OCC rejects.

19 Do you recall that?

20 A. Yes.

21 Q. And I think you said you -- in response, I think
22 you stated something to the effect of you could use
23 anything to haul rejects once they are dry.

24 Do you recall that?

25 A. I did say that, yes.

1 Q. Were you speaking hypothetically?

2 A. Yes. I definitely was. You wouldn't want to
3 haul a small amount of material in the big scheme of
4 things trying to keep -- are you talking in the
5 situation? The amount of material that is constantly
6 flowing, I don't believe a 20-yard bin is large enough
7 to maintain the area, but technically, you could haul it
8 in whatever you wanted.

9 Q. What do you believe is the best way to haul
10 rejects from the mill?

11 A. I feel that the solution we provided with the
12 belt trailers has been an effective solution. It allows
13 us to maintain the moisture of the product and make sure
14 it's properly mixed. It maintains us -- it allows us to
15 haul large quantities at a time, and it allows the mill
16 to continue processing without substantive services of
17 production.

18 Q. Why doesn't Jammie's use container boxes to haul
19 rejects?

20 A. Well, in this situation, there's not a big area
21 to store these container boxes. Container boxes are
22 heavy. In my opinion, I just felt it was better to
23 haul as large of a quantity as you can legally haul for
24 the customer.

25 Q. In your mind, is there a relationship between on

1 site OCC rejects management services and hauling
2 services?

3 A. Definitely there is. I feel that for us to be
4 effective, it's kind of a one -- it's one large process
5 continually flowing.

6 Q. And in your mind, can you really separate the on
7 site services from the hauling services?

8 A. Not to be an effective way of maintaining their
9 area and keeping up with their waste flow.

10 Q. And in your mind, was this one of the problems
11 before when BDI was hauling, that there were two -- sort
12 of two separate entities operating?

13 MR. FASSBURG: Objection; leading.

14 JUDGE HOWARD: I'll going to grant that
15 objection.

16 BY MR. STEEL:

17 Q. Earlier Mr. Fassburg asked you about your
18 testimony where you talk about real time.

19 What did you mean by the term "real time" in
20 your testimony?

21 A. In my testimony, real time is constantly
22 fluctuating, constantly flowing. I mean, we have no way
23 of knowing what the mill is going to produce, when it's
24 going to produce it, so for us to maintain this and
25 manage this waste, it's a constant eye on the site,

1 knowing what the customer's needs are going to be,
2 knowing how the piles look, knowing what's wet, knowing
3 what's dry, knowing that we have a loader, we're going
4 to load the material, we're going to haul, if we need
5 another truck to come in because there's a large amount
6 of material there. It's just constantly flowing. I
7 mean, it's not a stop, load a box, call for a pickup.
8 Mix the waste. That would be my best way to describe
9 it.

10 Q. Earlier Mr. Fassburg asked you about a
11 photograph dated August 2nd, 2021.

12 Do you recall that?

13 A. Correct, yes.

14 Q. And I have a copy of that photo here in front of
15 you; is that right?

16 A. Yes.

17 Q. During this time, had Jammie's fully implemented
18 its on site services in hauling for PCA?

19 A. No. This is -- I believe in August, we were
20 still trying to figure out the solution to the problem.
21 There's no -- there's no bunker set up. There's not
22 even a temporary bunker set up at this point, and I
23 don't see our loader on site at all either, so...

24 (Pause.)

25 Q. Mr. Fassburg asked a few questions on -- I'll

1 come back to that.

2 First, he asked you -- going to page 3 of your
3 testimony, if you want to turn there. Earlier, he was
4 asking you about the incidental exemption.

5 Do you recall that?

6 A. I do recall that, yes.

7 Q. And in your testimony, you state on page 3, line
8 14, that, "Jammie's maintains its position that the OC
9 rejects service should be exempt from regulation under
10 480-70-111(g) because Jammie's transportation and
11 disposal of OCC rejects is incidental to and just one
12 component of the myriad services it provides."

13 Do you see that?

14 A. I do.

15 Q. And Ms. Scott, in your mind, what is the hauling
16 of the OCC rejects incidental to?

17 A. The hauling is a tiny fraction of the work that
18 we -- it's a tiny fraction of the services we provide to
19 that mill, and it's even a smaller portion of the
20 services we provide in general, and so in my mind,
21 that's how I looked at it.

22 Q. Mr. Fassburg asked you several questions about
23 your personal knowledge of what happened at the mill in
24 let's say the spring of 2021.

25 Do you recall that?

1 A. I do.

2 Q. And I believe you stated that you weren't on
3 site during at least some of that time.

4 Do you recall that?

5 A. Yes.

6 Q. What was the basis for your knowledge of what
7 was taking place on the mill during that time?

8 A. You have to understand, we work at this mill on
9 a daily basis, so we see -- we see issues, we hear
10 problems that the customers have, so that is where I
11 gathered my knowledge on this whole scenario, is from my
12 employees, from, you know, just listening -- just
13 looking at the site, so... (Pause.)

14 Q. In your testimony, you state that you're the --
15 I believe the owner and president of Jammie's; is that
16 true?

17 A. That is true.

18 Q. And as owner and president, where do you
19 typically spend most of your time?

20 A. I'm generally in the office these days. I don't
21 get out to facilities nearly as much as I would like.

22 Q. Who do you rely on to communicate information
23 about what's happening on job sites to you?

24 A. I typically rely on my employees, my operations
25 managers, my field personnel.

1 Q. And is that what happened here?

2 A. Yes, for sure.

3 Q. So if your employees saw what was happening,
4 they would communicate that to you?

5 MR. FASSBURG: Objection; leading.

6 JUDGE HOWARD: I will grant the objection.

7 BY MR. STEEL:

8 Q. Did your company see what was going on at the
9 mill and communicate that information to you?

10 A. Yes, they did.

11 Q. And on page --

12 JUDGE HOWARD: Sorry, Mr. Steel, just a
13 moment, Ms. Blancaflor, you may want to check that
14 you're muted.

15 Thank you.

16 Sorry, Mr. Steel, go ahead.

17 MR. STEEL: No problem.

18 BY MR. STEEL:

19 Q. Ms. Scott, Mr. Fassburg asked you a few
20 questions about page 15 of your testimony. Do you want
21 to jump there? And he asked you about unsafe
22 conditions, fire concerns, environmental concerns, and
23 production concerns.

24 What is the basis for your knowledge of those
25 concerns?

1 A. Well, in discussions with my employees and
2 personally, I mean, it became apparent that the mess
3 really did need to be cleaned up. It was not
4 dissolving, it was growing.

5 Q. And was it your employees that conveyed these
6 concerns to you?

7 A. Yes. And eventually the mill. I mean, we
8 discussed providing a dump truck to start eliminating
9 some of these piles.

10 Q. Are you saying it was PCA that conveyed these
11 concerns to --

12 MR. FASSBURG: Objection; leading.

13 BY MR. STEEL:

14 Q. Did PCA convey these concerns to you and your
15 company?

16 A. There was communication between PCA and my
17 employees on site.

18 JUDGE HOWARD: Let's be sure to allow for
19 the ruling on the objection.

20 MR. STEEL: Sorry, Your Honor.

21 JUDGE HOWARD: It's okay. The question I'll
22 permit.

23 BY MR. STEEL:

24 Q. Ms. Scott, Mr. Fassburg asked you some questions
25 about Jammie's services at the mill, and can you

1 describe how Jammie's OCC rejects services sort of
2 started and how they evolved at the mill?

3 A. Well, this is a new process for PCA, the OCC
4 rejects area, so we had been working in that area from
5 the get-go. You know, they had upsets. We would go
6 unplug lines. We would go clean the areas as needed. I
7 mean, any type of a new process is going to have their
8 hiccups, and we assisted PCA and facilitated their
9 problems, their hiccups. We would assist where we could
10 to help them remain operational and at least get the
11 operations up and going, so whenever there was an issue,
12 we were generally on site to assist them.

13 Q. And did you start -- did the process start with
14 you managing the rejects on site initially, or how did
15 that play out?

16 A. No. That was never our intention, I mean, our
17 intention was to -- was not to go in and start changing
18 all this waste and taking it over from BDI. We went in
19 initially to help them remove piles, so it just evolved
20 from there?

21 Q. When did Jammie's begin providing this sort of
22 management set of service?

23 A. I would say full-on managing and day-to-day
24 operations in that area August.

25 Q. And earlier, you used the word upsets.

1 What does that mean?

2 A. Any time the mill isn't functioning as they
3 should, I would consider that an upset.

4 MR. STEEL: Your Honor, can I just have a
5 minute to check my notes to see if there's anything else
6 I want to ask.

7 JUDGE HOWARD: Yes, go ahead.

8 MR. STEEL: Thank you.

9 (Pause in the proceedings.)

10 MR. STEEL: Your Honor, we have no further
11 questions for redirect.

12 JUDGE HOWARD: Okay. I believe WRRRA also
13 indicated cross for this witness. Mr. Whittaker, do you
14 have questions for the witness?

15 MR. WHITTAKER: Yes, I do have questions,
16 Your Honor, but I'll try to be brief this afternoon.

17 JUDGE HOWARD: Okay. Please go ahead.

18 CROSS-EXAMINATION

19 BY MR. WHITTAKER:

20 Q. Thank you, Judge Howard, and hello, Ms. Scott.
21 I wanted to ask a few higher-level questions, starting
22 with the OCC rejects that Jammie's manages on site for
23 PCA.

24 So at a high level, you provide on site solid
25 waste handling services to reduce the moisture content

1 of OCC rejects to prepare them for transport; correct?

2 A. Yes, that is correct. That is one of the
3 services we provide.

4 Q. And you would agree once dry and loaded into a
5 trailer or drop box, there's no legal requirements that
6 you're aware of for hauling OCC rejects that differ from
7 any other municipal solid waste?

8 A. Yes.

9 Q. And these materials, OCC rejects, have no
10 economic value?

11 A. Not that I'm aware of, no.

12 Q. When developing your plan to manage PCA's waste,
13 you or your agents represented that Jammie's could
14 legally haul the OCC rejects for disposal to PCA?

15 A. Can you repeat your question?

16 Q. Sure. So when you developed your plan to manage
17 PCA's waste, you or your employees or agents represented
18 that your company could legally haul the OCC rejects for
19 disposal to PCA?

20 A. Initially, I never felt like this was a
21 regulated waste to begin with, so we had been hauling
22 for a while, and when I was approached by BDI, I think
23 it was an e-mail in maybe January-ish, stating that, you
24 know, this is illegal, that is when I reached out to the
25 UTC for their advice in this matter.

1 Q. So prior to servicing Jammie's, you testified
2 that you're familiar with the UTC's management of solid
3 waste collection; correct?

4 A. No, I have not. I've talked to the UTC in the
5 past on whether or not I needed a certificate or a
6 permit, and at that time, the amount -- the work that we
7 were doing was so incidental to the other services we
8 provide, I had never needed one.

9 Q. But you understand that the legislature had a
10 policy to manage solid waste collection through a
11 regulated system using regulated service providers;
12 correct?

13 MR. STEEL: Your Honor, I'm going to object
14 to that. That's a legal question about legal background
15 and asks for a legal conclusion.

16 JUDGE HOWARD: I am going to grant the
17 objection. I think that, you know, we have sometimes a
18 blurry line between policy questions and legal questions
19 in proceeding before the Commission, but we have not
20 quite laid the foundation for that type of question to
21 this witness.

22 BY MR. WHITTAKER:

23 Q. Then I will rephrase and say, you understand
24 that solid waste is regulated similar to the utility,
25 where the Commission regulates a company with authority

1 to collect solid waste within a given geographic area;
2 correct?

3 A. I do understand that there are regulations on
4 garage, yes, transportation and disposal.

5 Q. Okay. And you didn't reach out to --

6 A. As a -- go ahead. Sorry.

7 Q. No. Finish.

8 Okay. So you didn't reach out to the Commission
9 for technical assistance before beginning to haul these
10 large quantities of waste?

11 A. I did not.

12 Q. And earlier, you discussed the significant
13 volume of the waste as being one of its special
14 characteristics.

15 You didn't feel the need to consult with the
16 Commission or any regulatory body before beginning to
17 haul that quantity of waste, knowing that it was
18 regulated?

19 A. I did not feel that this particular waste was
20 regulated initially, so no.

21 Q. And that's because you believed the hauling is
22 an incidental adjunct?

23 A. After I reached out to the UTC, yes, that is my
24 understanding.

25 Q. And the volume of the waste doesn't matter, the

1 fact that it's hundreds of tons?

2 A. This waste is so wet, it definitely adds
3 tonnage, so, no, I did not -- again, I did not see this
4 waste as a -- as a regulated waste when we started
5 hauling.

6 Q. And the fact that the waste can be transported
7 with or without special handling once dry doesn't
8 matter; it's still exempt from regulation in your
9 opinion?

10 A. I feel like the transportation is incidental to
11 the other services we are providing in this situation,
12 and that's why I reached out to the UTC. That's why I'm
13 following the guidelines that they're recommending to
14 me, so... (Pause.)

15 Q. Okay. And you testified on redirect that it
16 would be difficult to separate the on site services you
17 provide from disposal, but at various points, both Basin
18 and Jammie's concurrently provide hauling of OCC rejects
19 for disposal; correct?

20 A. I feel the service Jammie's is providing is the
21 management. And again, the customer doesn't have to
22 think about the waste.

23 Q. Well, you testified on redirect that the hauling
24 portion is a tiny fraction, I think were your words, of
25 the services provided to the mill.

1 Did your revenue from the mill work increase by
2 a tiny fraction after you began hauling the OCC waste
3 for disposal?

4 A. The revenue did increase, yes.

5 Q. Did it increase substantially?

6 A. Yeah. I mean, we were hauling on a regular
7 basis, mixing on a regular basis, spending more time in
8 that area, yes.

9 Q. So not by a tiny fraction?

10 A. The hauling, itself, is a tiny fraction of the
11 services we provide.

12 Q. And the disposal?

13 A. Yes.

14 Q. So if you're correct, then Jammie's could haul
15 material from any paper mill in Washington where you
16 perform some sort of on site solid waste handling or
17 clean-up?

18 A. I would look to the Utilities Transportation
19 Council to make that decision. I think that's why we're
20 here. I guess --

21 Q. But you didn't feel a need to call ahead of
22 time?

23 A. I did. When it was brought to my attention this
24 may be a regulated waste under the UTC, that is when I
25 made the initial phone call.

1 Q. So your interpretation --

2 THE COURT REPORTER: I'm sorry. I didn't
3 hear that question clearly.

4 Can you please re-ask it?

5 MR. WHITTAKER: Sure. I'll rephrase.

6 BY MR. STEEL:

7 Q. Is it under interpretation of the law that you
8 would be able to provide this service at any facility,
9 any paper mill in Washington or industrial facility
10 where you perform some sort of on site solid waste
11 handling prior to the material going for disposal?

12 MR. STEEL: I believe that question has been
13 asked and answered. I think the witness has answered
14 that question.

15 JUDGE HOWARD: I'm going to deny that
16 objection. I -- the witness has not directly answered
17 that question.

18 THE WITNESS: So it is my understanding if
19 the hauling of the waste is incidental to the other
20 services we provide, then it is not regulated under the
21 UTC regulations, but, again, I am trying to learn here.
22 I really have never -- this is a different situation for
23 us in general.

24 BY MR. WHITTAKER:

25 Q. But you would agree though, you know, large

1 industrial facilities generate substantial amounts of
2 waste; they're the largest generators?

3 A. Correct. And I don't think that I can just go
4 in there and start hauling whatever waste, so...
5 (Pause.)

6 Q. So do you believe that interpretation, as you
7 discussed it, would impact the rates and services of
8 other smaller customers that are regulated by the
9 Commission?

10 MR. STEEL: Objection, Your Honor. I'm not
11 sure there's foundation for Ms. Scott to answer
12 questions about the rate impacts to other customers.

13 THE WITNESS: I don't know.

14 BY MR. WHITTAKER:

15 Q. I'll rephrase.

16 Are you familiar with the concept of credence
17 stealing (phonetic)?

18 THE WITNESS: Yes, I have learned that in
19 discovery, in somebody's testimony.

20 BY MR. WHITTAKER:

21 Q. And do you believe that -- so then do you view
22 this proceeding as an opportunity to expand your
23 business to other facilities as well?

24 A. I do not. That's not what I'm are asking for,
25 so... (Pause.)

1 Q. Do you believe your competitors could view this
2 proceeding as an opportunity to expand their business in
3 solid waste disposal?

4 A. I don't know.

5 MR. WHITTAKER: That's all I have, Your
6 Honor. Thank you.

7 JUDGE HOWARD: All right. Thank you.

8 Do we have any redirect?

9 MR. STEEL: No, Your Honor.

10 JUDGE HOWARD: Okay. Well, thank you, Ms.
11 Scott, for your testimony today. Let's turn to the next
12 witness.

13 Do we have Owen Scott -- is everyone -- we've
14 kind of had scatter shot breaks this afternoon. Does --
15 does anyone need a break before we continue with the
16 next witness? I would -- I want to be efficient, but I
17 also want to recognize that we're people.

18 MR. FASSBURG: Yeah, I would apologize, Your
19 Honor, but I would appreciate at least a five-minute
20 break.

21 JUDGE HOWARD: Okay. Let's take a
22 ten-minute break and reconvene at 3:20 and we'll pick up
23 with Owen Scott.

24 THE WITNESS: Thank you, Judge.

25 JUDGE HOWARD: Thank you. We are off the

1 record.

2 (A break was taken from
3 3:10 p.m. to 3:21 p.m.)

4 JUDGE HOWARD: Okay. Let's be back on the
5 record. It's 3:21 p.m. We're going to conclude the
6 cross-examination with Owen Scott.

7 Mr. Scott, would you please raise your right
8 hand?

9
10 OWEN SCOTT, having been first duly sworn by the
11 Arbitrator, testified as follows:

12
13 JUDGE HOWARD: All right. Thank you.

14 Mr. Steel, would you please introduce your
15 witness?

16 MR. STEEL: Thank you, Your Honor.

17 Mr. Scott, would state your name and title and
18 spell your name for the court reporter?

19 THE WITNESS: Owen J. Scott, operations
20 manager, Jammie's Environmental, O-w-e-n, J, S-c-o-t-t.

21 MR. STEEL: Mr. Scott, do you have before
22 you what has been marked for identification as Exhibit
23 Nos. OJS-1T through OJS-6 in Dockets TG-220215 and
24 TG-220243.

25 THE WITNESS: I do.

1 MR. STEEL: And these exhibits constitute
2 your pretrial testimony and related exhibits in this
3 proceeding?

4 THE WITNESS: Yes.

5 MR. STEEL: Were these exhibits prepared
6 under your supervision and direction?

7 THE WITNESS: Yes.

8 MR. STEEL: Do you have any corrections to
9 any of your exhibits at this time?

10 THE WITNESS: I do not.

11 MR. STEEL: Is your pretrial direct
12 testimony and accompanying exhibits true and correct to
13 the best of your information and belief?

14 THE WITNESS: Yes.

15 MR. STEEL: Thank you.

16 Your Honor, Jammie's offers Mr. Scott for
17 cross-examination.

18 JUDGE HOWARD: All right. Thank you.

19 Mr. Fassburg, you may proceed.

20 Are you handling this witness?

21 THE WITNESS: Yes, I am, Your Honor. Thank
22 you for asking.

23 JUDGE HOWARD: Okay.

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. FASSBURG:

3 Q. Mr. Scott, as you may have already heard, my
4 name is Blair Fassburg. I represent Basin Disposal. I
5 will try to keep my questions clear and relatively brief
6 today.

7 If you don't understand one of my questions,
8 please let me know.

9 I understand you're an operations manager for
10 Jammie's Environmental; is that correct?

11 A. That's correct.

12 Q. And in your capacity as operations manager, how
13 frequently are you on site at given facilities that
14 Jammie's provides services to?

15 A. It varies, but I'm on site often.

16 Q. I understand that you were on site on occasion
17 at PCA's mill near Wallula, Washington, during 2021; is
18 that correct?

19 A. That is correct.

20 Q. Working at the mill, did your particular
21 responsibilities involve more than just working at the
22 OCC plant?

23 A. Yes.

24 Q. What other service -- what other services are
25 you involved in there at the mill?

1 A. We do have the industrial cleaning, everything
2 from vacuum truck services, large mill outage, cleaning
3 services. It varies.

4 Q. And through that work you do at the mill, have
5 you developed a good relationship with the people who
6 work there with for PCA?

7 A. Yes.

8 Q. You state in your experience on the page of your
9 pretrial testimony that you've worked in industrial
10 waste handling.

11 Have you, prior to this particular facility, had
12 any experience working with OCC rejects?

13 A. Yes.

14 Q. Where did you have experience working with OCC
15 rejects?

16 A. I've worked with OCC rejects in several pulp
17 mill facilities in a cleaning capacity.

18 Q. Did you have any experience in removal,
19 collection, transportation, or disposal of OCC rejects
20 at any of those other facilities?

21 A. No.

22 Q. Do you have -- and you state you work in
23 industrial waste handling.

24 What does that entail for Jammie's?

25 A. Industrial waste handling can be a variety of

1 things from cleaning asphalt tanks, cleaning bilges on
2 ships. If we've decommissioned pulp mills, cleaned out
3 all their green liquor waste, transported that for
4 disposal, so it's a wide variety.

5 Q. Does your experience with industrial waste
6 handling always involve the disposal side?

7 A. Not always.

8 Q. Are there facilities at which you provide on
9 site processing where after you're completed with your
10 work, a solid waste collection company comes in and
11 hauls away the solid waste that has resulted from your
12 work?

13 A. Yes.

14 Q. And do you understand that solid waste handling
15 and management and solid waste collection under
16 Washington law are different services that are regulated
17 differently?

18 A. Yes.

19 Q. Now, I asked this question of Ms. Scott, but I
20 want to make sure I understand your testimony as well.

21 You testified on page 4 about a variety of
22 cleaning services that Jammie's provides at the mill.

23 Are you on site for any of the work that's
24 performed for those cleaning services?

25 A. Yes, I have been.

1 Q. Who removes the OCC rejects for the mill,
2 following Jammie's's cleaning services?

3 A. In the beginning, we would -- if we were
4 cleaning a tank prior to us doing any of the management,
5 we would clean the tank, if we were vacuuming and dump
6 that in a containment so it could then be pushed --
7 dewatered and pushed out with the PCA Bobcats.

8 Q. So when the -- when you were first working
9 there, if I understand, the OCC rejects that were
10 connected with the cleaning services you provided were
11 actually removed from the facility by PCA; is that what
12 you're saying?

13 A. I'm saying they collected those after we cleaned
14 and put those into the receptacle for the disposal.

15 Q. Okay. Has that process changed at all over
16 time?

17 A. Yes.

18 Q. Now when you clean, who removes the material
19 from the facility?

20 A. We do.

21 Q. What do you do with that material?

22 A. We dump it into the bunker.

23 Q. Why was there a reason for that change?

24 A. Well, there was reason for that change because
25 the material was not being handled to the satisfaction

1 of the customer.

2 Q. I'm talking about just the removal from the
3 mill.

4 You're saying that you were not satisfying the
5 customer with -- I'm sorry, they were unsatisfied with
6 their own removal from the mill?

7 A. No. No. If we're cleaning in the beginning
8 prior to us hauling and removing those OCC rejects, if
9 we were cleaning something back in the beginning of this
10 process, we would vacuum, clean, dump that, and then PCA
11 would use their equipment to load that into whatever
12 receptacle that was being hauled away.

13 Q. Where did you dump the material?

14 A. There was a couple of different spots we would
15 do that.

16 Q. Where were those spots?

17 A. Usually in the basement area, we would back in
18 and unload the truck so it could dewater.

19 Q. Why does that material need to dewater, in your
20 opinion?

21 A. Because it was wet.

22 Q. You wouldn't have loaded wet OCC rejects into a
23 solid waste container; correct?

24 A. No. And you couldn't have loaded it anyway out
25 of the vacuum truck into those containers.

1 Q. Did you at times empty those vacuum trucks
2 directly onto the grounds outdoors?

3 A. No.

4 Q. When you first started working for Jammie's to
5 provide service to collect those OCC rejects in May, who
6 first contacted you about that service?

7 A. From the mill, I spoke with Brian Wilhelm.

8 Q. Do you remember when that contact occurred?

9 A. Sometime in May of '21.

10 Q. And do you recall how that contact was
11 initiated?

12 A. I believe we were having a conversation about
13 work that was ongoing in the area. I was on site and I
14 brought it up, that he obviously had a need and a
15 problem growing.

16 Q. Did Mr. Wilhelm ask you to prepare a written
17 proposal for service?

18 A. Mr. Wilhelm asked me to give him a couple of
19 ideas how to at least stem the tide, and we gave him a
20 cost to provide a dump truck and pup.

21 Q. And did he ask you -- well, let he rephrase
22 this.

23 Were you asked for multiple written proposals?

24 A. Not at that time. We gave them one.

25 Q. Gave him one.

1 Did you have any plans, provide him any other
2 written proposals at that time?

3 A. No.

4 Q. Now you understand prior to Jammie's's
5 involvement, Basin Disposal did not perform any loading
6 or handling services with respect to the OCC rejects at
7 the mill; correct?

8 A. I do understand that.

9 Q. Now, you criticized Basin Disposal for not
10 hauling containers more quickly from PCA's facility; is
11 that correct?

12 A. That is correct.

13 Q. Now, when those containers were filled with wet
14 OCC rejects by PCA, are you suggesting that Basin should
15 have hauled them despite the fact that they contained
16 wet OCC rejects?

17 A. No, I'm not.

18 Q. Is it your contention that Basin should have
19 found a solution to reduce the water content of the
20 material placed in its containers by PCA?

21 A. I think that if Basin saw it as a problem, they
22 should have been suggesting something to the customer
23 that would help solve the problem.

24 And I want to go back to the other question you
25 just asked me. You also assume that every container

1 that was sitting in the yard is full.

2 MR. FASSBURG: Objection; nonresponsive.

3 JUDGE HOWARD: I'm going to grant the
4 objection from "I want to go back to the other question
5 you asked me" onwards.

6 And, Mr. Scott, just we have our formalities and
7 our specific rules we need to follow in this setting.

8 THE WITNESS: Sure.

9 JUDGE HOWARD: So please just focus on the
10 specific question being posed.

11 BY MR. FASSBURG:

12 Q. Mr. Scott, you were there on site to observe how
13 loading into Basin containers occurred, were you not?

14 A. Yes.

15 Q. And you understand that the materials were being
16 removed from the mill and loaded directly into
17 containers without first being processed to dry them; is
18 that right?

19 A. Yes.

20 Q. And it's your testimony that all of the loading
21 and handling was being performed by PCA; correct?

22 A. Correct.

23 Q. Now, if PCA loads a container full of wet
24 materials, are you suggesting PCA bears no
25 responsibility for the fact that container cannot be

1 hauled?

2 MR. STEEL: Your Honor, objection. That's a
3 legal conclusion. I'm not sure Mr. Scott should be
4 answering that question.

5 MR. FASSBURG: Your Honor, Mr. Scott then
6 shouldn't have provided testimony with respect to his
7 observation about whose fault it was that containers
8 weren't being moved.

9 JUDGE HOWARD: I will allow the question,
10 given the underlying testimony.

11 THE WITNESS: Will you ask the question
12 again?

13 BY MR. FASSBURG:

14 Q. Are you suggesting that PCA has no
15 responsibility when it loads a container with wet OCC
16 rejects?

17 A. Well, I would first suggest that not all the
18 containers were loaded with wet rejects. There are some
19 rejects that come out that have dewatered already, so
20 your assumption is that all the containers were wet.

21 Q. What was the dewatering process that PCA was
22 engaged in?

23 A. They had dumpsters inside the plant that had
24 screens built in them, and then the Sebright also does
25 some dewatering as it comes out.

1 Q. Okay. And do you understand that, according to
2 PCA's data request response that it provided to Basin,
3 the material was approximately 40 percent water?

4 A. Yes.

5 Q. And so you're saying that that was sufficiently
6 dry to haul when it contained 40 percent water?

7 A. As long as it wasn't dripping out of your
8 containers.

9 Q. Do you have any understanding of what water
10 percentage the water -- the material is not going to
11 drip out of the container?

12 A. I don't have that.

13 Q. Now, back to my question a moment ago, are you
14 suggesting that PCA does not bear responsibility?

15 A. No, I'm not suggesting that.

16 Q. Okay. Now, your testimony blames BDI for all
17 the problems that occurred at PCA with respect to
18 materials that accumulated on the ground; is that
19 correct?

20 A. Yes.

21 Q. Okay. Now, do you have an understanding of how
22 many containers were removed today from PCA's facility
23 by Basin Disposal?

24 A. I do not.

25 Q. Do you have any understanding of where the

1 bottleneck occurred and why materials could not be moved
2 at the same rate of production that they were being
3 generated by PCA?

4 A. I do not.

5 Q. Okay. So if we wanted to determine whether it
6 was poor service by BDI or a poor plan by PCA, we would
7 need to determine where the bottleneck actually
8 occurred; would we not?

9 A. Sure.

10 Q. Okay. You testified on page 8 of your direct
11 testimony that the OCC rejects piled against the
12 building present a fire hazard; is that correct?

13 A. That is correct.

14 Q. When PCA first hired Jammie's, was there a
15 bunker constructed at that facility?

16 A. There was not.

17 Q. Where were the materials piled when Jammie's
18 first took over service -- or first started providing
19 service?

20 A. They were piled up against the building, and
21 then there were other piles that were developing off to
22 the side of the building.

23 Q. And do those piles that were loaded next to the
24 building continue for several months after Jammie's
25 started providing service to PCA?

1 A. Yes.

2 Q. And when you eventually built for PCA a CONEX
3 bunker, what did that bunker consist of?

4 A. It was just a simple bunker built with a CONEX
5 box and concrete Jersey barriers.

6 Q. And so for those of us who would appreciate
7 layman terms, a CONEX box is basically a steel cargo
8 container; correct?

9 A. Correct.

10 Q. And the Jersey barriers are just concrete blocks
11 stacked up on top of each other at one end of that
12 trailer -- or one end of that container; correct?

13 A. That's correct.

14 Q. What was the barrier on the other side, opposite
15 the Jersey barriers?

16 A. I'm not 100 percent.

17 Q. Well, we can look at pictures.

18 If you turn to page 12 of your testimony, you
19 include a pictures.

20 Can you see there in that photograph what the
21 other end of the CONEX box consisted of?

22 A. Yes. It's a -- I think it might be a little
23 misleading. It's inside of the build. I think it's a
24 little past, but... (Pause.)

25 Q. If it would help, we can look at a picture

1 that's not in your testimony. The native file image
2 that I have is 0111.jpeg in Exhibit OJS-7X.

3 A. This picture looks -- it's not --

4 Q. The question is, is there another barrier on the
5 other side of that bunker?

6 A. Again, I can't tell, but it looks to me like
7 it's past where there's a ramp that goes back into the
8 building, the production building.

9 Q. Is -- so is it your testimony that there was
10 never a pile next to the building that was inside the
11 CONEX bunker?

12 A. No, I'm not saying that.

13 Q. Okay. And so when these piles are near the
14 building, do they present varying degrees of risk with
15 respect to a fire?

16 A. Yes.

17 Q. At what point is the pile small enough that it
18 doesn't present a risk?

19 A. Well, at this time, you've got to keep the piles
20 moving so they're not just sitting there for weeks and
21 weeks on end, and that was what was happening in the
22 summer of '21.

23 Q. Are you saying that PCA didn't rotate the
24 materials in its pile, that it left the same materials
25 to pile up against the building that whole time?

1 A. I'm saying PCA probably could only load what
2 they could load.

3 Q. If there was a fire risk based on how long
4 materials were sitting there at PCA's facility, you
5 would agree with me it would be incumbent on PCA to make
6 sure the pile was moved or being rotated; correct?

7 A. It would be incumbent on either PCA or the
8 contractor to make that happen.

9 Q. So it would be incumbent on whatever party is
10 actually doing the processing and loading; correct?

11 A. Correct.

12 Q. And we agree that the party performing that
13 service when BDI was providing solid waste collection
14 service was PCA; correct?

15 A. Correct.

16 JUDGE HOWARD: I -- let's -- I know we're
17 working with the limitations of this video hearing
18 setting, but I do -- I do have a bit of concern that
19 there's a lot of background noise from the conference
20 room right now.

21 MR. STEEL: Apologies, Your Honor. I was
22 page turning.

23 JUDGE HOWARD: Yeah, hopefully this goes
24 back to in person hearings soon, so I just wanted to --
25 it was getting to the point where I was worrying about

1 the record. Okay.

2 MR. FASSBURG: Thank you, Your Honor. We do
3 care about making sure we have a good record on this
4 case.

5 BY MR. FASSBURG:

6 Q. Now, with respect to this CONEX bunker, when
7 specifically was that constructed by PCA -- or I'm
8 sorry, by Jammie's?

9 A. Somewhere around the end of July, 1st of August,
10 '21.

11 Q. Okay. Now, we've discussed earlier with Ms.
12 Scott a picture that was taken on August 2nd. I'll
13 refer you back to that. It was -- the picture was
14 native file 0051.

15 Can you find that photograph?

16 MR. STEEL: That's the one dated August 2nd.

17 THE WITNESS: Yes.

18 BY MR. FASSBURG:

19 Q. We can see in that photograph there was note
20 CONEX bunker as of August 2nd; correct?

21 A. And how do we know this was taken on August 2nd?

22 Q. This is a photograph taken by PCA -- or
23 presumably taken by PCA. It was produced by PCA in
24 discovery. If you would like it, we can pull up the
25 metadata from the photograph and put it on the screen.

1 I'm confident we can do that.

2 A. I'm just saying, I don't know when the CONEX was
3 put in there, but it was somewhere in that time frame.
4 We can call it the end of August then. I'm not exactly
5 sure exactly when it was built.

6 Q. Sure. To be clear, I'm not trying to challenge
7 the accuracy of your testimony. I'm trying to pin down
8 when this was constructed.

9 A. We don't have that. Obviously, it wasn't
10 constructed by August 2nd. When is this dated? The
11 CONEX is there.

12 Q. Would the charge for the CONEX bunker appear in
13 the invoices that Jammie's issued for its solid waste
14 collection services to PCA?

15 A. I believe it would be.

16 Q. Do you know how that would have been coded or
17 what invoice we ought to be able to find that?

18 A. I don't.

19 Q. Okay. I may come back to that, but I don't have
20 a lot more questions, so why don't we actually go ahead
21 and take a quick break, and I'll look to see if I can
22 find that in the invoices.

23 JUDGE HOWARD: Mr. Fassburg, do you just
24 need a couple of minutes, or do you need a --

25 MR. FASSBURG: Yeah, I literally just need a

1 few minutes.

2 JUDGE HOWARD: Okay. We'll stay on the
3 record.

4 (Pause in the proceedings.)

5 BY MR. FASSBURG:

6 Q. Okay. Mr. Scott, do you have available to you
7 Document CV-07?

8 JUDGE HOWARD: Mr. Scott, so you're aware,
9 the -- a number of dollar values in this exhibit have
10 been marked confidential, so if you need to refer to any
11 specific numbers when you give your answers, please try
12 to give me a heads-up first so I can take a couple of
13 procedural steps, but if you're able to answer without
14 referring to specific dollar figures, then we don't need
15 to worry about it.

16 MR. FASSBURG: And to be clear, I won't be
17 attempting to ask Mr. Scott any questions about the
18 dollar figures. I'm referring to a redacted version,
19 which I believe contains what we're looking for.

20 MR. STEEL: Okay. I think we got it.

21 BY MR. FASSBURG:

22 Q. Okay. Would you please turn -- mine says page
23 8. Let me confirm that's actually accurate, yes, page
24 8. I see on August 15th, a charge for Jason Winchell
25 (phonetic) set up bunker.

1 Would that be the date in which the bunker was
2 set up?

3 A. Yes, it would.

4 Q. Okay. Thank you.

5 Who installed the bunker that is the larger
6 concrete bunker at PCA's facility?

7 A. PCA did the work.

8 Q. Do you know when they began planning the
9 construction of that bunker?

10 A. I do not.

11 Q. Sorry for the brief delay. I'm just going to
12 make sure that I've asked my questions.

13 Okay. On page 14 of your pre-trial testimony,
14 beginning at line 16, you state, "Before Jammie's
15 involvement, BDI was attempting to haul raw OCC rejects
16 to the transfer station, which was not working. This
17 reflects considerable inexperience with industrial waste
18 like the OCC rejects on BDI's part."

19 Is it your understanding that BDI was actually
20 attempting to haul OCC rejects that were so wet, they
21 could not be hauled?

22 A. No.

23 Q. And you have no knowledge of who selected the
24 type of service BDI would provide, do you?

25 A. I do not.

1 Q. And you don't know what amount of planning PCA
2 put into their decision-making for what service would be
3 used at the OCC plant for the removal -- or for the
4 collection and transportation of OCC rejects, did you?

5 A. I was not part of those conversations.

6 MR. FASSBURG: I have no further questions
7 at this time.

8 JUDGE HOWARD: All right. Do we have any
9 redirect?

10 MR. STEEL: No, Your Honor.

11 Okay. WRRRA also indicated cross. Mr.
12 Whittaker, do you have questions for the witness?

13 MR. WHITTAKER: Yes, I do. I have just a
14 couple of brief questions. Give me just a moment.

15 JUDGE HOWARD: Okay. Thank you.

16 CROSS-EXAMINATION

17 BY MR. WHITTAKER:

18 Q. This was asked previously, but I wanted to
19 clarify it with you as an operations person who probably
20 has more direct personal experience: When you were
21 developing your plan to manage PCA's waste, you or
22 someone from Jammie's represented that Jammie's could
23 legally haul the OCC rejects for disposal?

24 A. Correct.

25 Q. And it was also mentioned today that Jammie's

1 hauled material for disposal for other customers. In
2 those instances, you or your agents also represent that
3 you can haul waste for disposal; correct?

4 MR. STEEL: Just sec. Can you just slow
5 down? I didn't totally hear the question.

6 MR. WHITTAKER: Sure.

7 BY MR. STEEL:

8 Q. So you mentioned or it was mentioned earlier
9 today that Jammie's hauls materials for disposal for
10 other customers, and in those instances, you are -- you
11 or agents that represent you to those customers
12 represented that they can haul waste for disposal;
13 correct?

14 A. Correct.

15 Q. No further questions. Thank you.

16 JUDGE HOWARD: Do we have any redirect?

17 MR. STEEL: No, Your Honor.

18 JUDGE HOWARD: Okay. Mr. Scott -- Mr.
19 Scott, thank you for your testimony today. You are
20 excused from the proceeding.

21 Our next witness on the proposed order of
22 witnesses would be Skylar Ratchford (phonetic). I am
23 concerned that we don't actually have time today to
24 finish the examination of this witness and that it would
25 involve an awkward break partway through the testimony

1 because we're going to have to resume the hearing
2 possibly next week or at a later date. I'm proposing we
3 use the PCA witness Kurt Thorne forward and that we
4 handle the cross-examination of Mr. Thorne at this
5 point, and then we also identify a date for the
6 continuation of the hearing before we adjourn.

7 What are the parties thoughts about that
8 proposal or, do you have any alternatives?

9 I turn first to Jammie's.

10 MR. STEEL: We're flexible. We're fine with
11 your plan as proposed.

12 JUDGE HOWARD: All right. Does that work
13 for Basin?

14 MR. FASSBURG: It does, Your Honor. In
15 terms of assuming we have one hour left today, it's
16 possible that there are no other witnesses being offered
17 for testimony -- or for cross-examination by PCA that
18 would be completed today, I think we could definitely
19 complete Kurt Thorne. I don't believe it's going to
20 take anywhere near an hour. Mr. Wilhelm I suspect might
21 in terms of all parties examinations combined, and so I
22 think this is logical.

23 JUDGE HOWARD: All right. Does that work
24 for PCA?

25 MS. BLANCAFLOR: Yes, Your Honor. We're

1 ready.

2 JUDGE HOWARD: All right. And I did want to
3 check, what would be a good date for continuation for
4 PCA?

5 MS. BLANCAFLOR: Unfortunately, Your Honor,
6 with vacations coming up, the first full week that all
7 of our team is available is the week of December 5th.
8 We have two of our team members that are out of the week
9 of the 21st and as well as the week of November 28th.

10 JUDGE HOWARD: All right. And I can
11 certainly understand all of that with the Thanksgiving
12 holiday and planned leave.

13 I would be available December 6th. I could also
14 make December 7th --

15 MS. BLANCAFLOR: Tuesday?

16 JUDGE HOWARD: Yeah, December 6th, or
17 Wednesday, December 7th I could make work. I could make
18 the Friday, December 9th, work.

19 Do any of the parties have concerns with any of
20 those three dates? I think we would need to adjust the
21 post-hearing briefing deadlines because that would
22 otherwise take a couple of weeks off the parties'
23 preparation.

24 MS. BLANCAFLOR: Your Honor, my only
25 concern -- we are available those dates. My only

1 concern with a Friday hearing date, if today's progress
2 is any indication, I would request that we at least
3 reserve two days on our calendar so we don't have to
4 bump it again, if needed.

5 JUDGE HOWARD: Hopefully it's not necessary,
6 but I can see why you're requesting that. How about
7 December 6th and 7th, and we'll err on the side of
8 caution, we'll include at least another half day.

9 MR. STEEL: Your Honor, the 6th does not
10 work for Jammie's. The 7th does.

11 MR. WHITTAKER: The same for WRRR, Your
12 Honor.

13 MR. FASSBURG: Your Honor, for Basin, we
14 would be available, I can say, although I certainly
15 appreciate the need to reserve extra time, frankly, I
16 often think these hearings are overly rushed and
17 compressed when we don't allow ourselves enough time,
18 and so I would encourage us to do that. I will state,
19 even though maybe perhaps my best interest here, I think
20 because of opening statements today and preliminary
21 objections, we got a later start this morning than we
22 would on a second day.

23 JUDGE HOWARD: I can make December 8th work,
24 so I would suggest December 7th and 8th for the
25 continuation of the hearing, and I think we would likely

1 finish on the 7th. And then that -- at least we're not
2 rushing the parties, we don't have a suspension of a
3 deadline in the case.

4 And in the notice, I will issue -- I will adjust
5 the post-hearing briefing deadline; all right?

6 MR. STEEL: That works for Jammie's, Your
7 Honor.

8 MR. FASSBURG: That works for Basin too.

9 JUDGE HOWARD: Any objections from --

10 MS. BLANCAFLOR: Works for PCA.

11 MR. WHITTAKER: Works for WRRRA.

12 JUDGE HOWARD: Okay. Great. I feel better
13 addressing that, that issue.

14 So let's take up the examination of Kurt Thorne.

15

16 KURT THORNE, having been first duly sworn by the
17 Arbitrator, testified as follows:

18

19 JUDGE HOWARD: Thank you.

20 Ms. Blancaflor, would you please introduce the
21 witness.

22 MS. BLANCAFLOR: Yes, Your Honor. Thank
23 you.

24 Mr. Thorne, would you please state your name,
25 your title, and spell your name for the record, please.

1 THE WITNESS: Yes. Kurt Thorne. I'm the
2 mill manager here at the PCA Wallula mill, K-u-r-t,
3 T-h-o-r-n-e.

4 MS. BLANCAFLOR: Thank you.

5 Mr. Thorne, do you have before you what has been
6 marked for identification Exhibit Nos. KT-1T through
7 KT-1 through -- or 1-T through 3.

8 A. Yes.

9 Q. Do these exhibits constitute your pretrial
10 direct testimony and related exhibits in this
11 proceeding?

12 A. Yes.

13 Q. Were these exhibits prepared under your
14 supervision and direction?

15 A. Yes.

16 Q. Do you have any corrections to your exhibits at
17 this time?

18 A. There was one correction. On page 8, it
19 mentioned that -- or that the -- the question refers to
20 an e-mail from Skylar Ratchford dated September -- a
21 proposal dated September that should have been August
22 instead of September. That is the only correction.

23 MS. BLANCAFLOR: Your Honor, that's KT-1T,
24 page 8.

25 JUDGE HOWARD: All right. Thank you.

1 MS. BLANCAFLOR: So with this correction, is
2 your -- are your pretrial direct testimony and
3 accompanied exhibits true and correct to the best of
4 your information and your belief?

5 THE WITNESS: Yes.

6 MS. BLANCAFLOR: Your Honor, PCA presents
7 Mr. Thorne for cross-examination.

8 JUDGE HOWARD: Thank you.

9 Basin, you made proceed.

10 MR. FASSBURG: Thank you.

11 CROSS-EXAMINATION

12 BY MR. FASSBURG:

13 Q. And Mr. Thorne, although you may have heard
14 previously, my name is Blair Fassburg. I'm counsel for
15 Basin Disposal. I hope to keep my examination today
16 brief, and I will probably be skipping around in terms
17 of subject matters.

18 If you do not understand one of my questions due
19 to lack of context, please do let me know and I'll try
20 to rephrase the question. I would like to start first
21 with your responsibilities at the mill.

22 As mill manager, does that mean you are the
23 person with whom the buck stops for all major decisions?

24 A. Yes.

25 Q. As a person who is at that senior level, I

1 imagine you do not make certain decisions within the
2 mill directly such as selecting a contractor for solid
3 waste collection services; is that correct?

4 A. It depends on the decision. That will vary
5 depending on solid waste contractor. We didn't --
6 initially didn't have any options for that decision. So
7 but I was involved in the other decisions moving
8 forward.

9 Q. And now when you say initially you didn't have
10 any options moving forward for that decision, is that
11 because you understood in Washington, there's a system
12 of regulation by which solid waste collection company
13 needs to have a certificate before it can provide solid
14 waste collection services?

15 A. Well, I think we're here to decide that, but our
16 initially -- honestly, what we were initially told is
17 that BDI is our only option.

18 Q. Right. Now, BDI was your only option because of
19 what?

20 A. Well, really, that's just all we considered at
21 the time. We didn't really get into it, so I don't
22 really have a good because for that. We really didn't
23 get into the details around it. We just were going with
24 BDI.

25 Q. And when did anyone first tell you that

1 Washington has a system of regulation by which solid
2 waste collection companies are required to obtain
3 permission from the Commission?

4 A. Yeah, BDI -- BDI informed us of that once we had
5 moved to Jammie's.

6 Q. Now, in your position as mill manager, you were
7 not involved in things like cost analyses for using one
8 type of container versus another; is that correct?

9 A. Correct.

10 Q. And you would not have been involved in minor
11 day-to-day decisions regarding how materials would be
12 loaded into drop boxes for disposal; correct?

13 A. Correct. Although, I knew -- I knew of them,
14 but -- and at the time, I was more involved as the
15 operations manager, so I would say I was involved in
16 that.

17 Q. Okay. And so we may get into that a little bit.
18 When did you first get promoted to mill manager?

19 A. It was June of 2021.

20 Q. So at the beginning of the process of the OCC
21 plant, you were the operations manager?

22 A. That is correct.

23 Q. And is that the title held by one of our other
24 witnesses here today?

25 A. Correct. Mr. Wilhelm.

1 Q. Were you involves in the planning of the
2 commencement of services at the OCC plant?

3 A. Well, I was slightly involved. I wasn't the
4 main person involved in that, but I knew what was going
5 on.

6 Q. When the mill first decided to start up an OCC
7 plant, did it hire consultants or environmental services
8 companies or any other kind of contractor, frankly, to
9 help guide it on how the OCC plant should be operated?

10 A. No. No. We had that expertise inhouse. We
11 have OCC plants at four of our other mills, and I,
12 myself, had been at two other OCC plants prior to this
13 or been involved with it.

14 Q. Okay. At what other facilities where there are
15 OCC plants were you involved?

16 A. Myself, I was involved at Republic Paperboard at
17 Lawton, Oklahoma, and then Georgia Pacific in Rincon,
18 Georgia.

19 Q. And at that two facilities, were you personally
20 involved in OCC production?

21 A. I was.

22 Q. And were you personally involved in OCC waste?

23 A. Yes.

24 Q. At those two mills, how was -- or let's start
25 one at a time. I think you said one was in Oklahoma.

1 How were OCC rejects handled at that facility in
2 order to reduce their water content so they could be
3 disposed?

4 A. We had -- well, we didn't have a Sebright press
5 there, so it was a little bit different. We had rejects
6 that went straight into -- straight into bins or into a
7 bunker.

8 Q. And so if they went into a bunker, were they put
9 there so that they could be dried sufficiently so they
10 could later be loaded?

11 A. I don't recall if we had issues, moisture issues
12 loading and that's why we went into the bunker. We just
13 went into the bunk for sure for ease of handling.

14 Q. Okay. Now, are you saying that you don't know
15 for sure you didn't have -- or whether you had moisture
16 issues, are you suggesting that OCC rejects can vary
17 their water capacity based on the mill producing them?

18 A. Absolutely. And, yeah, based on even a singular
19 mill like here, the moisture content absolutely varies.

20 Q. Now, when you said you use a Sebright press --
21 or not Sebright press, but I think you said there was
22 another process, did that dewater the OCC rejects?

23 A. We did have a dewatering process, yes. It was a
24 different type of press.

25 Q. And what did that process do at the facility?

1 A. It just took out water. It squeezed it
2 together, not where a Sebright press is more of a
3 compactor, this was more of a belt press.

4 Q. So with the belt press, you dewatered the
5 material so once it had been sufficiently dried, that
6 paper mill could remove the OCC rejects from the plants
7 and place them in a container for disposal; is that
8 about right?

9 A. Sure.

10 Q. Okay. And at that mill, they would not have
11 taken materials directly out of the facility without
12 dewatering them or drying them in a bunker and place
13 them directly in a drop box for disposal, would they?

14 A. No. We took some out of the press -- straight
15 out of the press and went into drop boxes or -- I mean,
16 there was a time when we would go straight from the
17 bunker to -- sorry. I take that back. Straight from
18 the bunker straight into a box.

19 Q. Sure. And at that point, were the OCC rejects
20 sufficiently dried and could be transported without
21 leaking water on the roadway?

22 A. Yes.

23 Q. And I'm sorry, please remind me, where was the
24 other OCC plant at which you were located?

25 A. Georgia.

1 Q. In Georgia.

2 I think you said for Georgia Pacific; correct?

3 A. Yeah.

4 Q. How were the OCC rejects processed at the mill
5 at -- or at Georgia Pacific's mill?

6 A. They all went into a big bunker at that mill.
7 Yeah, it was a much bigger facility. They all went into
8 a big bunker and then loaded onto a truck.

9 Q. And did that bunker allow the OCC rejects to
10 dry, or were they dewatered before they went into the
11 bunker?

12 A. They were both dewatered, and then, yeah, there
13 was some drying. If the rejects sit there in Georgia
14 heat, it's going to dry.

15 Q. With respect to the handling of the rejects at
16 the Oklahoma facility, was it the mill that handled all
17 of the processing and the loading into the dumpsters?

18 A. Yes.

19 Q. And what about in Georgia?

20 A. We had a third party load onto -- from the
21 bunker into a truck similar to what Jammie's is doing
22 here.

23 Q. So it first went into a bunker and then it went
24 into a truck.

25 Was that a -- was the person who did that

1 loading someone who was authorized to haul solid waste
2 in Georgia?

3 A. I assume so. I don't -- I do not know.

4 Q. Okay. And I don't -- and I'm not trying to ask
5 you about the system of regulations in Georgia, but
6 presumably, you would use someone who is authorized to
7 provide the service?

8 A. Yeah.

9 Q. Okay. When PCA was planning its process here at
10 the Wallula mill, does -- did it plan for any sort of
11 dewatering device within the mill?

12 A. Well, we had the Sebright press, and we -- that
13 was our dewatering device, along with, you know, for the
14 junk trap, some of these dumpsters that had drilled
15 holes in them to let the water dry -- drip out of them.

16 Q. And so the plan for -- and let me actually make
17 sure we're talking about the right time frame.

18 Before the plant opened, the plan was to use the
19 Sebright press and the dumpsters that you used
20 internally that had holes in them; is that right?

21 A. It was. I mean you talked a little bit earlier
22 about our -- we were back and forth whether we were
23 going to burn the rejects or whether we were going to
24 haul them to a landfill, and it was pretty late in the
25 game when we said we were -- I think December we said,

1 but we said we were going to haul them to a landfill.
2 We didn't -- and then by that time, the plant was -- you
3 know, we were getting close to commissioning the plant,
4 and honestly, yeah, we -- we didn't -- at that time, we
5 started thinking about how we were going to handle
6 rejects. So prior to that, we were back and forth
7 between the burning them and landfilling them.

8 Q. And when you were considering how exactly to
9 handle them, one of the plans that you considered was
10 whether to use a pneumatic tube system for which you've
11 got an estimate or a quote from a vendor where you
12 transport those OCC rejects to a hog fuel boiler -- or
13 burner and burn them on site; correct?

14 A. Yeah, essentially. That's fair enough. We can
15 go with that. Some detail is missing, but the hog fuel
16 boiler is correct.

17 Q. Okay. Did you ever consider disposing of them
18 in your own landfill?

19 A. No. Our landfill does not have that capability.

20 Q. And what type of landfill does PCA operate?

21 A. We haul our own sludge from the mill over to our
22 landfill, where it gets processed and then generally
23 goes on to a secondhand use with farmers.

24 Q. Does PCA have a solid waste handling permit?

25 A. We do not -- well, I guess I don't know that.

1 From the -- not with the UTC, so I don't know how we
2 handle that, to be honest.

3 Q. And I wasn't --

4 A. What permit we have to handle that, if we have
5 one.

6 Q. Do you have any kind of knowledge what permits
7 you would have to have for the facilities that you
8 operate?

9 A. For the facility --

10 Q. Let me be clear, solid waste handling permits.

11 A. To handle what?

12 Q. Any of the waste you generate at your facility
13 that you landfill?

14 A. I do not.

15 Q. Okay.

16 A. For us to handle.

17 Q. Now, when you were planning this process with
18 respect to the OCC rejects, you considered more than one
19 way for the collection of those rejects at the mill for
20 transportation; correct? Do you understand my question?

21 A. Say that -- say that again.

22 Q. Before PCA started operating the OCC plant, it
23 was considering more than one method by which it would
24 transport OCC rejects for disposal; correct?

25 A. No. As far as off site, I guess transferring to

1 the hog fuel boiler would be one. And then the other
2 was -- BDI handled transporting off site.

3 Q. Now, with respect to the option of BDI
4 transporting off site, did you look at multiple
5 container options for how it might be handled?

6 A. I wasn't part of that. I do not know if we
7 considered different-size containers or different
8 container options. We did -- we did talk about and we
9 had that -- with that Sebright, there is a couple of
10 compactor containers we had and I guess we somewhat
11 considered it at that, but not seriously. It was a
12 later time we looked into that in more detail.

13 Q. Does that Sebright, by the way, have more than
14 one dewatering mode? In other words, can it generate
15 OCC rejects with more or less water?

16 A. I don't know the answer to that. I don't think
17 there are different modes to it, but I'm not positive.

18 Q. Okay. And that may be a question I just need to
19 ask a different witness.

20 A. Yeah. Ask Skylar that question. He would know.

21 Q. Now, were you involved in discussions with BDI
22 as to who would provide onsite loading and onsite
23 removal from the OCC plant?

24 A. No. My only interaction with BDI was in the
25 February meeting, when we brought them out -- brought

1 BDI out to ask for different ideas as far as how we
2 could handle the rejects.

3 Q. And so after that February 2021 meeting, you
4 didn't have much direct interaction with BDI?

5 A. No.

6 Q. And other than what was reported to you, I take
7 it then you don't have personal knowledge of what was
8 communicated on the telephone calls between BDI and PCA
9 either; correct?

10 A. Correct.

11 Q. It is your understanding, though, that PCA was
12 ultimately the party that took the OCC rejects out of
13 the mill and placed them into BDI's drop boxes for
14 collection during the time that BDI was providing that
15 service in March, April, and May of 2021; correct?

16 A. That is correct.

17 Q. Who does that now?

18 A. Jammie's -- well, we haul them out into the
19 bunker. Jammie's takes them, mixes them in the bunker,
20 processes them, loads them in the truck and hauls them
21 into the landfill.

22 Q. And my understanding is you still do use Basin
23 Disposal for the handling of certain OCC rejects out of
24 the plant; is that correct?

25 A. We do for our heavy rejects, Basin still handles

1 that. Heavy rejects means mostly the metals that get
2 removed from our process, where Jammie's handles the
3 plastic and then paper that gets rejected.

4 Q. Now, who handles the processing and the loading
5 of the heavy rejects?

6 A. PCA does.

7 Q. Okay. So just to make sure I understand your
8 answers clearly, at no time has Basin had the
9 responsibility at PCA for removing OCC rejects from the
10 plant or loading them into drop boxes?

11 A. Not that I know of.

12 Q. Okay. You are the person at the mill who is
13 ultimately responsible for safety; is that correct?

14 A. Yes.

15 Q. And I imagine as a person who -- you know, if
16 the buck stops with you, you would make safety a
17 paramount concern for the mill; correct?

18 A. Absolutely.

19 Q. And you would want to make sure that the mill is
20 doing everything necessary to protect its employees from
21 any risk of harm; correct?

22 A. Well, let me clarify. Let me answer like this:
23 There's inherent risk in all of the mill, and, yes, we
24 consistently work to reduce that risk on a daily basis.

25 Q. Sure. So understanding that there's inherent

1 risk in many things that people do throughout their
2 daily life and their work, PCA would not do anything
3 that would deliberately put its employees at risk, would
4 it?

5 A. Again, I need you to define "risk." If we're --
6 if -- if someone is going to have an immediate accident,
7 no. If I'm asking someone to cut a rope with a knife,
8 which is a risk, yes. So you need to define "risk"
9 there.

10 Q. Sure. And if there's something that PCA did
11 deliberately, it wouldn't have done so if they thought
12 the risk was going to create an immediate harm -- or
13 immediate risk of harm to somebody; correct?

14 A. Absolutely, correct.

15 Q. And so PCA would not have taken needless risk
16 either, right, risk that's too great of a danger to its
17 employees or others; correct?

18 A. As determined by us, yes, correct.

19 Q. Now, in your testimony, Exhibit KT-1T, you talk
20 about some of your concerns about the unsafe environment
21 that was created at PCA due to growing piles of OCC
22 rejects; is that true?

23 A. That's correct.

24 Q. Now, you blame the piles themselves and the
25 unsafe environment and the risk to your employees on

1 Basin Disposal; is that your testimony is?

2 A. Yes. Both on the method Basin was hauling and
3 how promptly they hauled. So the method I'm referring
4 to is loading the rejects into dumpsters. You
5 inherently get -- you know, you're not going to get all
6 that plastic and paper into the dumpster, so you develop
7 all these little piles everywhere around the dumpster,
8 and granted, the ground on there wasn't that even in the
9 first place, but it creates even more uneven ground and
10 rocks the Bobcat back and forth. And then when those
11 piles dry out, yeah, they -- they become an issue as far
12 as blowing around, as far as higher risk, so yes.

13 Q. Does -- does PCA take any responsibility for
14 risks that were created by OCC rejects being on the
15 ground?

16 A. I'm sure that our guys were operating the
17 Bobcat, so but at the same time, I mean, yeah, so yes,
18 we were involved in that, but I think it was unrealistic
19 based on the conditions to say we were going to get all
20 that -- all that material straight into the dumpster
21 without spilling.

22 Q. Now, just to be clear, some of the -- some of
23 the concerns that you have relates to the fact that OCC
24 rejects were on the ground after PCA loaded them and
25 spilled them during the process of loading; is that

1 correct?

2 A. Correct.

3 Q. And some of your concerns are about the fact
4 that PCA built piles against its building; is that
5 correct?

6 A. Well, and yes, and the only reason we built
7 piles was because all the dumpsters were full and we
8 didn't -- couldn't get them all hauled out. We couldn't
9 dump into the dumpsters.

10 Q. And so --

11 A. I shouldn't say that. I shouldn't -- can I
12 clarify? Or, no, do you want me to stop?

13 Q. Are you not complete answering your question?

14 A. I wasn't complete.

15 Q. Okay.

16 A. I was just going to clarify that, yes, there
17 were times, I think, that -- and you may were going to
18 allude to this, that we were too wet coming off the
19 Sebright, and that was definitely all the time, or we
20 were too wet because we had other rejects coming from an
21 upset process upset, and we would -- we would pile up
22 that way, so not -- maybe not all the piles were created
23 because the dumpsters were full. There could have been
24 times, I admit, that we could have been too wet. But
25 certainly the dumpsters being full was a big issue and

1 was a big contributor to that.

2 Q. But you understand that Basin coordinated with
3 PCA to haul a number of dumpsters that were estimated by
4 PCA on a regular basis; correct?

5 A. I do, but I also consider that Basin had a big
6 part in that in that we're not the expert --

7 MR. FASSBURG: I'm going to object to
8 nonresponsive everything after "I do." This is not the
9 question I was asking. Your Honor, I asked him if they
10 coordinated with Basin with respect to the number of
11 dumpsters to be hauled.

12 JUDGE HOWARD: I will grant the objection.

13 THE WITNESS: Yes, we did.

14 BY MR. FASSBURG:

15 Q. And have you ever examined the number of
16 dumpsters that Basin hauled on average?

17 A. I do not know that.

18 Q. And so you have no basis to challenge testimony
19 of Basin regarding the average number of dumpsters it
20 was hauling for PCA?

21 A. I do not and -- yeah. That was based on my
22 visual observations out there and what was reported to
23 me by my folks.

24 Q. Now, Basin Disposal did not, itself, dump OCC
25 rejects on the ground; correct?

1 A. Correct.

2 Q. Now, if there was a risk of fire because OCC
3 rejects had been dumped on the ground, who is the party
4 directly responsible for dumping the OCC rejects on the
5 fire -- on the ground and creating the risk of fire?

6 A. I think there's two parties directly
7 responsible: BDI and PCA.

8 Q. And who has the ability to control the
9 production of OCC rejects out of PCA's plant: BDI or
10 PCA?

11 A. PCA.

12 Q. Now, if piling OCC rejects on the ground was
13 creating an actual grave risk to your employees,
14 whatever that risk may be, or a risk to the potential
15 violation of your permit due to fugitive emissions, is
16 there one party that has the ability to turn off the
17 spigot and cut the production of OCC rejects so that
18 these risks are either mitigated or stopped?

19 A. Yes, yes, we have the ability to do that, but,
20 again, you say risk, and I did not determine the risk to
21 be to that level to do that. Did we have fugitive
22 emissions blowing constantly out of the mill? No. But
23 were we at a much greater risk for fugitive emissions?
24 Yes. Did we have fires starting? No. But were we at a
25 much greater risk for fire? Absolutely.

1 Q. If the risk had been so great that you believed
2 this was an actual grave threat to PCA, you would have
3 shut down the mill; correct?

4 A. 100 percent.

5 Q. And when you say in your testimony that no
6 manager wants to be in the position of either having to
7 slow down or shut down the mill with the financial
8 repercussions that would have in order to clean up the
9 OCC rejects pile, the question that you're being faced
10 with there is do you do the safer thing, or do you do
11 the thing that generates money; is that right?

12 MS. BLANCAFLOR: Objection; what's the
13 question? Can you rephrase? Re-ask?

14 BY MR. FASSBURG:

15 Q. I'll refer you to your testimony on page 7.

16 A. Okay.

17 Q. You state on the second paragraph, "Each of
18 these conditions created a work environment unacceptable
19 to PCA standards. The cumulative effect of these forced
20 me to consider slowing down production at our OCC plant
21 to allow BDI time to catch up, haul the waste of the
22 landfill, and for PCA to clean up the OCC rejects piles.
23 Slowing down production is a major decision with
24 potentially significant financial impacts to PCA, our
25 employees, and customers. No manager wants to be in

1 this position because a contractor can not perform its
2 responsibilities"; is that right?

3 A. That is correct.

4 Q. But the risks that are posed that you're
5 describing are the risks that stem from dumping OCC
6 rejects in piles along your building; correct?

7 A. I wasn't necessarily worried about them along
8 the building -- well, depending on how dry they were. I
9 was more worried -- personally, I was more worried about
10 the piles around the dumpsters and the piles that were
11 away from the building, but piles regardless.

12 Q. And so if I understand your testimony today, you
13 don't believe there was a significant danger from the
14 pile along the building that would have required you to
15 slow down production?

16 A. I didn't believe it was significant to slow --
17 enough to slow down production, correct. Do I believe
18 it was significant? Yes.

19 Q. And do you believe there was a risk of the piles
20 around the dumpsters that were significant enough to
21 find another solution to loading the containers, like
22 getting a bigger loader?

23 A. I did feel it was significant enough. That's
24 why went with Jammie's.

25 Q. And PCA could have acquired a different loader

1 to load those containers without spilling OCC rejects on
2 the ground; correct?

3 A. No, I don't think so because we wouldn't have
4 been able to fit that load -- we needed something small
5 enough to fit in for the Sebright is, where the Sebright
6 comes out. And so you couldn't get this big loader that
7 would have made it easier to dump into the containers.

8 Q. And so --

9 A. And I still -- and I still maintain that you
10 would have still had a mess around the containers.

11 Q. Are you telling me there's no mess when there's
12 loading into Jammie's's trailers?

13 A. Not nearly as much. A bigger truck and a
14 bigger -- and a bigger loader too.

15 Q. Sure. Now, to be clear, now that Jammie's is
16 providing the service, the material is being double
17 handled, one loader brings it out of the facility and a
18 larger loader brings into to the container; is that
19 correct?

20 A. That's correct.

21 Q. And you're telling me there's no way PCA could
22 have double-handled its own material, bringing one
23 loader into the facility and a larger loader from a
24 bunker to load into BDI's drop boxes; correct?

25 A. We didn't consider that, whether that was

1 possible or not. I still maintain that if we would have
2 done that, we still would have all the messes around
3 the -- around the drop boxes, and we would still have
4 had all the issues hauling the drop boxes.

5 Q. And again, those were messes that were created
6 by PCA loading the drop boxes, not by actions that BDI
7 took; correct?

8 A. Again, I said they're both our responsibility,
9 like I answered earlier.

10 Q. Sure. Now, I believe I only have a couple of
11 more questions.

12 If you had genuinely thought that all of these
13 various problems that you identified created a serious
14 risk to one of your employees, you would not have
15 allowed it to continue; you would have slowed down
16 production at the facility, you would have looked for
17 more immediate solutions; you would not have lowed this
18 to drag on until late August, when Jammie's first
19 started providing service via tractor trailer; correct?

20 A. I think we brought in Jammie's earlier than
21 that, for one. And you're right. If it was serious
22 enough, if I thought it was serious enough, and I do
23 think it was serious, but if I thought it was serious
24 enough, we would have shut down the OCC plant down if
25 there was a risk of immediate fire or immediate injury,

1 but it did increase the risk of injury, so we did look
2 at improving it, and that's why we went with Jammie's.

3 And according -- and talking to my guys, they
4 could probably answer this better, but the issues were
5 communicated to BDI as well.

6 MR. FASSBURG: Okay. I have no further
7 questions. Thank you.

8 JUDGE HOWARD: All right. Do we have any
9 redirect?

10 MS. BLANCAFLOR: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. BLANCAFLOR:

13 Q. All right. Mr. Thorne, earlier -- excuse me,
14 let me just look at my notes again really quick. Here
15 they are. Okay. Here we go.

16 Mr. Thorne, Mr. Fassburg asked you, when you
17 were considering your waste hauling options, he
18 suggested that we did not look at any other options.

19 Is that because BDI was our current waste
20 hauler?

21 A. Yes.

22 Q. And so BDI -- to be clear, BDI was already
23 providing waste hauling services to PCA?

24 A. Correct.

25 MR. FASSBURG: Objection; leading --

1 actually, I'll withdraw that objection.

2 BY MS. BLANCAFLOR:

3 Q. So does BDI provide other waste hauling services
4 at the mill?

5 A. They do.

6 Q. And so when we were looking at providing -- or
7 when we were looking at arranging for hauling, would we
8 have looked at anyone else, other than BDI at this time?

9 A. No, not in a situation we were in.

10 Q. Were we aware of another waste hauler providing
11 solid waste services in the area?

12 A. I was not, and I don't believe anyone else was.

13 Q. So was it reasonable for us to contact BDI at
14 the time?

15 A. Yes.

16 Q. With regard to the question surrounding your
17 experience with other facilities that had an OCC plant,
18 with regard to the republic -- the republic -- what was
19 it called Republic...?

20 A. Paperboard.

21 Q. Republic Paperboard in Oklahoma, is it
22 reasonable to say that the belt press functioned
23 similarly as the Sebright press?

24 A. It is, yeah. It upsets our process there. It
25 upsets just as we do here.

1 Q. So is it fair to say that at Republic
2 Paperboard, you had upsets as well?

3 A. Yes.

4 Q. And did the OCC rejects in that plant also need
5 dewatering?

6 A. Yes, at times.

7 Q. At times, similar to our upsets here at Wallula?

8 A. Correct.

9 Q. And at the Georgia Pacific plant, you also had a
10 bunker that functioned essentially as an area for
11 dewatering?

12 A. Yes.

13 Q. And did you have a piece of equipment at the
14 Georgia Pacific plant similar to our Sebright press?

15 A. I don't remember what the press was at the -- at
16 the Georgia plant.

17 Q. Is it fair to say, though, that OCC plants in
18 general will have some sort of press?

19 A. Absolutely. You have to. You have to dewater
20 the plastics before they -- they get -- before they go
21 into whatever containment system you have.

22 Q. And can you explain why that is? Why is it
23 necessarily -- necessary at an OCC plant to have some
24 sort of dewatering function?

25 A. Well, it would basically flow out. It would

1 basically flow. You would have water and then floating
2 plastics and floating paper debris in there, and it
3 would flow out of the plant, and so you've got to get
4 rid of that water somewhere.

5 Q. And so is it -- with Republic Paperboard,
6 Georgia Pacific, and now Wallula, is it reasonable to
7 say that mill operations vary at each of these plants?

8 A. Yes.

9 Q. And the equipment used to dewater the OCC
10 rejects varies?

11 A. Yeah. You're going to get different results.

12 Q. And --

13 A. Yeah.

14 Q. And the moisture content of the OCC rejects
15 would vary?

16 A. Yes.

17 Q. But at all of these plants, the rejects are not
18 necessarily derived?

19 A. Oh, yeah, they're never dry. They're going to
20 have some moisture in them until they go out into the
21 atmosphere and evaporate.

22 Q. So Mr. Fassburg also asked you a question about
23 the Sebright press. I believe his question was, you
24 know, what was it designed to do.

25 Can you tell me what the -- what the specific

1 function of a Sebright press is?

2 A. Just squeezing water out of the rejects of the
3 plastic and paper.

4 Q. And do you -- do you know as of the time of the
5 operations manager what the -- what the Sebright press
6 moisture guarantee is, meaning what will it guarantee it
7 to reduce the moisture content?

8 A. I believe 40 percent, but I'm not positive of
9 that number.

10 Q. Thank you.

11 And Mr. Fassburg also asked you a question
12 regarding permitting for solid waste activities.

13 Just to clarify, we have a solid waste landfill
14 on site, and does that landfill hold a solid waste
15 landfill fill permit?

16 A. Yes.

17 Q. I would like to ask you some questions regarding
18 the questions Mr. Fassburg asked you on safety.

19 In your opinion, was fire a concern due to the
20 piles of rejects around the facility?

21 A. Yes.

22 Q. Did you discuss these concerns with your team,
23 your staff?

24 A. Yeah, we did have -- we did have discussions
25 around the -- all the risks out there between blowing

1 material, fire. We had windows that broke on Bobcats
2 when they would go up against the containers. We would
3 put in incident reports for those, so we definitely took
4 those seriously, had discussions around them, and
5 discussed the need to improve.

6 Q. So why exactly do the piles of rejects around
7 the building, around the OCC yard, why does that create
8 a fire risk?

9 A. When they dry out, obviously, you've got a pile
10 of material out there, and you've got possible ignition
11 source and with the Bobcat moving around out there, so
12 any time you've got that much flammable material in one
13 area, it's certainly a concern.

14 Q. And if one of those piles would catch fire, what
15 could be the potential impact of that?

16 A. It could be huge. I mean, it -- depending on
17 how far it carried and how quickly we got it out. I
18 mean, it's certainly -- that's probably the biggest
19 concern out there. And really what -- that's one of the
20 things that keeps us up at night, is the risk of fire in
21 the mill, and so yeah, it is -- it is a big risk, and
22 there are other areas of risk as well, but we do our
23 best to mitigate them.

24 Q. Thank you.

25 I would like to show you an exhibit. It's

1 contained in SR-16X, page 22.

2 Do you recognize this photo?

3 A. I do. It just shows all the piles out there,
4 and it shows a lot of full dumpsters, piles against the
5 wall, and then piles outside the building. And then in
6 this case, it's covering a fire hydrant. And, yeah,
7 I -- it was just -- yeah, we covered the fire hydrant,
8 but we didn't have any other place to go with rejects,
9 so, yeah, this was probably one of the worst situations
10 out there that we had and completely unacceptable.

11 Q. In your opinion, covering a fire hydrant, did
12 that increase the risk -- or the risk for fire?

13 A. Well, it increased the risk, certainly, if we
14 had a fire. I don't see it for a fire, but certainly if
15 we had a fire, we wouldn't have access to that
16 particular fire hydrant to put it out.

17 Q. Thank you.

18 With regard to environmental compliance issues
19 that Mr. Fassburg brought up, we have what's called a
20 Title V air permit; is that correct?

21 A. That's correct.

22 Q. In our Title V permit, we have a condition that
23 requires us to control fugitive emissions; is that
24 correct?

25 A. Correct.

1 Q. I would also like to give you exhibit from SR --
2 it's Exhibit SR-6. It's a Title V permit -- Title V
3 permit conditions.

4 Would you please read Condition 4 of the permit.

5 A. Sure. So this is for, excuse me, fugitive
6 emissions. "The permittee shall take reasonable
7 precautions to prevent the release of air contaminants
8 from emissions -- from emission units engaged in
9 material handling, construction, demolition, or any
10 other operation that is a source of fugitive emissions.
11 Reasonable precautions include but are not limited to
12 application of water as necessary to control fugitive
13 dust or the timely removal or coverage of material
14 piles.

15 Q. In your opinion, were the piles timely removed?

16 A. No.

17 Q. Thank you.

18 Mr. Fassburg also asked you questions
19 regarding -- a lot of questions regarding the loading of
20 the OCC rejects in the dumpsters provided by BDI.

21 Do you remember those questions?

22 A. Yes.

23 Q. Mr. Fassburg seems to suggest that it was PCA --
24 PCA was responsible for the rejects piled around the
25 facility, but isn't it -- in your opinion, did PCA have

1 any other options at the time to dispose of the rejects
2 in these dumpsters? Was there any other way to dispose
3 of them, other than loading them into the dumpsters?

4 A. At that time, no. The dumpsters was the only
5 means to get them -- get the rejects off site.

6 Q. And so if the dumpsters were full, where was PCA
7 supposed to off-load the rejects?

8 A. Obviously, we just put them on the ground.

9 Q. And is it your recollection that oftentimes the
10 dumpsters were full for PCA to dump the rejects on the
11 ground?

12 A. From communication I had with folks out there,
13 yes. That probably is a better question for Skylar and
14 Brian, but that was communication that was given.

15 Q. Thank you.

16 JUDGE HOWARD: I'm going to -- I recognize
17 that Basin is not objecting to some of these questions.
18 I do feel some concern that they are suggesting or
19 implying answers. I'm not necessarily going to take any
20 particular action, but I do want -- I do want to note
21 that more open-ended questions on redirect are generally
22 more persuasive to me as a fact finder.

23 MS. BLANCAFLOR: Thank you. All right.

24 Thank you, Your Honor.

25 BY MS. BLANCAFLOR:

1 Q. Mr. Fassburg also questioned you on PCA's
2 ability to stop production.

3 Do you remember those questions?

4 A. Yes.

5 Q. So if we were to slow production, what impact
6 does that have on our mill and downstream?

7 A. So if we had slowed the OCC plant down, we would
8 have to slow our paper machines down, and the biggest
9 risk there is not meeting our customer commitments, so
10 that really is the bottom line, if we would have had to
11 slow the OCC plant down.

12 Q. So before slowing production down, are there
13 other options PCA would do prior to that?

14 A. Yeah, I mean, to me, if we're going to look at
15 all other options we have prior to slowing down. And,
16 again, like I said to Mr. Fassburg, we would have slowed
17 down had we considered the issue dire and that someone
18 was going to get injured or we would have had an
19 immediate fire, we would have taken that option. And I
20 don't want to say that it's production and at all
21 costs -- or at the cost of safety or at the cost of our
22 people, but that's what we do. We make paper, and then
23 we turn that paper -- our box plans, turn that into
24 boxes. And so that's how we make our living, and we
25 need to do everything we can to -- to meet our customer

1 needs.

2 Q. So instead of shutting down, we did look at
3 options to clean up that mess, and what did we do?

4 MR. FASSBURG: Objection; lead.

5 MS. BLANCAFLOR: All right. I'll rephrase.

6 MR. FASSBURG: Your Honor, this exceeds the
7 scope of examination.

8 MS. BLANCAFLOR: Your Honor, may I respond?

9 JUDGE HOWARD: You may respond.

10 MS. BLANCAFLOR: Mr. Fassburg asked,
11 directly asked Mr. Thorne if we were -- if we needed to
12 slow down production, and so my question is, is there
13 things that we would do in lieu of slowing down
14 production. This is directly responsive to his
15 questions on cross.

16 JUDGE HOWARD: I would like the question
17 rephrased, but I think it's within the scope of cross.

18 BY MS. BLANCAFLOR:

19 Q. So are there other options we would look at
20 instead of slowing down production?

21 A. Well, we did look at the other options. We
22 looked at if someone could help us out, and that's when
23 we looked at Jammie's -- or Jammie's brought to us the
24 fact that they could haul rejects. And so, yeah, we did
25 look at other -- at other options for haulers and

1 someone who can haul the rejects better.

2 Q. And did Jammie's solve your concerns with the
3 fire hazards?

4 A. Yeah. Certainly mitigated them. To me, there's
5 always -- I mean, there's still risk out there. I'm not
6 going to deny that. But they significantly lessened the
7 risk of fires out there.

8 Q. Did they mitigate your concerns with safety?

9 A. Yes.

10 Q. And what about environmental?

11 A. Again, safety I think is eliminated.
12 Environmental is, again, I would say mitigated similar
13 to the fire. There's always a chance of blowing debris
14 out there, but not nearly to the extent that there was.

15 MS. BLANCAFLOR: I have no further
16 questions.

17 JUDGE HOWARD: All right. WRRR indicated a
18 cross -- a brief cross for this witness.

19 Mr. Whittaker?

20 MR. WHITTAKER: Yes, just a couple of
21 questions at the end of the day, Your Honor, thank you.

22 JUDGE HOWARD: Go ahead.

23 CROSS EXAMINATION

24 BY MR. WHITTAKER:

25 Q. So it's fair to say that prior to contracting

1 with Jammie's for OCC rejects disposal, you were already
2 aware of the UTC's regulation of solid waste collection;
3 correct?

4 A. No, I was not.

5 Q. You testified earlier that you were aware that
6 Basin was a regulated service provider for solid waste
7 collection in the area of the mill?

8 A. I testified that Basin was our hauler, yes. I
9 didn't know they were the only ones -- I didn't even
10 know they were the only ones that hauled garbage.

11 Q. So neither you or anyone from PCA contacted the
12 UTC to verify that Basin -- Basin's claims?

13 A. We -- once Basin told us we were hauling
14 illegally, yes, I -- we got ahold of our legal
15 department and we brought -- we contacted the UTC. I
16 don't know who contacted the UTC for sure, but we had a
17 UTC representative in the mill.

18 Q. And so you didn't communicate with UTC before
19 contracting with Jammie's to haul the waste?

20 A. Correct. We didn't know it was illegal at that
21 point. We didn't know that it was deemed illegal by BDI
22 at that point.

23 Q. And you didn't file a complaint with the UTC
24 against a regulated company either?

25 A. Say -- rephrase that. Be more specific.

1 Regulated company is...?

2 Q. With Basin Disposal, you didn't file a complaint
3 with the UTC?

4 A. About Basin Disposal?

5 Q. Correct.

6 A. We did not. We didn't know Basin fell under the
7 UTC until after -- after the fact.

8 Q. And you had no concerns that Jammie's could
9 legally provide the service of OCC reject disposal?

10 A. Not at that time, no.

11 Q. And you had no concerns because Jammie's
12 represented that the company could haul those materials
13 for disposal?

14 A. The fact I guess that no concerns that Jammie's
15 could haul the material? No.

16 Q. And that's because Jammie's came to you with a
17 proposal to haul the material?

18 A. Yes.

19 MR. WHITTAKER: No further questions, Your
20 Honor. Thank you.

21 JUDGE HOWARD: Do we have any redirect?

22 MS. BLANCAFLOR: No, Your Honor.

23 JUDGE HOWARD: Okay. Mr. Thorne, thank you
24 for your testimony today. You are excused from the
25 proceeding.

1 THE WITNESS: Thank you.

2 JUDGE HOWARD: So of course we are roughly
3 at a halfway point or something along those lines with
4 our cross-examination of the witnesses. I will plan on
5 issuing a notice soon indicating that we will resume the
6 hearing on November 7th, continuing, if necessary, on
7 December 8th, and I will adjust the post-hearing
8 briefing deadlines for both initial and reply briefs
9 accordingly based on the amount of time being moved,
10 having heard no complaints from the parties earlier.

11 Are there any concerns or questions from the
12 parties before we adjourn for the day?

13 All right. Hearing none, we are off the record.
14 Thank you all.

15 (Hearing adjourned at 4:45 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Rose Detloff, a Certified Court Reporter in
and for the State of Washington, do hereby certify that
the foregoing transcript of the evidentiary hearing on
on November 15, 2022, is true and accurate to the best
of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 30th day of November, 2022.



ROSE DETLOFF, RMR, CRR, CCR #21036100

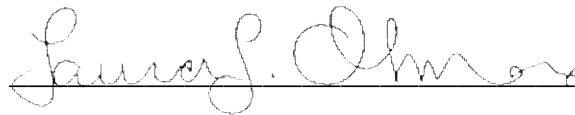
My commission expires:
DECEMBER 6, 2023

C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Laura L. Ohman and Rose Detloff, Certified Shorthand Reporters in and for the State of Washington, do hereby certify that the foregoing transcript of the evidentiary hearing on November 15, 2022, is true and accurate to the best of our knowledge, skill and ability.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 30th day of November, 2022.



LAURA L. OHMAN, RPR, CCR 3186



My commission expires:

MARCH 2023