

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

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

December 19, 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 III
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: DECEMBER 19, 2022
REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

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2 ADMINISTRATIVE LAW JUDGE:

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17 RYAN SMITH
18 BRAD LOVAAS
19 GREG HAMMOND

20 * * * * *

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1 LACEY, WASHINGTON; NOVEMBER 19, 2022

2 9:33 a.m.

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

5 JUDGE HOWARD: Let's be on the record. Good
6 morning. Today is Monday, December 19th, 2022. The
7 time is 9:34 a.m.

8 This is a continued hearing in consolidated
9 dockets TG-220243 & TG-220215.

10 These dockets are captioned respectively in
11 the Matter of Application of Jammie's Environmental
12 Incorporation For Authority to Operate as a Solid Waste
13 Collection Company in Washington and Basin Disposal,
14 Incorporated, versus Jammie's Environmental,
15 Incorporated.

16 My name is Michael Howard. I'm an
17 Administrative Law Judge presiding over today's
18 proceeding.

19 This is a continuation of a hearing we held
20 earlier on November 15th. But let's begin today by
21 taking short appearances from the parties.

22 And could we start with Jammie's?

23 MR. STEELE: Good morning, Your Honor.

24 This is David Steele with Perkins Coie on
25 behalf of Jammie's Environmental. With me, also, is my

1 colleague, Donna Barnett, also with Perkins Coie.

2 JUDGE HOWARD: All right. Thank you.

3 Do we have an appearance for Basin?

4 MR. FASSBURG: Yes, good morning, Your
5 Honor. Blair Fassburg of Williams Kastner joined by
6 David Wiley of Williams Kastner on behalf of Basin
7 Disposal, Inc.

8 JUDGE HOWARD: Thank you.

9 And could we have an appearance for
10 Packaging Corporation of America or "PCA"?

11 MS. BLANCAFLOR: Good morning, Your Honor.

12 I'm Dawn Blancaflor. I'm in-house counsel
13 for PCA, here representing PCA.

14 JUDGE HOWARD: All right. Thank you.

15 And could we have an appearance for
16 Washington Refuse and Recycling Association or "WRRRA."

17 MR. WHITTAKER: Good morning, again, Judge
18 Howard. This is Rod Whittaker, in-house counsel
19 appearing for WRRRA.

20 JUDGE HOWARD: All right. Thank you.

21 And I'll just let the parties know that
22 sometimes I will be looking above my camera here at my
23 other screen and it might look a little awkward, but I
24 am looking at other things related to the case, of
25 course.

1 So in looking at where we left off on
2 November 15th, I have it -- from my review and looking
3 at where we left off, I can see that we completed the
4 witnesses for Jammie's and we completed the cross and
5 redirect of Kurt Thorne for PCA.

6 So following -- and that last witness was
7 taken out of order.

8 So following the proposed order of
9 witnesses, we would begin today with Skyler Rachford.
10 And then we would move to Brian Wilhelm and then we
11 continue with Basin witnesses Charlie Dietrich and Andy
12 Foxx.

13 Any concerns or questions before we begin?

14 Do I have that correct?

15 MR. FASSBURG: That sounds right to me.

16 MS. BLANCAFLOR: That sounds right as well,
17 Your Honor.

18 I do have one administrative issue that I
19 would like to address before we get into testimony, but
20 you let me know when that's appropriate to bring that
21 up.

22 JUDGE HOWARD: All right. Why don't you go
23 ahead?

24 MS. BLANCAFLOR: So at the last hearing and
25 then subsequent to the hearing, BDI had requested PCA to

1 supplement their response to Data Request No. 5 which
2 PCA did. And we would just request that the
3 cross-exhibit that's used by BDI, which is cross-exhibit
4 GDS 23X, be updated to reflect PCA's full and complete
5 response to BDI's Data Request No. 5.

6 MR. FASSBURG: Your Honor, if I may respond.
7 I find that to be an unusual request in that the
8 cross-exhibit is -- what it is, it's been admitted into
9 the record. And it sounds that Ms. Blancaflor is asking
10 that it be substituted based on a subsequent supplement.
11 BDI does not intend to use the records that were
12 produced. It ultimately did not find a need to use them
13 as an additional cross-exhibit, otherwise I would have
14 filed them and asked permission to file a late
15 supplemental cross-exhibit. And so I don't know why
16 there would need to be a substitution of our
17 cross-exhibit.

18 If Ms. Blancaflor feels the responses that
19 she provided are somehow useful and she intends to use
20 them, I would propose that she seek that permission and
21 file them herself.

22 JUDGE HOWARD: I'm inclined at the moment to
23 agree with Basin on this issue.

24 We normally have a close of discovery before
25 the hearing, and the cross-exhibit has been admitted in

1 the form it was submitted in.

2 So I -- I wouldn't normally see a need to
3 supplement it based on a later response in this
4 situation.

5 Were there any further concerns from PCA?

6 MS. BLANCAFLOR: No, Your Honor.

7 JUDGE HOWARD: All right. Thank you.

8 Mr. Steele, did our proposed order of
9 witnesses for today sound appropriate to you?

10 Did you have any other concerns?

11 MR. STEELE: No, Your Honor. That sounds
12 fine. Thank you.

13 JUDGE HOWARD: Great.

14 Mr. Whittaker?

15 MR. WHITTAKER: No, Your Honor. Thank you.

16 JUDGE HOWARD: Okay. Great.

17 In that case, let's begin. I see we have
18 roughly four and a half hours of planned
19 cross-examination remaining.

20 As with other hearings before the
21 Commission, I plan to take a mid-morning break, a lunch
22 break, and a mid-afternoon break.

23 I'm going to try to be cautious in my
24 estimate of how long this hearing will actually take
25 today. So we're just going to leave it open. But I am

1 expecting we will finish today.

2 So could Packaging Corporation of America
3 tender their witness Skyler -- well, could Skyler
4 Rachford come on line.

5 Are you present?

6 MR. RACHFORD: Yes.

7 JUDGE HOWARD: All right. Great. Would you
8 please raise your right hand and I will swear you in?

9 Do you swear or affirm that the testimony
10 you will give today is the truth, the whole truth, and
11 nothing but the truth?

12 MR. RACHFORD: I do.

13 JUDGE HOWARD: All right. Thank you.

14 You may introduce the witness.

15 MS. BLANCAFLOR: Thank you, Your Honor.

16

17 SKYLER RACHFORD, witness herein, having been first
18 duly sworn on oath, was examined
19 and testified as follows:

20

21 EXAMINATION

22 BY MR. STEELE:

23 Q. Mr. Rachford, will you please state your name
24 and your title and spell your name for the court
25 reporter, please?

1 A. My name is Skyler Rachford. It's S-k-y-l-e-r.
2 R-a-c-h-f-o-r-d. My title is Assistant Superintendent
3 at the Wallula Mill.

4 Q. Thank you.

5 Do you have before you what is marked for
6 identification Exhibit Nos. SR-1T through SR-9?

7 A. I do.

8 Q. And do these exhibits constitute your pre-filed
9 direct testimony and related exhibits in this
10 proceeding?

11 A. They do.

12 Q. And were these exhibits prepared under your
13 supervision and direction?

14 A. They were.

15 Q. Do you have any corrections to the exhibits you
16 would like to make at this time?

17 A. Yes. I do have one correction.

18 On page 28 of my testimony, there's four
19 separate occasions where I reference a September meeting
20 and a September proposal. All four of those need to be
21 changed to August.

22 Q. And so with these corrections, do these -- this
23 pre-filed direct testimony and exhibits represent a true
24 and correct copy of the information presented?

25 A. They do.

1 MS. BLANCAFLOR: Thank you, Your Honor.

2 I tender Mr. Rachford.

3 JUDGE HOWARD: All right. Thank you.

4 Basin, you may proceed with your cross.

5 CROSS-EXAMINATION

6 BY MR. FASSBURG:

7 Q. Good morning, Mr. Rachford. You may have heard
8 my name is Blair Fassburg. I represent Basin Disposal
9 in this proceeding -- or these proceedings.

10 I have questions that will probably cover a
11 variety of topics and sometimes, without context, my
12 question may not make sense to you.

13 I would like to ask that if you do not
14 understand my question, will you please ask me to
15 rephrase or repeat it differently?

16 A. Absolutely.

17 Q. Thank you.

18 I understand that you are currently the
19 Assistant Superintendent of the Wallula Mill for PCA; is
20 that correct?

21 A. That's correct.

22 Q. And have you worked for PCA your entire
23 post-college career?

24 A. Yes.

25 Q. And so I would understand, based on that, you

1 have not worked in any other industrial facility
2 post-college; is that correct?

3 A. That's correct.

4 Q. Have you worked at any other industrial facility
5 at any other point in your life?

6 A. I have not.

7 Q. Other than your work at PCA, do you have any
8 experience with solid waste?

9 A. I do not.

10 Q. At PCA, has your experience required you in any
11 way to be responsible for the -- the collection or
12 disposal or the management of solid waste at other parts
13 of the mill other than the OCC plant?

14 A. No. The OCC plant was the first time I've been
15 responsible for solid waste.

16 Q. Now, I understand with respect to Basin Disposal
17 you were one of the primary points of contact at PCA; is
18 that correct?

19 A. Yep, that's correct.

20 Q. And you were one of the ones that regularly
21 engaged with Andy Foxx and Charlie Dietrich with respect
22 to PCA's needs or disposal of OCC rejects; is that
23 right?

24 A. Mm-hmm.

25 Q. Now, when you testified --

1 JUDGE HOWARD: Sorry. Mr. Fassburg, I would
2 just remind observers to mute their microphones. Sorry
3 for the interruption.

4 MR. FASSBURG: No problem. I was just
5 confused why my screen was a giant rectangle. That's
6 someone else.

7 BY MR. FASSBURG:

8 Q. Anyway, Mr. Rachford, in your testimony you talk
9 a bit about the nature of OCC rejects. And I just want
10 to make sure we understand, when you talk about how they
11 are different from other industrial waste, that's not
12 based on your personal experience or knowledge of
13 handling other industrial waste because you don't have
14 any; correct?

15 A. I think from the experience through starting up
16 and operating the OCC plant, we had a great deal of
17 experience with how this waste should be handled. And
18 we also had a lot of help from other parts in the
19 company that have been running OCC plants for a number
20 of years that have had their input as well.

21 Q. To be clear, Mr. Rachford, I'm talking about
22 your own personal knowledge and experience. You
23 testified with respect to the nature of OCC rejects in
24 comparison to other waste. You don't have any knowledge
25 or experience of other wastes by which you can make a

1 comparison; correct?

2 A. Well, I guess I can compare the nature in which
3 Jammie's handles the rejects now, which is proven to be
4 significantly more efficient.

5 MR. FASSBURG: I'm going to object to
6 nonresponsive. Move to strike his response, Your Honor.

7 JUDGE HOWARD: I will grant the objection.

8 I would encourage you, Mr. Rachford, to
9 focus on just the question being posed to you.

10 BY MR. FASSBURG:

11 Q. Mr. Rachford, I'll direct you to page 11 of your
12 pre-filed testimony -- these lines are not numbered --
13 down at the bottom of page 11.

14 When you find it, will you let me know?

15 A. Yes.

16 Q. You testified in the last sentence, "OCC rejects
17 are very wet. Almost 50 percent water."

18 Going on to page 12.

19 "This fact alone makes the OCC
20 rejects different from all other
21 wastes."

22 Did I read that correctly?

23 A. That's correct.

24 Q. I'm just asking, based on your personal
25 knowledge and experience with other wastes, you -- what

1 I think you admitted you don't have, you don't have a
2 basis to make that comparison; correct?

3 A. Correct. The only basis that I have is just
4 what I've -- examples of other waste that I've seen,
5 which this waste is significantly -- can be
6 significantly wetter and comes out in much larger
7 volumes compared to a standard municipal waste stream.

8 Q. And by "standard," you mean one generated at PCA
9 that you have knowledge of, not ones from other
10 facilities; correct?

11 A. Correct.

12 Q. So further down on page 12, when you say, the
13 wet nature of the OCC rejects, coupled with the volume
14 of waste generated on a continuous basis, makes the OCC
15 rejects a vastly different waste normally generated by
16 any residential, commercial, or industrial facility.

17 Similarly, you don't know because you don't have
18 any information or personal experience by which to make
19 a comparison; correct?

20 A. Well, I, myself, as a producer of residential
21 waste, so I guess you could say I have experience there.

22 I'm familiar with all the commercial waste
23 streams around the mill because we have EDI dumpsters
24 located all around the mill.

25 So I'm familiar with what goes in there. So

1 from my observations, the OCC rejects is different.

2 Q. Sure. And in your testimony, you stated by any
3 residential, commercial, or industrial facility.

4 So you weren't attempting to limiting that to
5 PCA, originally; correct?

6 A. No.

7 Q. But, in fact, your only knowledge is based on
8 what occurs at PCA; correct?

9 A. Sure. I mean, in an industrial setting, sure.

10 Q. Now, if Mr. Dietrich, Charlie Dietrich, had been
11 provided an opportunity to respond to your testimony and
12 describe wastes generated by industrial facilities to
13 talk about water content, you wouldn't have any basis to
14 dispute what water content exists at other facilities;
15 correct?

16 A. No. I'm not aware of water content in other
17 facilities, no.

18 Q. You're not aware of whether Basin Disposal
19 provides a solid waste collection service to other
20 industrial facilities that have water content issues; do
21 you?

22 A. I'm not.

23 Q. And you don't know who provides the processing
24 service to reduce the moisture content to allow safe and
25 legal collection and transportation at other facilities

1 served by Basin; correct?

2 MS. BLANCAFLOR: Objection, Your Honor. It
3 calls for a legal conclusion beyond Mr. Rachford's
4 expertise.

5 JUDGE HOWARD: Mr. Fassburg, could I have
6 your response?

7 I believe your question was directed at the
8 witness' familiarity with this.

9 MR. FASSBURG: Yeah. I can make it a little
10 clearer and limit this question a little bit.

11 JUDGE HOWARD: Yes. Thank you.

12 BY MR. FASSBURG:

13 Q. So, Mr. Rachford, if Basin Disposal has other
14 industrial generators that provide service to -- with
15 water content, you aren't personally knowledgeable about
16 who provides the processing of that waste; correct?

17 A. All I can speak to is the service that was
18 provided to us by BDI.

19 Q. And so if Mr. Dietrich were to testify or given
20 an opportunity to testify about the moisture problems
21 that they encountered with other industrial generators
22 and how exactly those moisture problems were resolved,
23 you just don't have any knowledge about that; correct?

24 A. Again, the only thing I can speak to is how the
25 moisture problems at our facility were handled.

1 Q. Okay. Now, you would agree that the solid waste
2 collection and transportation does not require on-site
3 management or processing by a collection company;
4 correct?

5 A. In this case, I think it does.

6 Q. Now, let me be clear. You understand that a
7 company can provide a service to collect and transport
8 solid waste from a container without providing on-site
9 management or processing; correct?

10 A. They can.

11 Q. And so if a company is hired to provide that
12 kind of service, it could be that someone else provides
13 the on-site processing and management -- excuse me,
14 management of that waste; correct?

15 A. Right. I think that's possible.

16 Q. And so because it's possible, if at another site
17 served by Basin Disposal with moisture issues, the
18 generator were to decide to handle what kind of -- any
19 kind of processing required to reduce the moisture
20 content, that does not mean that Basin cannot provide
21 collection and transportation services, does it?

22 A. Right. I think that would be very inefficient
23 for the handling of the waste with the coordination
24 between the two -- the hauler and the processor. I
25 think that if that would -- that would unravel really

1 fast, so.

2 Q. And you're not basing that on your knowledge of
3 what happens at other facilities; correct?

4 A. That's correct. I'm basing it on just the
5 observations that I've seen with how this waste stream
6 is handled.

7 Q. So you aren't here testifying that when Basin
8 Disposal provides industrial -- or excuse me. Let me
9 rephrase that.

10 You're not testifying that when Basin Disposal
11 provides a collection service to other industrial
12 facilities who provide their own processing that that is
13 going to quickly fall apart, right, because you don't
14 know?

15 A. I don't know.

16 Q. Now, PCA's Wallula plant where you work did not
17 have operations in the OCC plant prior to 2021; is that
18 correct?

19 A. That's correct.

20 Q. And when it began planning for those operations,
21 who at PCA was involved in how it would either dispose
22 or get rid of in any sense its OCC rejects?

23 A. That was mainly sorted out by the project
24 management team.

25 Q. Who was on the project management team?

1 A. It was the -- the main PI -- or with -- with,
2 really rejects disposal was Nicolas Davis and Jack
3 Schriver.

4 Q. When did that planning first begin in your
5 recollection?

6 A. Planning around the -- the OCC rejects disposal
7 initially -- discussions initially were in 2019.

8 Q. When the plan for this plant was -- were first
9 in their infancy, PCA was actually considering disposing
10 only a portion of its OCC rejects and burning a
11 significant portion of those OCC rejects; correct?

12 A. Correct. Yeah, the original plan was to
13 incinerate it in our biomass boiler. But before
14 construction of the OCC plant even started, that boiler
15 got converted to a natural gas burning boiler and no
16 longer was burning biomass fuel. So we had to find an
17 alternate disposal method.

18 Q. And when did that biomass boiler get converted
19 to natural gas?

20 A. I don't have the exact date on that. I'm not
21 sure.

22 Q. Do you know what year that was in?

23 A. It would have been -- would have been 2019.

24 Q. As of the end of 2019, it was still a plan to
25 burn a significant portion of the OCC rejects; correct?

1 A. Okay. Yeah, that's when the emails were.

2 So the boiler probably was converted early 2020,
3 then.

4 Q. Were you involved in meetings in early
5 2021 with -- or, excuse me, let me rephrase that.

6 Were you involved in meetings in December 2020
7 with Jeff Stevens?

8 A. I was.

9 Q. And at that point in time, did you all discuss
10 how you might actually start disposing of this material
11 as opposed to burning it?

12 A. Yeah. So after the biomass boiler got
13 converted, the next plan was to -- we bought these
14 Sebright -- these containers that hook on the end of the
15 Sebright compactor and, basically, the material is
16 extruded directly from the compactor into these boxes.

17 In early -- in -- and basically in -- probably
18 mid-2020, we had those boxes delivered to BDI with --
19 and BDI outfitted those boxes with their custom
20 undercarriage so they could be hauled on their truck.

21 When -- so, basically, the plan that was set up
22 by our project management team was that BDI would be the
23 one serving this. In December, it was up to me -- or it
24 was tasked to me to call BDI and get the service set up
25 because that was -- that was the plan that we were

1 planning to go down.

2 And after conversations with Kris May, it
3 quickly became apparent that this wasn't going to work
4 because they had a hauling limit of ten tons on their
5 truck, which these compactor boxes, empty, weigh six
6 tons. And they also didn't service -- provide 24/7
7 service, which was the -- which is what we needed to --
8 to service these boxes.

9 So in December is where -- yeah, we had to start
10 coming up with other alternative hauling methods since
11 we found out relatively close to start-up that the plan
12 we had in place wasn't going to work.

13 Q. Will you please turn to Exhibit SR-21X and find
14 page 41?

15 A. What page?

16 Q. Forty-one.

17 MS. BLANCAFLOR: I'm sorry. What page
18 again, Mr. Fassburg?

19 MR. FASSBURG: Forty-one.

20 MS. BLANCAFLOR: And what exhibit is it
21 again?

22 MR. FASSBURG: SR-21X.

23 MS. BLANCAFLOR: Hold on a second. We need
24 to grab -- excuse me.

25 Okay. Got it.

1 THE WITNESS: Sorry about that. I'm looking
2 at it.

3 BY MR. FASSBURG:

4 Q. This is an email from Jeff Stevens to a group of
5 people at PCA; correct?

6 A. Correct.

7 Q. First of all, who is Jeff Stevens?

8 A. Jeff Stevens was our mill manager at the time.

9 Q. He had the role that is now held by Kurt Thorne?

10 A. Correct.

11 Q. And in that email on December 16, 2020,
12 Mr. Stevens states:

13 "We need to do a review of handling
14 rejects from the OCC plant if we produce
15 450 TPD" --

16 Is that "tons per day"?

17 A. Correct. Tons per day, yep.

18 Q. -- "TPDs of pulp. We will produce about 45 TPD
19 of rejects. The original plan was to burn them in the
20 hog fuel boiler along with bark. From the beginning,
21 that plan was not going to work and there had to be a
22 way to handle 45 to 65 TPD of rejects."

23 Did I read that correctly?

24 A. Correct.

25 Q. It goes on to state:

1 "I have heard that we don't have
2 enough trucking capacity to haul off the
3 rejects and I also understand that the
4 discharge point from the Sebright press
5 is going to be too low for a large
6 trailer. What I think will be needed is
7 a large truck trailer combo like we have
8 from the sludge filter. We may need to
9 modify that discharge point. Also,
10 where will we landfill this stuff: our
11 landfill or a third party?"

12 Did I read that correct?

13 A. Yes, you did.

14 Q. And finally he says:

15 "Time is tight but would like to
16 review this afternoon before I leave so
17 we can put a plan together. Rejects
18 handling will be far more significant
19 than we think and if we don't have the
20 system right, it can get away from us
21 quickly."

22 Did I read that quickly?

23 A. Yes, you did.

24 Q. Now, with respect to his plan about "I've heard
25 that we don't have enough trucking capacity to haul off

1 the rejects."

2 Does PCA, in fact, haul any of its own solid
3 waste in trucks?

4 A. No, we do not.

5 Q. Now, when he's talking about the discharge point
6 from the Sebright press, is he talking about the point
7 at which OCC rejects are extruded from the Sebright
8 press?

9 A. Yes, he is.

10 Q. And -- so I think if I understand correctly,
11 he's saying you can't have the Sebright press discharge
12 directly into a trailer; is that right?

13 A. Right. Yeah, he's saying that the Sebright
14 press is too low for a trailer to back underneath it.

15 Q. What does PCA have the OCC rejects discharge
16 into from the Sebright press?

17 A. We basically just made a small metal bunker out
18 of sheet metal around the discharge point. And so it
19 just drops onto the ground into the bunker and our
20 operators pick it up with the lower and take to BDI
21 dumpster or the other holding bunker.

22 Q. Okay. Now, back in December, on the 16th of
23 December, 2020, it sounds like PCA did not yet have a
24 plan as to how it would dispose of its OCC rejects; is
25 that right?

1 A. We did have a plan that we were discussing with
2 BDI at the time over the multiple containers that we
3 were planning on using. I think what Jeff Stevens is
4 referring to in this email is his concern with that
5 plan. When he says "we don't have the trucking capacity
6 to haul the rejects," he's referring that we don't have
7 the trucking capacity to haul the rejects in the
8 Sebright containers that we were originally -- excuse
9 me, that we were originally planning on doing.

10 So we had a plan. I think we all recognized
11 that it wasn't a good plan and that's why we asked BDI
12 to meet us in February to brainstorm more ideas.

13 Q. I'll have you please turn to Exhibit SR-20X.

14 A. Okay.

15 Q. And please turn there to page 21.

16 Are you there yet?

17 A. I am there.

18 Q. Now, on this page, we have an email dated
19 December 17, 2020; correct?

20 A. Correct.

21 Q. And this is an email from you to Sam Holm;
22 correct?

23 A. Yes.

24 Q. Who is Sam Holm?

25 A. Sam Holm was our accounting manager at the time,

1 and he was handling the account with BDI for the rejects
2 disposal.

3 Q. Now, lower on this page -- and I realize part of
4 this is marked confidential. I'll see if I can avoid
5 addressing any of the confidential portion of this
6 email. It states:

7 "Skyler, please take a look at my
8 model. Not looking at Sebright at all,
9 only BDI. I captured the mileage from
10 BDI transfer to the mill, total of 27
11 miles round-trip, less the five miles
12 they don't charge for, my baseline total
13 per haul calculates out to \$704.54 based
14 on BDI numbers and using nine tons per
15 dumpster?"

16 Did I read that correct?

17 A. Correct.

18 Q. Now, if we turn to the next page, there is an
19 email from you to Sam Holm the same day earlier that
20 morning where you provided some calculations.

21 Did I understand that email correctly?

22 A. Um...

23 Q. Or are you providing calculations?

24 A. The -- that's the next page down.

25 Q. Yeah. Okay.

1 Now, on the next page, which is page 23 of this
2 exhibit, there is a table with some information on
3 there.

4 Is this a table you prepared?

5 A. Yes, it is.

6 Q. And if I understand correctly, this table is
7 your projection as to the number of dumpsters that would
8 be needed for using BDI's drop box service for disposal
9 of OCC rejects at PCA's Wallula Mill; correct?

10 A. Yeah. This basically was the number of
11 dumpsters we needed on-site to get us through a day and
12 a half of running without any of the dumpsters being
13 emptied since BDI did an upgrade on late Saturday or on
14 Sunday.

15 Q. Now, in this table you show -- for first
16 450 tons per day production rate, the estimated number
17 of -- actually, let's just go through this table.

18 The first column on the left says "OCC
19 dumpsters," and below that you have five different
20 categories.

21 Those, if I understand correctly, are different
22 points from which OCC rejects are removed from your
23 facility; correct?

24 A. Correct. Mm-hmm.

25 Q. And then next to each of those, you have the --

1 what? "O-D-T-P-D" stands for oven-dried tons per day
2 waste generated; correct?

3 A. That's correct.

4 Q. And that's your number of tons of material that
5 would come out not considering any of the water; is that
6 correct?

7 A. That's correct, yep.

8 Q. And then in your next column, estimated percent
9 solids, that's a number that represents out of the total
10 discharge how much of the material is solid; correct?

11 A. Correct.

12 Q. And you use that to extrapolate the actual tons
13 per day; correct?

14 A. Correct.

15 Q. So for the Sebright, for example, using an
16 estimate that 40 percent of the content was water, you
17 estimated that at 450 tons per day production there
18 would be 58.3 tons of OCC rejects per day; correct?

19 A. Correct.

20 Q. And when you determined the number of dumpsters
21 per day, that was based on an assumption that you would
22 have nine tons of OCC rejects in each dumpster; correct?

23 A. Correct.

24 Q. And so when you -- when you did that
25 calculation, you assumed that from the Sebright press,

1 you would be putting 58.3 tons of OCC rejects per day of
2 which 40 percent of that total weight would be water;
3 correct?

4 A. Correct.

5 Q. Based on that, you determined that for just the
6 Sebright press alone, you would need 13 dumpsters
7 on-site per day at a production rate of 450 tons per
8 day; is that right?

9 A. That's correct.

10 Q. Now, you estimated that the number of dumpsters
11 you would need to store on-site at that production rate
12 was 17; correct?

13 A. Correct.

14 Q. And so you used a similar methodology to project
15 out how many dumpsters would be needed on-site for
16 650 tons per day of production and you concluded 24
17 dumpsters would be needed on-site; is that right?

18 A. That's right.

19 Q. And that 800 tons per day you estimated that 31
20 dumpsters would be needed on-site; is that right?

21 A. That's right.

22 Q. And all of these calculations were performed
23 back in December on -- or provided on the 17th of
24 December 2020; correct?

25 A. Correct.

1 Q. And all of this was before you all actually had
2 contacted BDI to have them deliver any dumpsters; right?

3 A. We had contacted BDI and had discussed using the
4 drop boxes. But yes, I needed to put some numbers to
5 how many dumpsters I actually wanted for having BDI
6 start delivering them.

7 Q. So at this point in time, just to be clear, BDI
8 had not been asked to do anything other than provide
9 pricing information; correct?

10 A. Well, again, you know, we had the Sebright
11 roll-off boxes at their site with the undercarriages put
12 on. They were out to test the hookup point for the
13 Sebright, so I think BDI was aware that this -- that
14 they were going to be servicing this waste stream.

15 But yes, up until this point, you know, when --
16 when we figured out that that wasn't going to work and
17 we had to use the compactor boxes, they had not dropped
18 anything off at this point. Yes, we're just providing
19 pricing.

20 Q. And at this point the two options that PCA was
21 considering were either using BDI drop boxes or a
22 different type of dumpster that was one custom-made to
23 be used with the Sebright press; is that right?

24 A. That's right.

25 Q. Okay. Now, if you'll turn to page 29 of the

1 same exhibit, SR-20X.

2 Here you and Sam Holm are emailing each other,
3 December 17th, about looking at a comparison between the
4 drop boxes that BDI uses and the Sebright dumpsters; is
5 that right?

6 A. That's right.

7 Q. And so you were doing internal analyses
8 regarding how many tons per day you could haul in each
9 of these two ways and how much it would cost PCA to haul
10 OCC rejects via each of these two ways; correct?

11 A. Correct.

12 Q. And so just to be clear, PCA was concerned about
13 having the most cost-effective option of -- between
14 these two options; right?

15 A. Yeah.

16 Q. And here, in your cost analyses, you didn't
17 include any other method of disposal?

18 A. Correct. We had no proposals or anything to put
19 numbers to at the time.

20 Q. Will you turn to page 39 of the same exhibit?

21 A. Okay.

22 Q. And, actually, if you'll go one page back to
23 page 38.

24 Actually, I apologize. I think it would
25 probably make a lot more sense if we started on page 37

1 and took them one at a time, just to give this context.

2 On page 37, we have an email from you to Kurt
3 Thorne and Kasey Markland with respect to a model that
4 Sam Holm had made talking about the costs of disposal
5 for your OCC rejects; correct?

6 A. Correct.

7 Q. And when you did this estimator, when Sam Holm
8 did this estimate using the information that's here on
9 pages 38 and 39, it looks like Sam Holm took information
10 with respect to the distance of the haul and the pricing
11 information that BDI had provided to come up with per
12 delivery or per haul and annualized costs for disposal
13 of OCC rejects; correct?

14 A. Correct.

15 Q. And then here back on page 37 -- in this email
16 on January 22, 2021, you stated -- at the first -- the
17 last sentence of the first paragraph, we've already
18 decided to use the BDI dumpsters at this point; correct?

19 A. Right. The Sebright boxes were just not going
20 to be cost-effective with not being able to fill them
21 all the way up.

22 Q. Right. Now, when you guys did these cost
23 analyses, this was based on the assumption that BDI
24 would come collect drop boxes with OCC rejects and
25 deliver them to the transfer station for disposal;

1 right?

2 A. That's correct.

3 Q. And this was not based on any assumption that
4 BDI was going to provide on-site management or
5 processing of OCC rejects; correct?

6 A. Correct.

7 Q. And PCA -- PCA planned to provide any service --
8 excuse me, let me rephrase that.

9 Any processing or management of its OCC rejects
10 that were needed, PCA planned to do that itself;
11 correct?

12 A. Correct.

13 Q. I'd like to shift gears just a little bit.

14 You would not have expected Basin Disposal to
15 provide a service that it was not asked to provide,
16 would you?

17 A. No.

18 Q. And, in fact, PCA has a system by which it
19 requires vendors to provide quotes for services before
20 they can be initiated; right?

21 A. Correct.

22 Q. Will you turn to Exhibit SR-10X?

23 A. I don't have that in front of me.

24 Q. Will you turn to page 137 of that exhibit?

25 A. Okay. I am looking at it.

1 Q. This is an email from you to Kasey Markland and
2 some folks within PCA on December 11, 2020; correct?

3 MS. BLANCAFLOR: Mr. Fassburg, what page are
4 you on? I think we're looking at something different.

5 MR. FASSBURG: This is Exhibit SR-10X,
6 page 137.

7 THE WITNESS: Okay.

8 MS. BLANCAFLOR: All right. We're there.
9 Thank you.

10 BY MR. FASSBURG:

11 Q. So I'm asking you to characterize this email.
12 You would agree with me it is an email from you
13 to Kasey Markland and other people at PCA on
14 December 11, 2020; correct?

15 A. Correct.

16 Q. And down at the bottom of this first page on
17 137, there's a December 7, 2020, email from Kris May who
18 called Gibson providing pricing information with respect
19 to drop box service; correct?

20 A. Correct.

21 Q. And if you'll turn to page 138, there's an email
22 from Paul Gibson to Kris May on December 7, 2020,
23 stating:

24 "Kris, can you provide me a quote for
25 services? These are required for all

1 our POs now. Something that designates
2 pricing would suffice."

3 Did I read that correctly?

4 A. Correct.

5 Q. And just for clarity, a PO is a purchase order;
6 correct?

7 A. Correct.

8 Q. And so if I'm understanding correctly, PCA's
9 accounting or -- whether it's accounting or not, you
10 require that all vendors provide an estimate for
11 services and then before the service -- excuse me,
12 before services can be provided, PCA has to issue a
13 purchase order; correct?

14 A. Yes, we do.

15 Q. Okay. So when Basin Disposal had provided a
16 quote for services pricing that drop box service fee in
17 its tariff before service could commence, PCA issued a
18 purchase order; correct?

19 A. Yes, we did.

20 Q. Do you know when PCA issued a purchase order to
21 BDI?

22 A. I don't. That would have been something Sam
23 Holm handled.

24 Q. And when that PCA purchase order was issued, it
25 didn't authorize Basin Disposal to provide solid waste

1 collection service fee at any method it wanted to,
2 because that would have required a different estimate;
3 correct?

4 A. Well, yeah. That's why we had BDI come out in
5 February to go over other ideas in hopes they could
6 provide a new estimate for a more effective method.

7 MR. FASSBURG: I'm going to object to
8 nonresponsive and move to strike, Your Honor.

9 MS. BLANCAFLOR: Your Honor, that was
10 directly responsive, though. He asked why information
11 wasn't included in the PO and Mr. Rachford answered that
12 question.

13 MR. FASSBURG: That mischaracterizes my
14 question. I asked if a different service was going to
15 be provided, it would require a new purchase order.

16 JUDGE HOWARD: I'm going to grant the
17 objection. And again, I would just encourage
18 Mr. Rachford to -- to focus on the question being posed
19 and your attorney will have a chance to do a redirect,
20 if they feel it's necessary.

21 BY MR. FASSBURG:

22 Q. So, Mr. Rachford, if Basin was going to provide
23 a service other than the one for which it provided its
24 quote, a new quote and a purchase order would have been
25 required; correct?

1 A. That's correct.

2 Q. I'll turn back to Exhibit SR-20X. I'll direct
3 you to page 24.

4 Let me know when you have found it.

5 A. I am there.

6 Q. Okay. Now, with respect to this table that we
7 discussed a moment ago on page 23, on page 24, you
8 include some assumptions for your analysis, one of which
9 is you want to have enough dumpsters on-site to get us
10 through two days of production; is that right?

11 A. Correct.

12 Q. And why did you assume that you needed enough
13 dumpsters to get you through two days of production?

14 A. Again, just to get us through the weekend,
15 basically, since BDI didn't operate on late Saturdays or
16 Sunday.

17 Q. Did you do anything to determine how many
18 dumpsters could actually be stored on-site at PCA's
19 facility?

20 A. Yeah. We had a lot of space in -- in our yard,
21 and so we mapped out where the dumpsters would go prior
22 to BDI delivering them.

23 Q. So you determined where the dumpsters would go
24 and how much space you had for them?

25 A. Correct.

1 Q. And that is something you personally did;
2 correct?

3 A. Mm-hmm.

4 Q. You didn't ask Basin to determine if you had
5 enough space for the dumpsters because that was an
6 analysis you had already done?

7 A. Right. I needed -- the dumpsters needed to be
8 put in a location where operators could access them to
9 load.

10 Q. Now, moving back a little bit, perhaps, when you
11 were doing these projections and you determined the
12 percentage of solids and the percentage of liquid
13 contents of your outputs, did you assume that all of the
14 moisture content would be ultimately placed into the
15 drop box?

16 A. Yeah. At the time, yes. You know, I know I --
17 in my testimony, I say the rejects are very wet. They
18 are almost 50 percent moisture, which I would say is
19 very wet. But, you know, 50 percent moisture is not too
20 wet to haul.

21 At that point they are -- they have gone through
22 a press; they have gone through a compactor and the
23 rejects are damp --

24 MR. FASSBURG: Sorry. I'm going to stop to
25 you because I've got to object to nonresponsive.

1 Your Honor, I asked him if he would assume
2 it would be placed in the drop box.

3 MS. BLANCAFLOR: Again, Your Honor, he's
4 trying to answer his question to give some context
5 around his answer. So if you could allow him a little
6 bit of leeway to answer the question fully.

7 MR. FASSBURG: It sounds like Mr. Rachford
8 has something he wants to say but it's not what I asked
9 him.

10 JUDGE HOWARD: I'm going to grant the
11 objection.

12 We -- we do have to focus on -- on the
13 question being posed during the cross.

14 BY MR. FASSBURG:

15 Q. Mr. Rachford, I think you answered at least
16 initially that you did indeed assume all the moisture
17 content would be placed in the drop box; is that right?

18 A. That's right.

19 Q. And when you were doing these estimates, did you
20 ever consult with Kurt Thorne or anyone else at the mill
21 that had worked at another mill that had OCC production?

22 A. Yes, we did.

23 Q. Did Mr. Thorne ever tell you at any of the other
24 mills he worked at they had a system -- a process for
25 dewatering the OCC rejects before they were transported

1 for disposal?

2 A. Never directly had those discussions. But, you
3 know, again, it was going to be -- you know, we were
4 going to wait and see what the rejects were going to be
5 like before instituting something like that.

6 Q. My question is just -- did Mr. Thorne tell you
7 about the dewatering process at other mills?

8 It sounds like the answer is no.

9 A. No, we never had those discussions.

10 Q. Did anyone else tell you about dewatering
11 processes used at other mills for their OCC rejects?

12 A. No.

13 Q. What did you do prior to March 2021 to determine
14 whether or not it would be acceptable to place that
15 percentage of water into a BDI drop box?

16 A. I don't understand your question.

17 Q. Did you do anything to -- did you ask Basin
18 Disposal whether it would be safe -- whether it would be
19 permissible to place solid waste into its drop boxes
20 that contained 40 percent water?

21 A. We gave BDI the calculations that I had that
22 said what the moisture content of the rejects would be.

23 Q. Where did you do that?

24 A. It was in our discussions with -- with BDI. I
25 don't have an exact --

1 Q. You don't have an email or any other written
2 record that shows you provided that information to BDI,
3 do you?

4 A. I don't. But, again, at 50 percent moisture,
5 that is --

6 MR. FASSBURG: Objection. Unresponsive.

7 I'm going to object to everything after, no,
8 he did not and move to strike.

9 THE COURT: I will grant it again.

10 BY MR. FASSBURG:

11 Q. Mr. Rachford, I want to ask you about the
12 Sebright press just a little bit.

13 Does the Sebright press have different settings
14 by which it can compact the OCC rejects to different
15 densities?

16 A. No, it does not.

17 Q. And so no matter -- no matter what you do --
18 actually, let me rephrase that.

19 Does it have the ability to extrude different
20 amounts of water from the OCC rejects?

21 A. Depending on the residence time that is allowed
22 in the extruder. Basically, if -- if there's more
23 material on top that needs to be compacted, the extruder
24 will cycle faster, which means the water doesn't get
25 pressed out as much. So it just depends on how much

1 material you're sending it.

2 Q. If you could slow down the process, would it
3 extrude more water?

4 A. Under normal -- under normal operating
5 conditions, no, it -- it is designed to keep up with the
6 normal production rates.

7 Q. And so if it's producing 40 percent water at
8 normal production rates and it would turn out that is
9 too much water to place into a drop box, it sounds like
10 you would need to find a solution after this material
11 has exited the Sebright press to reduce its water
12 content; correct?

13 A. Forty percent water is not too wet to haul. BDI
14 has hauled the drop boxes with the material that's
15 40 percent water and no issue.

16 Q. Now, Mr. Rachford, again, my question is a
17 little different. If it were too much, you would need
18 to find a solution after it exits the Sebright press;
19 correct?

20 A. Yes, sure. Correct.

21 Q. I've got to ask you about your answer. You
22 state that BDI has hauled the OCC rejects that contain
23 40 percent water.

24 What have you done to determine the water
25 content of a drop box hauled by BDI?

1 A. We've taken samples of the material coming off
2 the Sebright press and ran a density and moisture
3 content test and found that they were around 43 percent
4 water, which is within the design specifications of the
5 compactor.

6 Q. And so the answer is you haven't done anything
7 to determine the water content of the OCC rejects hauled
8 by BDI. You've only tested them at the compactor
9 itself; correct?

10 A. It wouldn't change between the compactor and
11 moving into the boxes.

12 Q. No, but it would change if it's been left there
13 to dry before it's been transported, wouldn't it?

14 A. Possibly.

15 Q. Are you saying that drying it by allowing it to
16 drain out of the drop box wouldn't change the water
17 content?

18 A. Forty percent water, there would be no draining.
19 It's damp. There is no material dripping from -- from
20 the dumpster. But, yes, it would dry up a little bit.

21 Q. I asked you a few questions about the various
22 exit points or the various discharge points within the
23 mill of these OCC rejects.

24 You speak in your pre-filed testimony about the
25 junk tower, the Sebright, effluent, the ragger, and the

1 sedimator.

2 Is that all the various discharge points?

3 A. Yes.

4 Q. Now, if we turn back to your exhibit -- or your
5 table in Exhibit 20X on page -- I believe it is page 38.

6 That may be the wrong page. Let me find this.

7 It is page 23. If I understand this correctly, the two
8 discharge points that would create the largest amounts
9 of water would be the junk tower and the effluent;

10 correct?

11 A. Correct.

12 Q. Does the material come out of the junk tower or
13 the effluent contain a large amount of pulp?

14 A. Yes, it does.

15 Q. But these are, in fact, two of the discharge
16 points that produce the smallest amount of materials at
17 the mill; correct?

18 A. Correct.

19 Q. In fact, most of the material comes out of the
20 Sebright; correct?

21 A. That's correct.

22 Q. Does the Sebright contain a large amount of
23 pulp?

24 A. It does.

25 Q. I want to ask you a little bit about alternative

1 methods that you discuss on page 18 of your pre-filed
2 testimony.

3 A. Okay.

4 Q. Let me take a minute. I may be looking at the
5 wrong exhibit.

6 I'm sorry. Bear with me just a moment.

7 I want to -- if you'll take a look at page 15 of
8 your testimony instead.

9 You talked about that first, the reason the
10 Sebright dumpster was not a cost-efficient method for
11 disposal and you state that:

12 "Needing a solution quickly, we met
13 with BDI at the mill site in
14 February 2021. We toured the OCC plant
15 area with BDI and reviewed the layout
16 and the plans for the plant. We had a
17 fairly good understanding of what the
18 OCC reject streams would consist of and
19 presented several items to BDI for
20 consideration."

21 Did I read that correctly?

22 A. Correct.

23 Q. And then you stated:

24 "We wanted to start production before
25 we made any final decisions on handling

1 and disposal options. After this first
2 on-site meeting with BDI, it was decided
3 that BDI would initially provide 17,
4 20-yard dumpsters like the other
5 dumpsters throughout the mill."

6 Did I read that correctly?

7 A. Yes, you did.

8 Q. Now, you had familiarity with BDI's dumpsters
9 because they were providing them at the mill for its
10 other solid waste collection; correct?

11 A. Correct.

12 Q. So you knew what those drop boxes looked like
13 and how they worked and how they could be collected; is
14 that right?

15 A. Yes. That's correct.

16 Q. And when you met with BDI in February of 2021,
17 this was just days before production was set to
18 commence; correct?

19 A. Correct.

20 Q. And at that point in time, the only analysis you
21 had done for disposal options was the Sebright versus
22 the drop box; is that right?

23 A. Correct. Yes.

24 Q. And so when you discuss with BDI alternatives
25 for transporting PCA's OCC rejects, there wouldn't have

1 been enough time between that date and when production
2 would commence on March 1st or was planned to commence
3 on March 1st to actually put together a plan to
4 transport solid waste via any other method, was there?

5 A. Right. And we weren't expecting a proposal
6 before production commenced.

7 But, you know, we were hoping that once we
8 gathered enough information on the -- what the rejects
9 were like coming out, that BDI would be able to produce
10 other ideas to us quickly after start-up.

11 MR. FASSBURG: I'm going to object to
12 nonresponsive to everything after "correct."

13 My question was pretty simple. Maybe we
14 could just do yes or no.

15 BY MR. FASSBURG:

16 Q. Mr. Rachford, yes or no: Did you expect Basin
17 Disposal to be able to have a plan together for an
18 alternative method before March 1st at your February
19 meeting?

20 JUDGE HOWARD: Just a moment. Since you
21 made an objection, Mr. Fassburg, I'll rule on it just so
22 it's clear.

23 That particular objection, given -- given
24 what it asked for, I'm going to deny that particular
25 objection. Please proceed and sorry for the

1 interruption.

2 MR. FASSBURG: My mistake there, Your Honor.

3 BY MR. FASSBURG:

4 Q. Mr. Rachford, to be clear, you didn't expect
5 Basin Disposal to provide some alternative method of
6 service by March 1st after your February meeting;
7 correct?

8 A. No, we did not.

9 Q. And the alternatives that were discussed there
10 didn't include options for drying the material, did
11 they?

12 A. No, it did not.

13 Q. In fact, the only -- the only alternatives you
14 were really considering there were different methods of
15 collecting a material into a container without a
16 separate dewatering process in between; correct?

17 A. Correct.

18 Q. But, ultimately, one of those options that was
19 considered was a bunker; correct?

20 A. Correct.

21 Q. And there weren't any detailed discussions of
22 how the bunker would be constructed or where it would be
23 placed; correct?

24 A. Correct.

25 Q. In fact, it was a pretty brief discussion,

1 wasn't it?

2 A. It was one of several ideas, yes. And we needed
3 commitment from BDI to move forward with us building the
4 bunker for BDI to service it.

5 Q. And if this bunker had been built, PCA would
6 have provided the processing, the managing, and the
7 loading; correct?

8 A. Not necessarily from, you know, what we have
9 found with the -- from the characteristics of the
10 rejects after running the plant for almost two years
11 now, we do not have the resources or the manpower to do
12 that without additional hiring.

13 Q. And that's based on your experience now but not
14 based on what you thought then; correct?

15 A. Correct. I think we -- we knew that there were
16 some unknowns, and we were going to wait and see what --
17 what efficient processing and handling would take of the
18 rejects.

19 Q. Now, when service commenced in March of 2021,
20 Basin let you and Kasey Markland know pretty much
21 immediately that there was a water content problem with
22 the OCC rejects; correct?

23 A. Correct.

24 Q. In fact, on the very first day of production,
25 the material that was placed in BDI's containers

1 contained so much water they could not be hauled;
2 correct? Or at least a number of them.

3 A. Correct.

4 Q. Do you have any idea percentage-wise what
5 percentage of containers that PCA was loading could not
6 be hauled due to water content?

7 A. I don't have an exact number. But I will
8 acknowledge that in the -- when we were first starting
9 up production, yeah, we had a lot of issues. We had a
10 lot of upsets in the plant. We were getting very wet
11 material. And I agree, it was -- it was too wet to haul
12 and it did go in BDI's containers. And we -- you know,
13 as time went on, we made efforts to correct that and we
14 reduced that significantly.

15 But, yes, so I don't have a -- an exact
16 estimate.

17 Q. If you'll turn to page 23 of your testimony, you
18 stated -- about halfway down the page --

19 "It is true that BDI did complain to
20 PCA about the moisture content of the
21 rejects, yet BDI never offered any
22 additional services to PCA that would
23 help remedy the wet issues with the
24 rejects. So PCA would load the wet OCC
25 rejects into the dumpsters and allow the

1 water to drain before transporting."

2 Did I read that correctly?

3 A. Correct.

4 Q. And then you state:

5 "The dumpsters would sometimes sit
6 on-site for days before they were dry
7 enough to haul to the landfill."

8 Is that correct?

9 A. Correct.

10 Q. Between March 1, 2021 -- or rather the actual
11 start-up date of March 3, 2021, and April 27, 2021, did
12 PCA do anything to moderate the water content of the OCC
13 rejects coming out of the mill?

14 A. There were a few things we did. I mean, first
15 off, was, you know, we -- we got better at running the
16 plant. So upsets became less frequent, which reduces
17 the very, very wet material. The results from -- from,
18 you know, equipment failures and other upsets of that
19 nature.

20 But, you know, one thing we did prior to April
21 was we modified the timing of the grapple claw that
22 hangs over the junk tower. So that is designed to go
23 down and get the heavies from the bottom of the junk
24 tower and hang over the top of the junk tower for a
25 preset amount of time to basically allow that material

1 to gravity drain.

2 We found on start-up that was only set to one
3 minute and we wanted it significantly longer than that.
4 So we upped that time to six minutes. So basically
5 allowed five extra minutes of gravity draining, which
6 helps the moisture content of that stream slightly -- I
7 mean, it allows more time to gravity drain. It is still
8 wet, but there was an improvement made there.

9 Q. And when did you make that improvement?

10 A. Was late April. April 20-something.

11 Q. And so between March 3rd and late
12 April-something, the things you did to reduce the water
13 content were basically run the mill better first and
14 then eventually let the grapple hook hang longer before
15 you loaded the OCC rejects into Basin's drop box?

16 A. That's correct.

17 Q. Did you ever think that perhaps if putting wet
18 OCC rejects into a drop box was not allowing it to dry
19 efficiently that you should come up with an alternative
20 solution? I mean that before April, say, 26, 2021.

21 A. Well, I think the -- the moisture content in the
22 boxes was becoming less and less of an issue. And by
23 this time, BDI was already so behind and a lot of the
24 dumpsters around the site were actually dry and ready to
25 haul, but they just couldn't keep up at this point.

1 MR. FASSBURG: Objection. Nonresponsive and
2 I'll move to strike his entire response.

3 Your Honor, I asked him -- actually --
4 excuse my -- I don't recall the precise wording of my
5 question. But I'm asking about what actions they took
6 to reduce water content between March 3, 2021, and
7 April 26, 2021.

8 JUDGE HOWARD: Any response from PCA on
9 that?

10 MR. STEELE: Can you -- I'm sorry. I got
11 lost in the question, Mr. Fassburg, could you ask that
12 again, please?

13 MR. FASSBURG: Not until I've had my motion
14 to strike ruled on.

15 JUDGE HOWARD: Could the court reporter read
16 back the question?

17 (Question was read back.)

18 MS. BLANCAFLOR: My response is I think
19 Mr. Rachford is trying to answer Mr. Fassburg's
20 question. It was a loaded question. And I think he's
21 trying his best to answer his question.

22 If Mr. Fassburg wants to rephrase and -- we
23 can hear that. But Mr. Rachford is answering to the
24 best of his ability Mr. Fassburg's question.

25 JUDGE HOWARD: I'm going to deny the

1 objection and the motion to strike the -- the answer.

2 I do believe that Mr. Rachford was
3 attempting to provide an explanation to a question that
4 asked for -- essentially, a thought process and an
5 explanation.

6 MR. FASSBURG: Your Honor, with all due
7 respect, he talked about Jammie's in his response which
8 has nothing to do with my question.

9 MS. BLANCAFLOR: He's -- he's trying to
10 answer your question.

11 Your Honor, I think he's trying to answer
12 Mr. Fassburg's question.

13 And he's ruled on that, so I guess his
14 question -- his answer stands.

15 JUDGE HOWARD: Yes. Please proceed.

16 MS. BLANCAFLOR: His answer stands. Sorry
17 about that.

18 BY MR. FASSBURG:

19 Q. Mr. Rachford, to be clear, you didn't make any
20 adjustments within the plant to reduce the water
21 content -- you didn't take specific actions to reduce
22 the water content between March 3rd and April 26th,
23 2021; is that correct?

24 A. Again, made the grapple claw modification, which
25 helped reduce moisture content as well as the frequency

1 of upsets decreased. And we also were having our loader
2 operators mix the wet rejects with the dry rejects in
3 the containers when we did have some wet rejects that
4 needed to be disposed of, so -- so that it was more
5 evenly disbursed across the dumpsters and everything was
6 good to haul.

7 Q. Now, Mr. Rachford, are you testifying that that
8 mixing was occurring when PCA was providing its own
9 loading?

10 A. I'm -- I'm just saying that -- that if we had
11 wet rejects, we would mix it with dry rejects in the
12 dumpster.

13 Q. And I'm just asking to be clear. This is an
14 action PCA had done?

15 A. Correct.

16 Q. And so it's an action that was known to PCA as a
17 way to reduce water content before Jammie's was
18 involved; correct?

19 A. Yes.

20 Q. Now, with respect to your complaints to Basin
21 about how many containers were being hauled on a day,
22 you sent a single email to Sam Holm about this; correct?

23 A. Correct.

24 Q. And what was the date of that email?

25 A. I have it here. What was it? April 26th.

1 Q. And in that email exchange -- or on that day,
2 you emailed Sam Holm and then Sam Holm emailed Basin
3 Disposal about your request that they haul more
4 containers; correct?

5 A. Correct.

6 Q. And you asked for Basin Disposal to haul seven
7 to eight containers per day as opposed to five or six;
8 is that right?

9 A. Correct.

10 Q. And you've seen that Andy Foxx responded to Sam
11 Holm to provide that, in fact, Basin Disposal was also
12 averaging eight containers per day on weekdays and 10 to
13 11 on Saturdays; is that right?

14 A. Yep.

15 Q. And so if I understand you correctly, what you
16 were asking for is something Basin was already doing; is
17 that right?

18 A. Well, what I'm asking for is we up -- basically,
19 the seven to eight is supposed to be a baseline, which I
20 think would be enough to keep up with what we were
21 producing but at this time we also had a very heavy
22 backlog that needed to be dealt with and that we were
23 calling weekly or even several times in the week for --
24 asking BDI to get caught up.

25 So what I'm asking for is up the baseline, but

1 we also have a backlog that needs to be caught up
2 with --

3 Q. In order to catch up the backlog, there would
4 need to be empty containers that aren't sitting there
5 drying to be loaded; correct?

6 A. I'm sorry. Can you repeat the question?

7 Q. Sure. I want to make sure the record is clear
8 on this. The backlog you're speaking of is the fact
9 there are OCC rejects being generated that don't have a
10 container in which they can be placed; correct?

11 A. Correct.

12 Q. And so if all of the containers that you've
13 requested BDI provide have been completely filled by
14 PCA, PCA has nowhere else to put the OCC rejects as they
15 come out of the mill; correct?

16 A. Correct.

17 Q. And so PCA made the decision to place its OCC
18 rejects on the ground until they can be placed in an
19 empty drop box; right?

20 A. That is what we had to do, yes, because all the
21 dumpsters we had on site were full because they were not
22 being hauled away by BDI.

23 Q. Right. And the reason they were not being
24 hauled away by BDI was because the water content
25 prevented them from transporting them; correct?

1 A. I think there were several or there were many
2 dumpsters on site that were dry enough and ready to be
3 hauled that were not getting hauled way.

4 Q. And did you, yourself, inspect the bottom of
5 those dumpsters to determine if there was moisture that
6 was accumulating in the bottom of the dumpster?

7 A. I did.

8 Q. And did you pick it up on a truck to tilt it and
9 determine whether or not liquids were going to leak out
10 after it was loaded onto a truck?

11 A. No.

12 Q. And so you don't know if a Basin driver came and
13 picked up that drop box and it was leaking water that
14 would prevent it from legally -- preventing Basin from
15 legally transporting it, you don't know one way or
16 another if that was the case, do you?

17 MS. BLANCAFLOR: Objection, Your Honor. It
18 calls for a legal conclusion beyond the extent of
19 Mr. Rachford's ability.

20 JUDGE HOWARD: I'm going to allow the
21 question. It's going to his -- primarily to his level
22 of familiarity with this issue.

23 MS. BLANCAFLOR: Then, Your Honor, may I ask
24 Mr. Fassburg to rephrase, because the word "legally
25 haul" is -- is -- calls for a legal conclusion.

1 JUDGE HOWARD: I would -- I would -- thank
2 you. I would agree with that requested change, the
3 wording of the question.

4 Mr. Fassburg, if you could -- if you could
5 re-word the question and focus on the witness' firsthand
6 knowledge rather than legal hauling.

7 BY MR. FASSBURG:

8 Q. Sure. Let me start with a different question.

9 Mr. Rachford, do you understand that if a
10 container is leaking liquids onto the roadway that would
11 violate state law?

12 A. I do understand.

13 Q. Okay. Now, when I ask you about whether a
14 container could be legally hauled, I'll be referring to
15 whether or not it would violate state law by leaking
16 liquids onto the roadway.

17 So you're not testifying that you picked a
18 container up with a truck to determine whether or not it
19 was leaking liquids onto the roadway and therefore could
20 not be legally hauled; correct?

21 A. Correct.

22 Q. And so you don't have any personal knowledge
23 based on having done that whether Basin could or could
24 not haul each of those containers; correct?

25 A. Again, my conclusions are just based on my own

1 observations. And what I could see from the dumpsters
2 is there's many -- many holes and gaps in the bottom of
3 those dumpsters.

4 If there was significant liquid, it would be
5 leaking out of that. I saw none of that. All of the
6 material was, you know, between 40 and 50 percent
7 moisture, which is standard coming out of the Sebright.
8 That is dry enough to haul.

9 So that is what I saw.

10 Q. Mr. Rachford, you don't personally haul OCC
11 rejects, do you?

12 A. I do not.

13 Q. And Basin Disposal makes money by hauling
14 containers for disposal; correct?

15 A. Yes.

16 Q. And Basin Disposal has no motive to leave a
17 container uncollected if it can make money collecting it
18 and transporting it for disposal; correct?

19 MS. BLANCAFLOR: Objection, Your Honor.
20 Calls for speculation.

21 Mr. Rachford doesn't know what BDI's intent
22 is at all.

23 JUDGE HOWARD: I'm going to grant that as
24 speculative.

25 BY MR. FASSBURG:

1 Q. Mr. Rachford, would you agree with me that if
2 Basin does not haul a container and transport it for
3 disposal, it cannot charge PCA; correct?

4 A. That is correct.

5 Q. And if it does collect the container and
6 transport it for disposal, it should charge PCA;
7 correct?

8 A. Correct.

9 Q. And you would agree with me that as a matter of
10 simple math and logical sense that it --

11 MS. BLANCAFLOR: Objection, Your Honor.
12 Really, I think that's argumentative.

13 JUDGE HOWARD: I'm -- I'm going to grant the
14 objection, again.

15 I -- I'm -- I'm not sure asking this witness
16 about another company's motives is necessarily -- is
17 going to lead us in -- anywhere concrete.

18 MR. FASSBURG: Your Honor, I didn't even
19 finish my question.

20 JUDGE HOWARD: I'm granting the objection
21 based on what I've heard of it.

22 BY MR. FASSBURG:

23 Q. Mr. Rachford, does Basin Disposal make more
24 money or less money if it leaves a container on site?

25 A. I don't know.

1 Q. Let's go back to this point about the water
2 content.

3 Do you have knowledge as to whether Basin
4 drivers were on site daily?

5 A. I do not, no. I wasn't out in the yard all day
6 watching when BDI would show up on site or not.

7 Q. So Basin's drivers hauled a number of containers
8 on average each weekday; correct?

9 A. Correct.

10 Q. And you coordinated with Andy Foxx to let him
11 know on -- in your estimate how many containers would be
12 filled and needed to be hauled; correct?

13 A. Correct.

14 Q. And Andy Foxx regularly let you know that
15 containers on-site were too wet to be hauled; correct?

16 A. No, I don't recall that.

17 Q. You don't recall that Andy Foxx told you in
18 emails that containers were too wet to be hauled?

19 A. In the beginning, yes. That was an issue. But,
20 you know, in the April and May months, that started to
21 significantly slow down. We were running the process
22 better and it was coming out drier and we were mixing
23 the material in the different dumpsters. So, no, I do
24 not believe moisture content was an issue during that
25 time when we had significant backlog.

1 Q. You don't recall that on April 27th Andy Foxx
2 emailed to provide that the moisture problems were
3 continuing?

4 MS. BLANCAFLOR: Objection, Your Honor.

5 Can Mr. Fassburg please reference where that
6 email is in the exhibits so we can refer to it?

7 JUDGE HOWARD: I would agree. It might be
8 helpful to cite the underlying exhibit at issue.

9 BY MR. FASSBURG:

10 Q. I'll refer you, Mr. Rachford, to Exhibit CD-02.

11 MS. BLANCAFLOR: We're looking for it. Just
12 give us a minute.

13 What page?

14 MR. FASSBURG: Forty-four.

15 MS. BLANCAFLOR: We have it.

16 MR. FASSBURG: Actually, I think I need to
17 get you to page 47.

18 BY MR. FASSBURG:

19 Q. And, actually, on -- this email is dated
20 April 28, 2021, it states:

21 "Good afternoon, Kurt. I just wanted
22 to touch base with you in response to
23 Skyler's email. I looked at the total
24 number of hauls from April 1st through
25 the 24st, and we average eight hauls a

1 day. We average 10 to 11 hauls on
2 Saturday. These numbers do not reflect
3 the containers we could have hauled if
4 they weren't too wet."

5 Did I read that correctly?

6 A. Yes.

7 Q. I'll have you turn to page 45 of the same
8 exhibit -- I'm sorry, 44.

9 There's an email here from Charlie Dietrich to
10 Sam Holm and Kris May, I believe that is, you and Andy
11 Foxy. It states:

12 "Sam, thank you for your email. I
13 will review with my folks and we will
14 reach out. As a reminder, there have
15 continued to be instances where
16 dumpsters are not able to be hauled
17 because of the water content."

18 Did I read that correctly?

19 A. Correct.

20 Q. You did receive this email on April 2021;
21 correct?

22 A. I did.

23 Q. So will you acknowledge that Basin advised PCA
24 that they were continuing water problems that prevented
25 containers from being hauled?

1 A. Well, in this email, it says there have been
2 instances where dumpsters were not able to be hauled due
3 to their water content.

4 Let's not forget here that in April, when this
5 email was sent, we had every dumpster on the site full
6 and we were dumping the rejects on the ground.

7 MR. FASSBURG: Objection. Nonresponsive.
8 Move to strike.

9 Your Honor, I only asked him if he would
10 acknowledge that Basin had been advised there were
11 continued problems with water content.

12 MS. BLANCAFLOR: Objection, Your Honor.
13 It's mischaracterizing the testimony continuing. This
14 is one email.

15 JUDGE HOWARD: I'm going to grant the
16 objection as -- as the answer was nonresponsive.

17 Mr. Fassburg, you may re-ask the question,
18 if you like.

19 BY MR. FASSBURG:

20 Q. Mr. Rachford, will you acknowledge that Basin
21 Disposal, in April 2021, was advising PCA that there
22 were continued water problems in the contents of its OCC
23 rejects that were preventing containers from being
24 hauled for disposal?

25 A. Yes, I acknowledge.

1 JUDGE HOWARD: Mr. Fassburg, would this be a
2 good chance for us to take our mid-morning break?

3 I normally like to do this between
4 witnesses, but would this be a good time now for
5 everyone?

6 MR. FASSBURG: Now would work.

7 JUDGE HOWARD: All right. Let's take a
8 ten-minute break and come back at 11:10 a.m. All right.
9 We are off the record.

10 (A break was taken from
11 11:00 a.m. to 11:11 a.m.)

12 JUDGE HOWARD: Let's be back on the record.
13 We're returning from our short break.

14 Mr. Fassburg, you were crossing the witness.
15 You may continue.

16 MR. FASSBURG: Thank you.

17 BY MR. FASSBURG:

18 Q. Mr. Rachford, will you please turn to Exhibit
19 SR-23?

20 JUDGE HOWARD: I think you're on mute,
21 Mr. Rachford.

22 THE WITNESS: There we go. I am on SR-23.

23 BY MR. FASSBURG:

24 Q. You testified just a few minutes ago with
25 respect to what steps PCA took with respect to reducing

1 the water content of its OCC rejects.

2 Here in Data Request No. 6, Basin Disposal asked
3 PCA, regarding the pre-filed testimony of Skyler
4 Rachford in Exhibit 01T on page 3 -- and this is
5 referring to your pre-filed testimony -- stating:

6 "As Assistant Superintendent, my key
7 responsibility is to assist in the
8 overall operation of the OCC plant which
9 includes some of the following duties
10 identifying and troubleshooting process
11 issues, optimizing plant production, end
12 quote, for the period of January 1, 2020
13 to present, produce all records relating
14 to efforts made by PCA including without
15 limitation by Skyler Rachford
16 individually to establish a process for
17 drying OCC rejects at PCA's facility so
18 that they could be loaded when
19 sufficiently dried to permit safe
20 transportation."

21 And did I read the question correctly, first?

22 A. Yes, you did.

23 Q. Now, the response was first that there were no
24 responsive records; is that right?

25 A. Correct.

1 Q. Okay. Then you described that on April 27,
2 2021, you modified the process for the junk tower
3 grapple claw to reduce moisture content in that OCC
4 reject waste stream.

5 Did I read that correct?

6 A. You did.

7 Q. And I think you described what you did there a
8 few minutes ago. I just wanted to make sure, we're
9 clear this was not done until April 27, 2021; correct?

10 A. Correct.

11 Q. And then you also made changes to the design and
12 operations of the effluent Sidehill Screens but not
13 until May 2021; correct?

14 A. Correct.

15 Q. Now, turning back to your testimony, your
16 written testimony, you stated on page 13 -- here you are
17 describing the services provided by Basin Disposal with
18 respect to other parts of the mill.

19 "BDI sends a driver everyday Monday
20 to Friday to periodically check on the
21 dumpsters. If the dumpsters are full,
22 they load them onto their trucks and
23 haul the trash to the landfill for
24 disposal."

25 Did I read that correctly?

1 A. Yes, you did.

2 Q. Do you have any reason to believe Basin Disposal
3 used a different process for the collection of OCC
4 rejects?

5 A. Well, no.

6 Q. So as far as you understand, Basin has a driver
7 on-site Monday to Friday to check on the OCC
8 dumpsters -- to be clear in the time period of March
9 through May 2021?

10 A. Yeah, that's my understanding of how -- how the
11 dumpsters are handled, yes.

12 Q. I'll have you turn to page 16 of your pre-filed
13 testimony.

14 You state -- towards the top of the
15 page -- "OCC rejects were piling up
16 outside the bins and all over PCA
17 property."

18 Did I read that correctly?

19 A. Yes.

20 Q. First of all, that was occurring not because of
21 anything Basin Disposal was doing but because the
22 material was spilling when it was being loaded by PCA;
23 correct?

24 A. I'm sorry. Can you restate what you're
25 referring to in my testimony?

1 Q. You said:

2 "OCC rejects were piling up outside
3 the bins and all over PCA property."

4 To be clear, PCA provided its own loading;
5 correct?

6 A. Correct.

7 Q. Okay. Now, the materials piling up outside the
8 bins were not because Basin Disposal spilled them but
9 because they were spilled while being loaded; correct?

10 A. No, I think this is referring to the fact that
11 we had all the bins full on our site and we had to pile
12 them around the bins and outside the bins, because we
13 had nowhere to load them.

14 Q. Now, you state:

15 "The amount of OCC rejects on the
16 ground outside the dumpster was so
17 extensive it was beginning to create
18 traffic flow and visibility problems."

19 This is, again, not something BDI did by causing
20 the material to be piled there, something PCA did when
21 it had no place to place the material; correct?

22 A. Correct. Because all the dumpsters were full
23 and not getting hauled away.

24 Q. Now, you state:

25 "BDI communicated to PCA that they

1 were having a hard time keeping up with
2 the volume of waste generated as well as
3 the wet nature of the OCC rejects."

4 Correct?

5 A. Correct.

6 Q. Now, you're claiming that 40 percent water
7 content of the material is not too high but you
8 acknowledge in your written testimony that BDI told you
9 there was a problem with the water; correct?

10 A. Correct.

11 Q. And BDI told you they could not haul the wet
12 waste material because it would violate DOT regulations;
13 correct?

14 A. Correct.

15 Q. Now, you go on to state:

16 "When BDI complained about the wet
17 OCC rejects, they never offered
18 any ideas on how BDI could help manage
19 the wet waste material, instead BDI told
20 us that PCA needed to address the
21 moisture content and the OCC rejects."

22 Did I read that correctly?

23 A. Yes, you did.

24 Q. And as I understand it from your testimony, you
25 allowed the grapple claw from the junk tower to drain

1 longer, and you made a change to the effluent Sidehill
2 Screens, but you didn't do anything about the water
3 content from the Sebright press; correct?

4 A. Correct. The -- the contents coming from the
5 Sebright press under normal conditions is perfectly fine
6 to haul.

7 Q. And you state that, once again, based on no
8 personal experience about hauling solid waste?

9 A. That is what the equipment is designed to do.
10 To reduce moisture content so that it can be within a
11 haulable tolerance.

12 Q. And so you are basing that based on
13 specifications for the equipment, not your personal
14 experience or knowledge transporting and collecting
15 solid waste; correct?

16 A. Yeah. It's based on the specifications of the
17 equipment, correct.

18 Q. And BDI was telling you this was too wet. But
19 because the specifications for the equipment said it
20 wasn't, you took no action to reduce the water content;
21 correct?

22 A. BDI said there were instances where the
23 dumpsters were too wet to haul. But there were many
24 dumpsters on-site, like I said, that were ready to be
25 hauled, that were dry enough to be hauled, and the

1 backlog was continuing to grow.

2 Q. And, again, you're basing that on your opinion,
3 not as someone who actually attempted to haul the solid
4 waste containers; correct?

5 A. Correct.

6 Q. You state further down on page 16:

7 "PCA was also having problems dumping
8 the OCC rejects into the BDI dumpsters.
9 With BDI's service, PCA would load the
10 OCC rejects into the BDI dumpsters with
11 PCA Bobcats. The Bobcats would scoop up
12 the OCC rejects and then attempt to dump
13 them into the dumpsters. This soon
14 became a hazard."

15 Did I read that correctly?

16 A. You did.

17 Q. And are you here implying that BDI was
18 responsible for creating the hazard that you're
19 describing?

20 A. Not saying that they created the hazard, but I
21 think the method that BDI was choosing to use was
22 creating the hazard. You know, we don't -- obviously,
23 don't blame BDI for that, but we were looking for
24 alternate solutions that would be better and safer for
25 us and we heard nothing from BDI until July.

1 Q. Are you saying that PCA has no employees that
2 are capable of determining how to manage its OCC
3 rejects?

4 A. I don't understand the question.

5 Q. So if I understand correctly, are you saying
6 because BDI didn't propose an alternative, it is
7 essentially BDI's fault that you -- PCA, that is,
8 created a hazard?

9 A. Correct. As you've stated, we had no expertise
10 in waste handling, so that is a responsibility we put on
11 BDI, as they are the experts.

12 Q. Do your equipment operators have licenses or --
13 any kind of certification to operate the equipment they
14 are handling?

15 A. They do.

16 Q. And who provides training for operating that
17 equipment?

18 A. We have certified on-site trainers that run them
19 through the training and get them their licenses.

20 Q. And would they know what is safe and what is not
21 safe in terms of equipment operation?

22 A. They would.

23 Q. And if they are engaging in something that's
24 hazardous, that's BDI's problem?

25 A. No.

1 Q. If the Bobcats weren't tall enough to safely
2 deposit the material into a drop box, wouldn't it be
3 PCA's responsibility for determining what type of loader
4 would be appropriate?

5 A. It's not that they weren't tall enough. It was
6 the fact that when the operator would go to dump their
7 load, it would sometimes lurch the Bobcat forward, which
8 would cause the windshield of the Bobcat to make contact
9 with the ridge of the dumpster causing the windshield to
10 shatter.

11 Q. And this is because BDI did something incorrect,
12 you're saying?

13 A. No.

14 Q. And so did BDI provide you defective dumpsters?

15 A. No, they did not.

16 Q. Did BDI place them in a location other than
17 where you had requested them?

18 A. No.

19 Q. Did BDI provide you a different type of dumpster
20 than you requested?

21 A. No, they did not.

22 Q. Did BDI select the loader for you?

23 A. No, they didn't.

24 Q. Did BDI tell you how to load their containers?

25 A. No. But again, obviously, this solution was not

1 working and we were looking for alternative solutions
2 and BDI was nonresponsive until July.

3 Q. When you say that, did you receive any emails
4 from Basin Disposal in May of 2021 requesting a meeting?

5 A. We did.

6 Q. Did you respond to those emails?

7 A. Can you point me to what emails you're referring
8 to, just so I can follow?

9 Q. Why don't you turn to Exhibit CD-02.

10 MS. BLANCAFLOR: What page, Mr. Fassburg?

11 MR. FASSBURG: Let's start with page 52.

12 I'm sorry. Page 51.

13 Are you there?

14 MS. BLANCAFLOR: We're here.

15 BY MR. FASSBURG:

16 Q. The first email on page 451 here is from Charlie
17 Dietrich to Kurt Thorne on May 21, 2021; correct?

18 A. Correct.

19 Q. And Charlie writes:

20 "Hi, Kurt. I hope all is well with
21 you and your team as we head into the
22 summer months. Now that we have had a
23 few months of operation under our belts,
24 I think now would be a good time to get
25 together and talk about what is working

1 with our service and what is not. I
2 want to make sure the service we are
3 providing is meeting current needs as
4 well as the future. We are committed to
5 our partnership together and are willing
6 to do what it takes to have everything
7 operate smoothly on the disposal side
8 for years to come. Let me know a few
9 times that work for you in the coming
10 weeks and can meet on-site. Thank you
11 and have a great weekend."

12 Did I read that correctly?

13 A. Yes, you did.

14 Q. Mr. Thorne did not respond to Charlie Dietrich,
15 did he?

16 MS. BLANCAFLOR: Your Honor, objection.
17 Foundation. Mr. Rachford is not on this email.

18 BY MR. FASSBURG:

19 Q. Mr. Rachford, have you reviewed Exhibit CD-02?

20 MS. BLANCAFLOR: Excuse me. There's an
21 objection.

22 JUDGE HOWARD: It sounds like your objection
23 is concerned with his earlier question about this email.

24 MS. BLANCAFLOR: Well, Mr. Rachford is not
25 on this email. So he has no personal knowledge as to

1 what Mr. Thorne did. And Mr. Fassburg is asking
2 Mr. Rachford about Mr. Thorne's response.

3 So my objection is there's no foundation.
4 Mr. Rachford cannot know what Mr. Thorne did.

5 JUDGE HOWARD: If -- Mr. Fassburg, if you
6 could re-word your question to focus on this witness'
7 own knowledge of whether there was any response.

8 MR. FASSBURG: Happy to do that.

9 BY MR. FASSBURG:

10 Q. Mr. Rachford, you don't know if Mr. Thorne
11 responded to Charlie Dietrich, do you?

12 A. I don't know.

13 Q. Have you reviewed Exhibit CD-02?

14 A. I have.

15 Q. Did you -- did you participate in any way in the
16 collection of records that were produced to BDI in
17 response to its data requests?

18 A. I helped submit some of the emails, yeah.

19 Q. Okay. Now, did you ever take a look to see
20 whether there were emails that had responded to Charlie
21 when he was emailing PCA in May and June of 2021?

22 A. I can't speak for the others. I know Charlie
23 emailed me in early July and I responded to that very
24 quickly.

25 Q. Why don't you take a look at Exhibit CD-02,

1 page 52.

2 A. Okay. I'm there.

3 Q. And there Charlie Dietrich is emailing Sam Holm
4 with what looks to be a very, very similar email on
5 June 8, 2021; is that correct?

6 A. Correct.

7 Q. You don't know if Sam Holm responded to Charlie
8 either, do you?

9 A. I highly doubt he did. Sam Holm didn't work
10 with the company at the time this email was sent.

11 Q. Let me turn to page 53.

12 A. I'm there.

13 Q. There on June 10th, Charlie Dietrich sends
14 essentially the same email to Sam Holm, Brian Wilhelm,
15 and Kurt Thorne; correct?

16 A. Correct.

17 Q. And you don't know whether there was a response
18 to that email either, do you?

19 A. I do not.

20 Q. And then on June 30th, on page 54, Charlie
21 Dietrich emails you and Kasey Markland with what is
22 essentially the same email.

23 Did you receive that email?

24 A. I did.

25 Q. And in response to that email, you did speak to

1 Charlie; correct?

2 A. I did, yes.

3 Q. And Charlie wanted to meet with you to talk
4 about how the process could be improved; correct?

5 A. Correct.

6 Q. And just like these email attempts Charlie made
7 in May and June, he wanted to speak to you about what
8 Basin could do to help PCA to provide service that would
9 meet to PCA's needs; correct?

10 A. Correct.

11 Q. And in the meeting, Charlie talked about the use
12 of a bunker and a truck and trailer to haul OCC rejects
13 from PCA; correct?

14 MS. BLANCAFLOR: Wait. Objection, Your
15 Honor. What meeting is Mr. Fassburg referring to?

16 MR. FASSBURG: The meeting that -- excuse
17 me, I can back up. But to be clear you met with Charlie
18 Dietrich in July to discuss this transportation;
19 correct?

20 THE WITNESS: Yes. Yes, we did.

21 BY MR. FASSBURG:

22 Q. And during that meeting, you discussed the
23 potential use of a bunker and a tractor-trailer;
24 correct?

25 A. Yeah, we had two meetings in July.

1 What specific date are you referring to?

2 Q. What are the two dates of these meetings?

3 A. I believe one was early July and one was
4 mid-July. I don't know the exact dates.

5 Q. Why don't you turn to page 58 of this exhibit.

6 There, about halfway down the page, there is an
7 email from Charlie to you on July 14, 2021; correct?

8 A. Yes.

9 Q. Was this after the first or second meeting?

10 A. It's definitely after the first one. I'm not
11 sure on the date of the second. I think it was the
12 second.

13 Q. So here in Charlie's email to you -- I'm sorry,
14 further down on the same page, you are responding to
15 Charlie where you say, "Hi Charlie. Please see my
16 responses below."

17 A. Mm-hmm.

18 Q. And you're responding there to questions Charlie
19 had asked; correct?

20 A. Correct.

21 Q. And he asked:

22 "What is the lead time" -- "what is
23 the lead time and process to get a
24 designated area on-site to be approved
25 as a bunker holding area?"

1 Correct?

2 A. Correct.

3 Q. And so if I understand correctly in your meeting
4 with Charlie Dietrich, he proposed that you would have a
5 bunker on-site to hold OCC rejects from which they could
6 be loaded into a tractor-trailer that Basin would
7 provide; correct?

8 A. No. It's my recollection that Basin was
9 offering to build a temporary bunker to trial this, just
10 like what we were doing with Jammie's at the time.

11 Q. Sure. A bunker from which the OCC rejects would
12 be loaded onto a tractor-trailer, though; correct?

13 A. Correct.

14 Q. And a bunker from which they would be loaded via
15 a loader Basin would operate; correct?

16 A. Correct.

17 Q. And so Basin, in fact, was attempting to make
18 this offer to PCA, as far as you know, at least in
19 July 2021; correct?

20 A. In July they were, yes.

21 Q. And you don't know what Charlie was attempting
22 to offer in May when he reached out to Kurt Thorne, Sam
23 Holm, and Brian Wilhelm, do you?

24 A. No.

25 Q. I'll have you turn in your testimony to page 22

1 to 23. Beginning at the end of page 22, you stated:

2 "There were many piles of rejects and
3 the piles were so high that we
4 eventually ran out of space, forcing us
5 to cover a fire hydrant with OCC
6 rejects."

7 Did I read that correctly?

8 A. Correct.

9 Q. And you believe that covering a dumpster with
10 OCC rejects is a hazard; correct?

11 I'm sorry, I said a dumpster.

12 A fire hydrant. Covering a fire hydrant would
13 be a hazard; correct?

14 A. Absolutely.

15 Q. And you don't blame BDI or PCA for covering that
16 fire hydrant, do you?

17 A. Not directly. But again, it was a result of not
18 enough dumpsters being empty at the time and that's what
19 pushed us to have to do that.

20 Q. Sure. And if that was a true problem, PCA knew
21 not to do that, though; correct?

22 A. Well, it was a problem, you know, it was
23 something -- and it was something we needed -- we knew
24 we needed to address as quickly as possible.

25 Q. What did PCA do to uncover its fire hydrant?

1 A. Well, this was about the time when we employed
2 Jammie's to help us catch up on the backlog.

3 Q. So you left the fire hydrant covered until
4 Jammie's uncovered it?

5 A. Well, we uncovered it once we had enough room to
6 put the rejects somewhere else.

7 Q. And so my understanding is you didn't say, hey,
8 this is a safety hazard, we need to immediately expose
9 this fire hydrant so it can be accessed, you left it
10 covered until the OCC rejects were moved; is that right?

11 A. No, we did -- we did say it was a safety hazard.

12 We called BDI and told them it was a safety
13 hazard. We expressed our concerns. We also emailed to
14 our management that -- you can reference Kasey's email
15 for that, expressing the safety concern and that was
16 really the tipping point for us when we realized we
17 needed to do something different.

18 Q. Let's be clear. I'm talking about an immediate
19 hazard. If you can't access a fire hydrant during a
20 fire and you can't use the water to help extinguish one,
21 is that not an immediate threat?

22 A. We have other access to the water in the area.
23 If we had a fire, you know, we could still fight it.
24 But, yes, I mean, we -- we need all our fire hydrants to
25 be accessible. And so -- yeah, it was -- it was an

1 immediate --

2 Q. To be clear, PCA operating its own loaders,
3 transporting around its facility its own waste covered
4 the fire hydrant; correct?

5 A. Correct.

6 Q. And PCA did not use its own loaders to uncover
7 the fire hydrant; correct?

8 A. I don't recall exactly how the fire hydrant was
9 uncovered.

10 Q. But you told BDI they needed to come uncover the
11 fire hydrant that PCA covered; right?

12 A. No. No. We told BDI that they needed to catch
13 up on the backlog so that we had room to put the rejects
14 to uncover the fire hydrant.

15 Q. And now on the next sentence, you state:

16 "Hiring additional drivers is not
17 going to solve the problem. Placing the
18 OCC rejects into 20-yard dumpsters was
19 just not working. BDI failed to
20 recognize the problems and come up with
21 solutions."

22 Did I read that correctly?

23 A. You did.

24 Q. And the reason it wasn't working was because you
25 were putting those materials in wet and they had to be

1 left for days to dry out before they could be hauled;
2 correct?

3 A. Incorrect. In the beginning, sure, that was
4 happening frequently, but that definitely was not the
5 case after a few months of running the process.

6 Q. So if -- if that's the case, and you're saying
7 these containers could have been hauled right away,
8 wouldn't have hiring additional drivers to transport the
9 dumpsters more frequently have emptied them so that you
10 could put the material into the dumpsters again?

11 A. Well, possibly. I mean, BDI said that that's
12 what they were doing, but the backlog never decreased.
13 So I don't know if it would or not. But I think,
14 really, the core issue is the method that we were using
15 and these dumpsters were just not working for us.

16 Q. Now, you say they weren't working because the
17 material was loading -- piling up on the ground.

18 But I want to get to the point that you're
19 making here saying that additional drivers wouldn't have
20 fixed the problem. If you could haul more containers
21 per day, then more waste would be deposited of; right?

22 A. Sure.

23 Q. And each drop box could hold nine tons of OCC
24 rejects; correct?

25 A. Correct.

1 Q. And a driver is transporting, according to Sam
2 Holm's analysis, a container to the transfer station and
3 back, round trip, in the range of 30 miles; correct?

4 A. Correct.

5 Q. And so if we assume that round trip it can take
6 place in one hour, is that a fair assumption by the
7 way -- that a round trip to the transfer station could
8 be one hour?

9 A. I don't know.

10 Q. If we assume it takes about an hour to get to
11 and from the transfer station, the single driver, once
12 per hour could empty nine tons of OCC rejects; correct?

13 MS. BLANCAFLOR: Objection, Your Honor. It
14 calls for speculation. We shouldn't have to assume any
15 facts in evidence.

16 JUDGE HOWARD: I will allow this question.
17 I think he's just proposing a hypothetical to the
18 witness.

19 MS. BLANCAFLOR: Can you please ask the
20 question, again, Mr. Fassburg?

21 BY MR. FASSBURG:

22 Q. If we assume that it takes about one-hour round
23 trip to the transfer station, a driver can haul for
24 disposal about nine tons of OCC rejects in one hour;
25 correct?

1 A. Sure.

2 Q. And so if that driver were to make five trips,
3 we can do simple math, that's nine times five -- and
4 actually, my math isn't always so wonderful, but I
5 believe that's 45 tons in five hours; correct?

6 A. Correct.

7 Q. And if a driver hauls ten trips to the transfer
8 station, that's 90 tons; correct?

9 MS. BLANCAFLOR: Again, Your Honor, I have
10 to renew my objection. This is all speculative based on
11 no facts that are in evidence. So I don't know where
12 Mr. Fassburg is going with this.

13 JUDGE HOWARD: Well, I will allow this --
14 this question.

15 The witness did make a statement about
16 hiring additional drivers would not have helped.

17 So I'm going to allow Mr. Fassburg to -- to
18 explore that point.

19 BY MR. FASSBURG:

20 Q. Mr. Rachford, you can answer my question.

21 A. Can you repeat it, please?

22 Q. Based on -- I think what we just established
23 under my hypothetical -- if a driver drives ten trips in
24 one day at nine tons each, that would be 90 tons of OCC
25 rejects disposed of by a single driver; correct?

1 A. Correct.

2 Q. And if there were two drivers doing the same
3 number of trips, that would be 180 tons of OCC rejects
4 in one day; correct?

5 A. Correct.

6 Q. Do you know whether Basin Disposal at any point
7 assigned a driver to your facility to work there every
8 day?

9 A. I don't know if they did or not. They said they
10 did, but I don't know.

11 Q. They said they did.

12 And if they did, and that driver worked a full
13 day, they could transport a significant amount of OCC
14 reject per driver; right?

15 MS. BLANCAFLOR: Objection, Your Honor.

16 What's a full day?

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

18 BY MR. FASSBURG:

19 Q. If we -- if that driver drives for ten hours,
20 which I don't believe is a full day under Basin's
21 shifts, but let's call it ten hours. They are going to
22 be able to haul a significant amount of OCC rejects;
23 correct?

24 A. Correct.

25 Q. What is the most number of tons in a day that

1 PCA has produced of OCC rejects?

2 A. It's hard to say. But probably roughly around a
3 hundred tons.

4 Q. So if you were using 20-yard drop boxes, it
5 would take you how many drop boxes in your analysis to
6 hold 100 tons?

7 A. Probably about 12.

8 Q. And -- and you testified earlier that the
9 material coming out of a Sebright was dry enough that it
10 could be transported immediately; right?

11 A. Correct.

12 Q. And so if the material coming out of there
13 generates 12 containers' worth a day, are you disputing
14 that two drivers would be able to haul all of that
15 material regularly?

16 A. I'm not disputing anything. What I'm saying is
17 that BDI said that they hired more drivers and the
18 backlog did not -- the piles didn't go away. The piles
19 didn't shrink. So I don't know what they did. I don't
20 know if they had a permanent operator, if they had more
21 drivers or what.

22 What I'm saying is the problem was not resolved
23 and the method of using the 20-yard dumpers was
24 extremely inefficient for us. It was bad for us for
25 loading. It was bad for BDI to haul. It wasn't

1 efficient. They weren't taking it away in large volumes
2 and we needed something different.

3 And we asked for that in February and we didn't
4 hear anything from Charlie until July.

5 Q. Except when Mr. Dietrich reached out repeatedly
6 in May and June; correct?

7 A. Yeah, I have no knowledge that those emails went
8 out to them.

9 Q. Now, to be clear, you're saying Basin didn't
10 make you a specific proposal for an alternative until
11 July -- I want to make sure I understand -- maybe that's
12 not the month you stated, but I want to make sure I
13 understand something else here.

14 PCA did not make a proposal to Basin that it
15 collect this material via any other method, did it?

16 A. What are you referring to? A written proposal
17 or?

18 Q. Let's back up a bit.

19 In this February 2021 meeting, you and other
20 witnesses -- I believe Mr. Wilhelm and Thorne claimed
21 that the use of a bunker or a conveyor belt or storing
22 the material in another location were all PCA's ideas;
23 right?

24 A. Correct.

25 Q. And you never asked Basin to provide an estimate

1 to provide transportation under a different method like
2 those that PCA claims were its ideas, did you?

3 A. We asked Basin to evaluate our ideas and offer
4 any additional ideas they had.

5 Q. And you never -- you never said to Basin,
6 provide us a written estimate for the cost of providing
7 service via a truck and trailer until November 2021;
8 correct?

9 A. That's correct. It was up to BDI to give us the
10 proposal that they felt would be best to handle the
11 material.

12 Q. And, in fact, you did not ask Basin Disposal to
13 provide an estimate for an alternative -- any other
14 specific alternative method of disposal until November
15 of 2021; correct?

16 A. We asked for a proposal in February and in March
17 and April and May and June.

18 Q. Point to any record -- any document in this
19 record that supports what you just said?

20 A. There's no document in the record, but it was at
21 the meeting and over the phone.

22 Q. So you're claiming that in all of those
23 instances you asked Basin to provide you a written
24 estimate for alternative services and there are no
25 emails that would support this claim; correct?

1 A. Correct. That was the purpose of the on-site
2 meeting from the get-go, and then there were several
3 follow-up attempts made up until we heard something
4 finally in July.

5 Q. Now, when Basin brought up its proposal to
6 provide service via this method in July, instead you
7 guys wanted to study the use of the Sebright compactor,
8 again; correct?

9 A. Correct.

10 Q. And so Basin came to you with a proposal of a
11 bunker and a tractor-trailer, but instead you wanted to
12 look at using these Sebright dumpsters that you had
13 already concluded would not work; correct?

14 A. Well, I think that they would have worked if we
15 had different equipment and larger trucks that could
16 handle the capacity.

17 Q. And after the study was done, you determined
18 that still was not efficient; correct?

19 A. Right. It would not work with the equipment BDI
20 had.

21 Q. And BDI proposed, again, using a truck and
22 trailer, and you weren't interested in that, were you?

23 A. No. At this point, it was the same method that
24 Jammie's was already using and we were happy with the
25 service that Jammie's was providing. We were very

1 interested in the compactor boxes because that's what we
2 used at other mills and works well.

3 So at this point, we were interested in
4 exploring BDI for that. But for the truck and trailer
5 method we felt was sufficiently handled by BDI at this
6 point -- or by Jammie's at this point. Excuse me.

7 MR. FASSBURG: Excuse me. Ms. Blancaflor
8 providing testimony to the witness is highly
9 inappropriate.

10 MS. BLANCAFLOR: I'm sorry, Your Honor. I
11 didn't mean to provide any sort of information to
12 Mr. Rachford.

13 THE WITNESS: Can I finish?

14 JUDGE HOWARD: Please, finish.

15 THE WITNESS: Yeah. So just the truck and
16 trailer services were being sufficiently provided by
17 Jammie's, and we just felt no need to switch to BDI at
18 that current time.

19 BY MR. FASSBURG:

20 Q. So to be clear, BDI proposed and was willing to
21 provide service via truck and trailer using a bunker
22 providing its own loader and you said no?

23 A. We're not sure how ready they were to provide
24 the service. I don't know if they never disclosed to us
25 that they had the equipment ready or what the time frame

1 would be to get everything set up.

2 MR. FASSBURG: Objection. Nonresponsive.
3 Move to strike. You Honor, I asked him, you made a
4 proposal and you said no.

5 JUDGE HOWARD: I will grant the objection.

6 And, Mr. Rachford, could you answer the
7 question as posed?

8 THE WITNESS: Yeah, they delivered us a
9 written proposal in August for the --

10 BY MR. FASSBURG:

11 Q. And you didn't respond to it or accept it;
12 correct?

13 A. At the time we asked them to explore the
14 Sebright boxes first.

15 Q. And Basin came back to you proposing to provide
16 the service again in November and -- in response to
17 Mr. Thorne's inquiry; correct?

18 A. Correct.

19 Q. And, again, you didn't respond to it or accept
20 the proposal; correct?

21 A. Correct.

22 Q. And they made a similar proposal in January of
23 2022, and you did not respond to or accept the proposal;
24 correct?

25 A. Correct.

1 Q. And they made a similar proposal in March of
2 2022 and you did not respond to or accept the proposal;
3 correct?

4 A. Correct.

5 MR. FASSBURG: Your Honor, if we could take
6 a quick break. I want to take a couple minutes to
7 review my notes. I'm not yet sure if I have more
8 questions. If we can take that break, we can figure
9 that out real quick.

10 JUDGE HOWARD: Yeah. All right. Well, are
11 you envisioning just a couple -- just a couple brief
12 minutes here?

13 MR. FASSBURG: Yes.

14 JUDGE HOWARD: Okay. Let's be off the
15 record.

16 (A break was taken from
17 11:49 a.m. to 11:52 a.m.)

18 JUDGE HOWARD: Let's be back on the record.

19 And, Mr. Fassburg, you may proceed.

20 MR. FASSBURG: Just a few more questions,
21 Mr. Rachford.

22 BY MR. FASSBURG:

23 Q. Just to be clear here, you do not claim that
24 Basin Disposal had any kind of control over the water
25 content of the OCC rejects generated by PCA, do you?

1 A. No.

2 Q. And you do not claim that when there were
3 problems with water contents that prevented a container
4 from being hauled, Basin Disposal was somehow
5 responsible for ensuring that that material was dry
6 enough that it could be collected, do you?

7 A. No.

8 Q. And so if Basin Disposal in its opinion could
9 not collect and transport a container without risk of
10 violating state law, it would not be Basin Disposal's
11 fault or problem for leaving that container on-site as
12 opposed to collecting it; correct?

13 A. Correct.

14 Q. And if the number of containers that were too
15 wet to collect and transport grew and prevented PCA from
16 loading additional containers, that is also not BDI's
17 fault; correct?

18 A. Correct.

19 Q. And so what you expected from BDI as your solid
20 waste collection provider is to transport containers
21 that were sufficiently dry and could be transported for
22 disposal; correct?

23 A. Correct.

24 Q. And if the container could not be hauled and
25 that were the source of PCA's problems, again, this is

1 not something Basin Disposal is responsible for doing;
2 correct?

3 A. Correct.

4 MR. FASSBURG: Okay. I have no further
5 questions. Thank you.

6 JUDGE HOWARD: All right. Thank you.

7 And I would allow PCA an opportunity to
8 redirect the witness, but it may make sense to take a
9 break for lunch first.

10 Does that make sense to you, Ms. Blancaflor?

11 MS. BLANCAFLOR: Yes, Your Honor. That
12 would be great. Thank you.

13 JUDGE HOWARD: All right. How about we take
14 a 45-minute lunch break?

15 Does that work for everyone?

16 And we return at 12:40. I'm seeing
17 affirmations and nods. All right. Let's be off the
18 record. We'll be off the record and we'll return at
19 12:40. All right. Thank you.

20 (A luncheon recess was taken from
21 11:55 a.m. to 12:41 p.m.)

22 JUDGE HOWARD: Let's be back on the record.

23 We're returning after our lunch break and we
24 left off with the -- we were about to begin the redirect
25 of Mr. Rachford.

1 You may proceed.

2 MS. BLANCAFLOR: All right. Thank you, Your
3 Honor.

4 REDIRECT EXAMINATION

5 BY MS. BLANCAFLOR:

6 Q. Mr. Rachford, Mr. Fassburg asked you your
7 experience with regard to solid waste materials; do you
8 remember that?

9 A. I do.

10 Q. Would you please tell us your experience? What
11 is --

12 Starting with, what is your degree in?

13 A. Chemical Engineering.

14 Q. And how long have you worked with PCA?

15 A. About five and a half years.

16 Q. And with PCA, what have your experiences been --
17 what -- what positions have you held with PCA?

18 A. Yeah. So in May of 2017, I started. While I
19 was in college, I interned here at the mill as an
20 engineering intern.

21 During that, I -- I was involved in some data
22 analysis and optimization projects across the different
23 areas in the mill. And also just spent a lot of time
24 with the folks and -- and production managers and
25 operators just learning what they do on a day-to-day

1 basis in all areas of the mill.

2 And then in the following year, in 2018, I
3 started -- after I graduated, I started as process
4 engineer, particularly worked in the power and recovery
5 side so, like, where we operate our boilers and things
6 like that for steam generation.

7 And, again, you know, worked on data analysis
8 projects, assisted the manufacturing personnel.

9 Was a shift supervisor during some of that time.
10 And then I also spent some time on the paper machines.
11 And then after that, was promoted to assistant
12 superintendent to work on the OCC project.

13 So I've been -- worked in pretty much all the
14 areas of the mill and have had experience with dealing
15 with the waste streams generated from all the different
16 processes in all the different areas that I've worked.

17 Q. So in your -- in your different roles throughout
18 the mill, did you have an opportunity, then, to have
19 direct experience with the different waste streams that
20 are generated at the mill?

21 A. I did, yeah. Every -- every process has their
22 own special waste stream, you know, in the -- like in
23 our pulp mill, you know, it is very similar to the OCC
24 plant. It doesn't contain any garbage, obviously. But
25 it's -- it's similar, you know, screening and cleaning

1 processes and the -- in the pulp mill and the rejects
2 from that need to be handled as well, just like OCC
3 rejects.

4 Q. So did you become familiar with how the
5 different waste streams were handled at the mill?

6 A. I did, yeah.

7 You know, majority of the -- of the waste
8 streams, the rejects from, like, our other pulp mill
9 processes are normally loaded into a trailer with a
10 loader and hauled off site to -- to our landfill. And
11 we can dispose of it in our landfill because it is all
12 organic material.

13 And then in most cases, the moisture content of
14 these rejects are very similar to the moisture content
15 of the OCC rejects.

16 Q. So when you started at the OCC plant, you came
17 with experience with handling or understanding different
18 waste streams at the mill; is that correct?

19 A. Yeah, that's correct.

20 Q. Thank you.

21 Mr. Fassburg also asked you questions related to
22 PCA's interest in using the Sebright compact boxes.

23 Do you remember that?

24 A. I do.

25 Q. And can you please describe how -- how that came

1 to start with PCA requesting BDI for their help with the
2 compact boxes?

3 A. Right. So that -- you know, as I kind of
4 mentioned before.

5 Initially the plan was, was to incinerate most
6 of the OCC rejects in our biomass boiler, which was
7 then -- before construction even really started,
8 converted to a natural gas only boiler and the costs
9 that were -- that were required to get the boiler fit to
10 burn the OCC rejects was just not a commitment the
11 company was willing to make at the time.

12 So we had to pivot and basically we purchased
13 dumpsters that are -- roll-off boxes or containers that
14 fit onto the end of the Sebright compactor and the
15 material basically falls and compacts directly into that
16 compactor. And all the -- the whole compactor is
17 enclosed and then it can be loaded up onto a truck to be
18 hauled. We were working with BDI to get that set up.

19 The project management team purchased a few of
20 these dumpsters and had them delivered to BDI's facility
21 where they were -- had the undercarriages that would
22 allow for the dumpsters to fit on top of BDI's trucks
23 installed.

24 And then a few months before start-up, I want to
25 say it was around, maybe, October when we had the

1 loading area complete for -- for the Sebright dumpster
2 to go up and hook onto the Sebright press. We had BDI
3 come out with the dumpster with one of their trucks and
4 practice loading and off-loading it.

5 Q. And when was this time frame?

6 A. I want to say, probably October. It was a few
7 months before I started getting in contact with them in
8 December. So I don't know the exact time, but probably
9 October --

10 Q. October?

11 A. Probably September/October.

12 So anyway, from what we had seen, you know, and
13 I wasn't involved in getting the Sebright container
14 service set up. But I think that we were -- we had the
15 understanding that that was something -- a service that
16 BDI could provide.

17 So in December I was instructed by the project
18 team to reach out to BDI since we were getting close to
19 start-up to get that service set up because I was going
20 to be the primary contact with BDI moving forward while
21 the plant was operating.

22 And so when I did that, you know, after a short
23 conversation with Kris May, it became apparent very
24 quickly that that wasn't going to work.

25 BDI had a ten-ton hauling limit on their trucks.

1 These dumpsters, empty, weigh about six-tons, so we
2 could only fit four tons of material in before it had to
3 be hauled, so that wasn't even close to half full.

4 And also BDI did not service -- provide 24/7
5 service, which is something we would have needed to
6 service these dumpsters because they needed to be
7 switched out and hauled away about every eight hours or
8 so.

9 So that was where, you know, we were looking for
10 something that we could do quickly with the equipment
11 that BDI had. And so that was where -- basically, what
12 BDI could offer on their -- on the trucks that they had
13 were to haul these dumpsters.

14 And we went with the 20-yard because it was
15 small enough to where we couldn't overfill it, because
16 if we put more than ten tons of material in the
17 dumpsters, they couldn't even be loaded on their trucks.

18 Q. So when you contacted BDI in December, was this
19 the first time you heard that the compact boxes -- the
20 Sebright compact boxes were not going to work?

21 A. Yeah. Correct.

22 Q. So was this a surprise to PCA?

23 A. Yeah, it was. It was a surprise to me,
24 especially, because -- yeah, I mean, this had been in
25 the planning stages for, you know, what seemed like

1 months. And, you know, I don't know -- I wasn't
2 involved with it. I don't know what led to it.

3 I don't think BDI asked enough questions. I
4 don't know if we gave enough information. But I think
5 we reached an understanding that this was going to work.
6 And it very clearly wasn't going to work.

7 So I was just making the call to set up the
8 service and became very apparent very quickly that due
9 to the limitations that BDI had with the equipment that
10 they had, what we had planned, it just wasn't going to
11 work at all.

12 Q. Mr. Fassburg presented you with an email from --
13 in December that was from Mr. Stevens.

14 Do you remember that email?

15 A. I do.

16 Q. I'd like to bring that up, again. It is Cross
17 Exhibit SR-21X.

18 Will you please re-read this -- this email from
19 Mr. Stevens?

20 It's page 41. SR-21X, page 41.

21 Okay. So this is an email from Jeff
22 Stevens. It is dated December 16, 2020.
23 Sent at 2:56 p.m. it reads: (As read).
24 "We need to do -- we need to do a review
25 of handling rejects from the OCC plant.

1 If we produce 450 tons per day of pulp,
2 we will produce about 45 tons per day of
3 rejects. The original plan was to burn
4 them in the hog fuel boiler along with
5 the bark. From the beginning, that plan
6 was not going to work and there had to
7 be a way to handle 45 to 65 tons per day
8 of rejects. I have heard that we do not
9 have enough trucking capacity to haul
10 off the rejects, and I also understand
11 the discharge point from the Sebright
12 press is going to be too large for a
13 large trailer. What I think will be
14 needed is a large truck-trailer combo
15 like we have from the sludge filter and
16 we may need to modify the discharge
17 point. Also, where will we landfill
18 this stuff? Our landfill or a third
19 party? Time is tight, but I would like
20 to review this afternoon before I leave
21 so we can put a plan together. Rejects
22 handling will be far more" sufficient --
23 "significant than we think and if we
24 don't have the" right -- "if we don't
25 have the system right, it can get away

1 from us quickly. Jeff."

2 So in this email, Mr. Fassburg asked you about
3 the -- the trucking capacity.

4 A. Correct.

5 Q. And just so we're clear on that, is Mr. --
6 Mr. Stevens is referring to whose trucking capacity?

7 A. I believe --

8 MR. FASSBURG: Calls for speculation. Lack
9 of foundation.

10 MS. BLANCAFLOR: Well, Mr. Fassburg asked
11 you specifically about this -- this question on the
12 trucking capacity. This is a redirect to Mr. Fassburg's
13 cross-examination of Mr. Rachford.

14 THE COURT: I'll allow the question.

15 MS. BLANCAFLOR: Thank you.

16 BY MS. BLANCAFLOR:

17 Q. So when Mr. Stevens says, I've heard we don't
18 have enough trucking capacity, who -- whose trucking
19 capacity is he referring to? PCA's?

20 A. He's referring to BDI's trucking capacity with
21 hauling, not having enough capacity to haul the Sebright
22 boxes when they are all the way full.

23 Q. And this is because of BDI's tonnage
24 restrictions?

25 A. Their ten-ton weight limits on the trucks they

1 had, correct.

2 Q. Thank you.

3 And so what -- after learning that -- that BDI
4 was not going to be able to haul the Sebright compact
5 boxes, what did PCA do?

6 A. Well, the first thing was, you know, in talking
7 to BDI was -- we just wanted to get something set up as
8 quickly as we could since start-up was right around the
9 corner for us.

10 So, you know, BDI basically offered that, you
11 know, they can bring out the -- the dumpster containers
12 that's typically hauled on these trucks.

13 So I did my calculations to figure out how many
14 we needed and how many would need to be hauled per day
15 based on our production rate that we were starting up
16 at. So we got that service set up.

17 And then, you know, as we were getting that set
18 up, though, many of us here at PCA, including myself,
19 Mr. Thorne, and Brian had concerns about it not working.
20 And so we set up a meeting, which was the February
21 meeting for -- to bring -- bring BDI out to brainstorm
22 other ideas and see if we could come up with an
23 alternative solution that would be more sufficient.

24 Q. And Mr. Fassburg asked you at that time when you
25 did your calculations, you -- you were focused primarily

1 on the 20-yard dumpsters that BDI currently was
2 providing to the mill for the other waste streams and
3 the compact boxes; do you remember those questions?

4 A. Correct.

5 Q. And he asked you -- there weren't -- he asked
6 you why there were no other options considered in your
7 analysis.

8 Do you remember those questions?

9 A. I do.

10 Q. And can you explain, please, why you didn't at
11 that point in time have any other options in your
12 evaluation?

13 A. Yeah, we just had no -- no other proposals or
14 anything to put numbers to.

15 So, you know, we were evaluating the 20-yard
16 boxes because we had the cost associated with those.
17 The cost per ton; cost per delivery; cost per mile.

18 And then we were also evaluating the 20-yard
19 boxes -- or I'm sorry, the Sebright boxes. So we were
20 trying to see if, you know, it would still be, you know,
21 within a reasonable cost to haul them when they're not
22 all the way full and within the ten-ton limit, which we
23 found it was not. It was far more -- far more
24 cost-efficient to just use the 20-yard boxes for -- to
25 haul the waste.

1 Q. And would you say it -- you wouldn't normally
2 consider other options until you had an opportunity to
3 meet with your hauler to see what other options were
4 available?

5 A. That's correct, yeah. I mean, we -- we need a
6 written proposal with hard costs that we can put numbers
7 to and, you know, put a theoretical cost model together
8 based on the rejects output they were planning to
9 produce.

10 Q. And is this -- is this why you wanted to meet
11 with BDI in February?

12 A. Yep, that's correct. We wanted just other ideas
13 and other solutions and, you know, hopefully a proposal
14 for something that BDI, I think, would -- thought would
15 better service the -- the waste stream and, yeah,
16 something that we could price out.

17 Q. So I'm going to put an email in front of you.
18 It's part of your testimony. It's Skyler -- or
19 SR-10X, page 11.

20 And this is -- this is an email from Sam to
21 Charlie.

22 Would you please read the email?

23 The date of email and read the content of the
24 email, please.

25 A. Yep. So starting at the bottom here, this email

1 is from Sam Holm dated February 18, 2021, at 3:24 p.m.

2 says:

3 "Charlie, our ops manager and paper
4 machine production manager had been
5 doing some brainstorming and may have
6 some different ideas about handling of
7 the waste stream coming out of the OCC
8 plant. They would like to meet with you
9 and your team and walk through their
10 ideas and get your input. Would you and
11 your team be available to come to the
12 mill tomorrow sometime for a tour and
13 discussion? Please let me know your
14 availability either tomorrow or Monday,
15 keeping in mind that we expect to start
16 the process of feeding materials next
17 week, so the sooner the better. Thanks.
18 Sam Holm."

19 Q. And then a couple emails later, this is same
20 exhibit, SR-10X page 12.

21 A. Mm-hmm.

22 Q. Would you please read Charlie's response about
23 the middle of the page?

24 A. Mm-hmm.

25 Q. And this is from Charlie to who and what --

1 what's the date?

2 A. So this is from Charlie to, basically, Kurt and
3 Sam Holm and Brian Wilhelm are copied on it. The date
4 sent is February 18, 2021, at 4:21 p.m. It says:

5 "Hi gentlemen. I appreciate the
6 help. I will have one, potential two --
7 I will have one, potential two more
8 people on my team with me, if that
9 works."

10 Q. And then will you please read Mr. Thorne's
11 response to that?

12 A. Yep. So from -- from Kurt to Charlie, dated
13 February 18th at 4:24 p.m., Kurt says:

14 "The more input the better. See you
15 tomorrow. Thanks for coming on such
16 short notice, by the way."

17 Q. Thank you.

18 So the idea of this -- the purpose -- I'm sorry,
19 the purpose of this February meeting was to solicit
20 ideas from BDI on additional -- or different disposal
21 options; is that correct?

22 MR. FASSBURG: Objection. Leading.

23 MS. BLANCAFLOR: I'm sorry.

24 MR. FASSBURG: Objection. Leading.

25 JUDGE HOWARD: I'm going to grant that one.

1 MS. BLANCAFLOR: I'll rephrase.

2 BY MS. BLANCAFLOR:

3 Q. What was the purpose of this meeting in
4 February?

5 A. To get with BDI and walk them through our
6 facility and our processes. Go through the different
7 discharge points of the rejects and just see if there
8 was anything more efficient than using the 20-yard
9 blowout boxes.

10 Q. And at this meeting were there other options
11 discussed -- other disposal options discussed?

12 A. Yes. I mean, PCA presented several ideas. You
13 know, one of which was using the back room. It was an
14 empty loading area in the back of the plant that was
15 basically just used for storage at the time -- making a
16 staging area there and putting a bunker in the back of
17 the building.

18 We also talked about loading the rejects with
19 railcars. Talked about putting a conveyor system in the
20 front to -- so that the Sebright would discharge onto
21 the conveyor system and then be conveyed out to a bunker
22 in the front of the building.

23 So there were many ideas, you know, discussed,
24 you know, on both parties' sides. And, ultimately, we
25 were just interested in what BDI would come back with as

1 a viable option that they could service.

2 Q. So was there an expectation from PCA --
3 was there -- did PCA have an expectation of BDI after
4 this meeting?

5 A. Yes, we did. You know, we were hoping that we
6 would see -- see some ideas from them and, you know,
7 get -- get a proposal so we could run some numbers. You
8 know, we understood that it wasn't going to be, you
9 know, within days or, you know, even a couple weeks. I
10 mean, we knew that, you know, we were about to start at
11 the plant and we -- we would learn a lot with the
12 characteristics of the rejects and -- and how -- how to
13 handle them.

14 But, ultimately, yeah, we expected to hear
15 something from BDI, you know, within a reasonable time.

16 Q. And so Mr. Fassburg asked you about a July email
17 exchange between you and Mr. Dietrich.

18 Do you remember that?

19 A. I do.

20 Q. And in this -- in this July email -- well, let's
21 go ahead and refer to it, please. It's Exhibit CD --
22 page 56 of 107.

23 Can we pull that up?

24 CD-02. Yeah, CD-02, page 56.

25 In this email dated July 14th, will you please

1 read -- starting at the bottom, which is the beginning
2 of the email exchange, the date and the time of this
3 email, please?

4 A. Okay. So this email is from Charlie to myself.
5 It's dated Wednesday July 14, 2021, at 8:01 a.m.

6 He says:

7 "Hi Skyler. I wanted to keep you
8 up-to-date on the proposal process. I'm
9 putting the final touches on a few
10 plans, both for short-term and for
11 long-term to help solve our problem.
12 Through this, two questions have popped
13 up that I was wondering if I could get
14 some help on. What is the lead time and
15 process to get a designated area on-site
16 to be approved for a bunker/holding
17 area; and, two, what is the process/lead
18 time to get on-site approval to bring a
19 loader and have one of our employees
20 operate it? Thanks, Charlie."

21 Q. And would you please read your response? The
22 date and the time and then your response, please.

23 A. So my response is sent on July 14, 2021, at
24 8:46 a.m.

25 I said:

1 Hi Charlie. Please see my responses
2 below. My response to the first
3 question: What is the lead time to get
4 a designated area on-site to be approved
5 for a bunker/holding area? I said it
6 should be pretty quick. We already had
7 a contractor come out and look at the
8 area and they are working on an estimate
9 to install a bunker. After we get
10 costs, it should be approved pretty
11 quickly if that is the route we decide
12 to go. The second question: What is
13 the process/lead time to get on-site
14 approval to bring in a loader and have
15 one of our employees operate it? My
16 response is this should be pretty quick
17 as well. I'm not sure of the total
18 process, but I've seen this happen
19 pretty quickly in the past. I think
20 it's just a liability agreement that
21 needs to be signed and we should be good
22 to proceed."

23 Q. Thank you.

24 And so prior to this email, do you have any
25 recollection of BDI proposing that they could process or

1 mix the rejects on-site prior to this July email?

2 A. No.

3 Q. So back to February. We just -- we met with BDI
4 in February asking for ideas; correct?

5 A. Correct.

6 Q. And then July, is this the first time you heard
7 any proposal from BDI?

8 A. This was the first time that I had heard of BDI
9 working on possible solutions. We didn't actually get a
10 proposal for this until mid-August.

11 Q. Thank you.

12 So this is the first time we heard back from BDI
13 with -- with an idea -- with ideas?

14 A. That's correct.

15 Q. So would you -- in your opinion, would you
16 consider this responsive to PCA's request in February?

17 A. No, I wouldn't. You know, we had the initial
18 meeting in February. Ever since start-up, we had many
19 issues with the 20-yard boxes, both on our end and on
20 BDI's end.

21 I think it was pretty apparent that we needed to
22 come up with an alternate solution and, yeah, we didn't
23 hear anything from BDI until July where they were
24 starting to look into it. So, yeah, I would not
25 consider five months to be timely.

1 Q. And so when did -- when did PCA receive an
2 actual written proposal from BDI?

3 A. It would have been on -- at Charlie's on-site
4 visit on August 16th.

5 Q. And what was in BDI's proposal?

6 A. It was, essentially, to bring -- bring out their
7 own loader and -- and bring out a -- I think they
8 proposed a -- like a 50 -- 53-foot semitrailer to load
9 the rejects into that and haul it to the landfill, which
10 was very similar to what we had Jammie's on-site already
11 doing at this point.

12 Q. So was PCA happy or content with BDI's proposal?

13 A. No. I think -- you know, from the -- from the
14 experience that -- experiences that we had, we kind of
15 lost faith in BDI being able to manage this -- being
16 able to effectively manage this waste stream. And we
17 had Jammie's doing such a good job for us at this time
18 that we really felt no need to consider the proposal.

19 Q. And so is that -- can you explain, then, we --
20 PCA went back to BDI at this time and asked them to
21 resurrect the compactor box option.

22 A. Mm-hmm.

23 Q. Can you explain why -- why PCA wanted to
24 re-evaluate this option?

25 A. Yeah. I mean -- this option is -- what's used

1 at one of our other mills and it works very well.

2 They -- they -- they take these Sebright boxes
3 and they haul them basically to -- to the mills on-site
4 landfill, but the -- so anyway, I think if -- if BDI had
5 the right equipment, I think it could work very well.
6 And we've seen it work well in other mills. So that
7 was -- that was why we wanted to explore that at -- that
8 option.

9 Q. So when you say "right equipment," can you
10 explain, please, what that means?

11 A. Just larger trucks that would be able to haul
12 the capacity of the -- of the weight capacity of the
13 dumpster all the way full.

14 Q. So when you say "larger trucks," does that mean
15 a larger truck that wouldn't have the ten-ton limit?

16 A. Right. And I'm not fully versed in the DOT
17 regulations, but from my understanding it is -- the
18 ten-ton limit comes from the number of axles on the
19 trucks and there's a weight capacity per axle. So I
20 think a larger truck with more axles would allow you to
21 haul more weight.

22 Q. Thank you.

23 So Mr. Fassburg asked you several questions
24 about -- and I'm going to group them altogether because
25 we went around a couple different ways. But he asked

1 you several questions about the moisture content of the
2 rejects.

3 Specifically, he -- he referenced some changes
4 that PCA made in April and May of 2021.

5 Do you remember those questions?

6 A. I do.

7 Q. Can you describe the nature of the rejects
8 now -- what they look like now compared to what they
9 looked like after PCA made those changes in April and
10 May?

11 A. Yeah. I would say that the rejects are not
12 materially different than they are today. You know, the
13 changes we made, you know, might have helped the
14 moisture content a little bit.

15 But, you know, as we saw from the analysis
16 that -- that I did, you know, vast majority of the
17 rejects produced by the OCC plant come from the Sebright
18 press and when that's working properly and it's
19 producing solids at, you know, 40 percent or 50 percent,
20 you know, they -- plenty dry enough to haul.

21 So, you know, the smaller streams that these
22 were made to, the grapple and the effluent, it -- sure,
23 it might have helped their moisture content slightly,
24 but they are such small streams that I don't believe
25 that it made a material difference to the overall --

1 overall rejects. And --

2 Q. And these changes were completed in May; is that
3 correct?

4 A. Correct. Yeah. We did the -- we did the
5 grapple claw modification in April and then the effluent
6 modification in May.

7 Q. And was BDI still hauling for PCA in May?

8 A. Yes, they were.

9 Q. And were they hauling in June?

10 A. Yes, they were hauling in June.

11 Q. And July?

12 A. July as well.

13 Q. And August?

14 A. Yeah. At the end of August is -- we were
15 trialing Jammie's during that time. So Jammie's was
16 helping in, you know, July and August time frame, but it
17 was still BDI doing a significant amount of the hauling.

18 And then it wasn't until end of August that we
19 actually cut Jammie's PO to service the OCC rejects
20 full-time.

21 Q. And Mr. Fassburg asked you about upset
22 conditions and how they can impact our operations.

23 Can you describe what an upset condition is?

24 A. Yeah. So, you know, an upset condition can be,
25 you know, where we have something malfunctioning in the

1 plant. A piece of equipment, you know, goes down on us
2 for, you know -- for mechanical or, you know, whatever
3 reason.

4 You know, and -- and depending on what it is,
5 you know, it can impact moisture content significantly.
6 You know, if it's a press or -- or the compactor, you
7 know, when we especially have to bypass that, then the
8 rejects can come up much wetter. If it's an instance
9 where, you know, we have to drain something, you know,
10 all those rejects -- all that material and that -- and
11 whatever we're draining is very wet.

12 And then also for, you know, an upset condition
13 can be characterized in a shutdown when we -- when we
14 have to shut down the plant for maintenance, there's a
15 lot of draining and cleaning that happens. And that's
16 when we see very wet material that we need to dispose of
17 as well in many cases so --

18 Q. And -- I'm sorry. Go ahead.

19 A. Go ahead.

20 I was just going to say that these upset
21 conditions, you know, it happened then and they still
22 happen today. And that's -- that's where we see the
23 widest variability in the moisture content of the
24 rejects.

25 Q. And is there any sort of predictability as to

1 when upset conditions happen?

2 A. No, not really. When -- when it's due to
3 equipment failure or, you know, a process malfunction or
4 something like that, no, it's impossible to predict.

5 Q. And can you give me an estimate as to how often
6 these happen?

7 A. You know, it's -- it's hard to say. There's
8 instances where, you know, it can happen several times
9 in a week. And there's times where it can happen once a
10 month. It's very difficult to predict.

11 Q. I'm going to show you a photograph. So this is
12 SR-16X, page 122.

13 Can you describe --

14 Does everyone have that up?

15 Can you describe what you see in this
16 photograph, please?

17 A. Yes. So this is our effluent rejects.
18 Basically, the solids that are coming off the Sidehill
19 Screen above and going into a dumpster. And I would
20 say, yeah, this is a very wet reject stream.

21 Q. So what happens -- what can happen with this wet
22 reject stream?

23 A. I guess, can you be more specific?

24 Q. So what -- what would we do? If we have this
25 type of rejects that we have to -- or this type of waste

1 stream that we have to deal with, what are some options
2 that we would use for ultimate handling or disposal of
3 this?

4 A. Yeah. So the best method for us, the easiest,
5 the cleanest and the most cost-effective is with the
6 change we made to our effluent back into the process.
7 Once the process starts back up, we can wash this into
8 our sewers and it will go back into the process and it
9 really doesn't need to be disposed of.

10 If we do need to dispose of it, if the process
11 is going to be down for a long period of time, then we
12 will take this out and it would need to be mixed with
13 dry material and processed and allowed to dry so that it
14 can be hauled to a landfill.

15 Q. I'm going to show you another photo. This is
16 SR-16X, page 130.

17 Can you describe what you see in this photo,
18 please?

19 A. So, again, this is a pretty -- looks like a
20 pretty massive upset condition, possibly during a
21 shutdown. But again, this is where we would get a lot
22 of really wet rejects. And again, we would try to pump
23 this back into the process if we could. But if we would
24 need to dispose of this, this is where we would need
25 some significant processing and handling before it could

1 be hauled.

2 Q. So you would -- this would be too wet to put in
3 a dumpster; correct?

4 A. I think so, yes.

5 Q. So would this be something that would need to be
6 mixed?

7 A. Yes, it would.

8 Q. Okay. Thank you.

9 So Mr. Fassburg also asked you some theoretical
10 questions on -- on what a driver could haul in a
11 ten-hour day.

12 Do you remember those questions?

13 A. I do.

14 Q. So -- so based on what was actually happening
15 out at the OCC plant, did you see -- was BDI able --
16 excuse me, let me rephrase.

17 Based on what was actually happening at the OCC
18 plant, was -- was BDI able to haul enough dumpsters in a
19 ten-hour day?

20 A. No, it didn't appear so. You know, they told us
21 that they had hired more drivers. They told us that,
22 you know, they were increasing the rate of their hauls.
23 But, you know, we never saw the piles shrink or the
24 backlog catch up. So, you know, we just saw BDI was
25 behind and they weren't able to -- just weren't able to

1 catch up, really.

2 Q. I'm going to show you another photo. Excuse me,
3 just one second.

4 This is -- this is SR-8, page 14.

5 Can you tell me the date this photo was taken?

6 A. Yeah, this was May 21, 2021.

7 Q. And prior to this photo being taken, was PCA
8 shut down for a week?

9 A. Yeah. You know, this -- this photo was really
10 particularly concerning to us and I think I described it
11 as the tipping point earlier, because, yeah, the mill
12 was down for about a week for an annual shutdown in the
13 first week of May.

14 And, you know, during that time, we were
15 producing OCC rejects, we still had this massive
16 backlog, and we saw that as a good opportunity for BDI
17 to be able to catch up with what was on-site.

18 And we did not see that happen and we basically
19 started up with still piles of rejects out there and the
20 piles just continued to grow even bigger. And it got to
21 the point where we did end up having to bury a fire
22 hydrant because there was just no where else to put the
23 rejects and all the dumpsters were full.

24 Q. And here's another picture. SR-8, page 12.

25 A. Okay.

1 Q. Can you tell me the date this photo was taken?

2 A. May 4, 2021.

3 Q. And what do you see -- can you please describe
4 what you see in this picture?

5 A. Yeah. I see at least two full dumpsters in this
6 picture with massive piles behind them. In this
7 picture, to me, it doesn't seem like these -- any of
8 these rejects are very wet at all. I don't see any
9 moisture around or dripping from the dumpsters. So I
10 see no reason why these dumpsters can't be hauled
11 immediately, but they are still sitting there full.

12 Q. And then here is another picture. This is
13 SR-16X, 23.

14 A. Okay.

15 Q. Can you describe what you see in this picture?

16 A. Yeah. Again, I see four full dumpsters --
17 doesn't look to me like the material is particularly
18 wet -- and massive piles -- or piles of rejects, you
19 know, behind the dumpsters up against the building.

20 Q. And when you say these materials seem dry,
21 that's based -- can you explain to me how you can make
22 that assessment?

23 A. Yeah. Like I said, the rejects coming out of
24 the Sebright press, which is -- looks like what a
25 majority of these rejects are, are able to be hauled

1 if -- if everything is working properly and it's
2 outputting at least, you know, 50 percent moisture.

3 And so that looks, to me, what these rejects
4 are. I don't see any -- any water around these
5 dumpsters. Typically, if -- if the rejects were too wet
6 to haul, there would be water leaking out of the -- out
7 of the gaps in the bottom of the -- of the dumpsters and
8 the gaps in the holes.

9 But I -- I see no moisture around the bottom of
10 these dumpsters at all.

11 Q. Thank you.

12 Mr. Fassburg asked you about questions related
13 to PCA's experience with OCC rejects, specifically
14 whether PCA had asked about the nature or quality of the
15 OCC rejects at other locations.

16 Do you remember those questions?

17 A. I do.

18 Q. Does -- does PCA have other OCC facilities?

19 A. We do, yeah. The one built here in Wallula was
20 the fifth one. We have one in Filer City, Michigan;
21 Tomahawk, Wisconsin; DeRidder, Louisiana; and then --
22 the one in DeRidder was our most recent one. That was
23 started up in 2016. And then five years later, we
24 started up this plant.

25 So we had -- we had multiple corporate help and

1 people from other mills who were familiar with the OCC
2 plant and the OCC processes helping with the design and
3 the construction of the plant. And so we had -- I felt
4 we had a pretty good idea of what the OCC rejects would
5 look like.

6 And I think we did, but, you know, there are the
7 upset conditions and those are obviously, you know,
8 impossible to predict, you know, what the impact that
9 would have. So that was where we needed to kind of wait
10 and see of what all we would be dealing with our
11 particular waste stream.

12 Q. And with the other experiences at -- within PCA,
13 did we also consider and analyze some of the other
14 processes at the mill for handling the OCC rejects?

15 MR. FASSBURG: Objection. Leading.

16 MS. BLANCAFLOR: I'll rephrase.

17 BY MS. BLANCAFLOR:

18 Q. Did PCA consider other -- other options -- other
19 disposal options?

20 A. Yeah. Initially, incinerating it in the boiler
21 and then having -- and then having to switch to the --
22 using the Sebright blowout boxes as we do in our other
23 mill.

24 MS. BLANCAFLOR: Your Honor, can I have just
25 a minute to make sure I've got -- I think I'm done, but

1 I just want a minute to make sure I've got all my --
2 went through all my notes.

3 JUDGE HOWARD: Certainly.

4 MS. BLANCAFLOR: Just one more question,
5 Your Honor.

6 BY MS. BLANCAFLOR:

7 Q. Mr. Fassburg had asked you, Mr. Rachford, about
8 if PCA thought it was -- if -- if BDI could haul the
9 waste and Jammie's or PCA manage the waste on-site.

10 Do you remember that question?

11 A. Mm-hmm.

12 Q. Is this -- is this an option that PCA considers
13 viable?

14 A. Not over the long-term, no. I think that would
15 create a lot of inefficiencies with using that method.

16 Q. And could you explain, like, what you mean by
17 those inefficiencies?

18 A. Well, I think that it just requires, you know,
19 way more parties than necessary to basically do the job
20 of processing and hauling the waste.

21 You know, the way I see it going would be, you
22 know, us, PCA, would take the rejects out to the bunker
23 and then BDI would need to be on -- I'm sorry, Jammie's
24 would need to be on-site too with their loader to mix
25 and process the waste. And then BDI would need to come

1 with their truck and they would need to bring their own
2 loader to load it. Because due to liability issues, I
3 don't think you would want, you know, one person -- one
4 operator from another company loading another company's
5 truck.

6 So then BDI would need to load up their truck
7 and haul it away. And this would require collaboration
8 between BDI and Jammie's and they would need to be
9 on-site at the same time.

10 If for some reason one of the parties didn't
11 show up, then, you know, it's very inefficient from a
12 cost standpoint because we would have to pay,
13 essentially, you know, the other party for not providing
14 service because they would be there with no rejects to
15 haul or anything like that.

16 I think it can also create a traffic issue with
17 having multiple loaders on-site and -- and -- and, yeah,
18 having so many different -- different processes going on
19 between the different parties.

20 So, yeah, I just don't -- don't see that as a
21 very long-term viable solution.

22 MR. FASSBURG: Your Honor, I'm going to
23 object to nonresponsive and to portions of
24 Mr. Rachford's answer where he provides legal opinions
25 and conclusions. I think I got a lot of objections to

1 my questions on the basis of calling for legal
2 conclusions. Mr. Rachford's testimony with respect to
3 liability concerns should all be stricken from the
4 record.

5 JUDGE HOWARD: I'll hear your response,
6 Ms. Blancaflor.

7 MS. BLANCAFLOR: I'll rephrase. I'll ask
8 again. I'll ask a different way that won't call for
9 legal conclusions.

10 JUDGE HOWARD: Well, I'm not sure if that
11 entirely gets to Mr. Fassburg's objection. But please
12 proceed.

13 BY MS. BLANCAFLOR:

14 Q. So does PCA consider having -- let me rephrase.
15 What are the inefficiencies that PCA would be --
16 that is concerned with -- with BDI doing the hauling and
17 either PCA or Jammie's managing on-site?

18 A. Well, I think, you know, if we had them both --
19 you know, if we had both Jammie's and BDI on site, with
20 BDI doing the processing -- or with Jammie's doing the
21 processing and BDI doing the hauling, I think just from
22 the -- you know, having duplicative resources and, you
23 know, the inefficiencies there is what we're concerned
24 with.

25 And also just from the experiences that we've

1 had with BDI, we're not totally confident that they can
2 keep up with this waste stream. You know, that's --
3 that's why us, as PCA, are so involved in this case is
4 because, you know, we -- we want to convey that -- the
5 experiences that we had with BDI just didn't work for
6 the application of the OCC rejects. And we really feel
7 that Jammie's does a much better job at providing
8 service effectively to -- to the waste stream.

9 MS. BLANCAFLOR: No further questions.

10 We're done on redirect, Your Honor.

11 JUDGE HOWARD: All right. Thank you.

12 Mr. Whittaker, do you have a cross for this
13 witness?

14 MR. WHITTAKER: No. No, Your Honor. No
15 questions from the association on this one.

16 JUDGE HOWARD: All right. Mr. Rachford,
17 thank you for your testimony today. We will now proceed
18 to Brian Wilhelm.

19 MS. BLANCAFLOR: Your Honor, may we take a
20 five-minute break. We'll come right back.

21 JUDGE HOWARD: Certainly. We are off the
22 record. We will return in five minutes.

23 (A break was taken from
24 1:32 p.m. to 1:37 p.m.)

25 JUDGE HOWARD: Let's be back on the record.

1 We are resuming after a short break. We are going to
2 pick up with the cross-examination of Brian Wilhelm.

3 Mr. Wilhelm, will you please raise your
4 right hand and I will swear you in.

5 Do you swear or affirm that the testimony
6 you will give today will be the truth, the whole truth,
7 and nothing but the truth?

8 THE WITNESS: I do.

9 JUDGE HOWARD: All right. Thank you.

10 Ms. Blancaflor, you can introduce the
11 witness.

12 MS. BLANCAFLOR: Thank you, Your Honor.

13 BRIAN WILHELM, witness herein, having been
14 first duly sworn on oath,
15 was examined and testified
16 as follows:

17 EXAMINATION

18 BY MS. BLANCAFLOR:

19 Q. Mr. Wilhelm, will you please state your name and
20 title and spell your name for the court reporter?

21 A. Yep. My name is Brian Wilhelm. I'm the
22 Operation Manager here at Packaging Corporation of
23 America, Wallula, Washington. My name B-r-i-a-n,
24 W-i-l-h-e-l-m.

25 Q. Thank you.

1 Mr. Wilhelm, before you, you have what's been
2 marked for identification exhibit numbers -- I don't
3 have it in front of me -- what is that, Rachel?

4 SPEAKER: BW-1T through BW-7.

5 MS. BLANCAFLOR: BW-1T through BW-7?

6 THE WITNESS: Yes.

7 BY MS. BLANCAFLOR:

8 Q. Do these exhibits constitute your pre-filed
9 direct testimony and related exhibits in this
10 proceeding?

11 A. Yes, they do.

12 Q. And were these exhibits prepared under your
13 supervision and direction?

14 A. Yes, they were.

15 Q. And then do you have any corrections you want to
16 make to these exhibits at this time?

17 A. Yes. Similar to Skyler and Kurt's on pages 12,
18 14, and 16. Any reference to the September meeting
19 should refer to the August meeting.

20 Q. Thank you.

21 So with those corrections are these pre-filed
22 direct testimony and accompany exhibits true and correct
23 to your best information and belief?

24 A. Yes, they are.

25 Q. Thank you.

1 MS. BLANCAFLOR: Your Honor, I present
2 Mr. Wilhelm for cross-examination.

3 CROSS-EXAMINATION

4 BY MR. FASSBURG:

5 Q. Thank you.

6 Mr. Wilhelm, I'm sure you've heard by now, my
7 name is Blair Fassburg. Like I've asked everyone else,
8 if you don't understand my question or it's confusing to
9 you, would you please ask me to restate it?

10 A. Sounds good.

11 Q. Okay. Thanks.

12 I'll probably skip around a little bit for a
13 moment or here two.

14 First, I would like to direct you to Exhibit
15 SR-8, page 15.

16 A. Give us a second to get that pulled up.

17 What page was it?

18 MR. FASSBURG: Page 15.

19 THE WITNESS: All right. I'm there.

20 BY MR. FASSBURG:

21 Q. Are you there?

22 A. Yep.

23 Q. Okay. This is a photograph that Mr. Rachford
24 was asked about a few moments ago when he was being
25 redirected.

1 And have you seen this photograph before today?

2 A. I have.

3 Q. Now, in this picture, we see drop boxes filled
4 with OCC rejects; correct?

5 A. We do.

6 Q. Is there anything in this photograph that would
7 indicate to you how long these drop boxes have been
8 on-site?

9 A. No.

10 Q. Is there anything in this photograph that would
11 indicate to you how long they remained on-site after the
12 photograph was taken?

13 A. No, not exactly.

14 Q. And you would agree with me that Basin Disposal
15 regularly collected, I think, an average of eight drop
16 boxes a day in April from PCA's facility; correct?

17 A. I don't know that for sure, no.

18 Q. But you know they were there every day
19 collecting drop boxes every day; right?

20 A. Yes, but I don't know how many.

21 Q. Sure. And on May 21, 2021, BDI undoubtedly
22 collected drop boxes that day; correct?

23 A. No, I don't know that.

24 Q. Do you think there are days they just didn't
25 show up?

1 A. Yes, it's very possible.

2 Q. But you don't know that one way or another, do
3 you?

4 A. No.

5 Q. So if you thought they didn't show up, that
6 would be speculation or a guess as well; right?

7 A. Correct. I guess so.

8 Q. Yeah. Would you turn to exhibit -- I'm sorry.
9 I don't have my -- my labeled number here in front of
10 me. Probably will take me a second.

11 SR-16 or if you prefer it is BW-13X. This
12 should be photographs. PCA's response to BDI Data
13 Request No. 12. There's a version with time and date
14 labels on them and this would be file "130.jpeg."

15 MS. BLANCAFLOR: What page?

16 MR. FASSBURG: Sorry, but I don't have the
17 page number. I might be able to find that.

18 The page-number version won't have the time
19 and date stamp.

20 MS. BLANCAFLOR: I don't know if we know
21 what you are referring to, then. Can you --

22 MR. FASSBURG: Sure. This is the re-filed
23 exhibit with that label that I provided. These are the
24 native images that have been provided a Bates label.

25 I'm sorry, not a Bates label, but a time and date stamp

1 based on the metadata.

2 MS. BLANCAFLOR: So these -- did you file
3 these with -- are they filed with the court?

4 MR. FASSBURG: With the Commission, yes,
5 indeed.

6 MS. BLANCAFLOR: I'm sorry. With the
7 Commission.

8 JUDGE HOWARD: I would -- I recognize that
9 we did allow Basin to file these in this format and that
10 is perfectly appropriate. But I would appreciate a page
11 number if you are able to -- able to cross-reference
12 them.

13 MR. FASSBURG: I will give that a try.

14 MS. BLANCAFLOR: Could he share his screen
15 maybe? I just want to make sure for a second so we can
16 see.

17 MR. FASSBURG: I'm happy to share the
18 screen, if that is permissible.

19 THE COURT: That is perfectly fine by me.

20 MR. FASSBURG: Okay. Can you see that now?

21 THE WITNESS: No.

22 MR. FASSBURG: What about now?

23 THE WITNESS: Okay.

24 MS. BLANCAFLOR: Yes.

25 MR. FASSBURG: This is going to be the same

1 photograph as the one in Exhibit SR-8, page 15.

2 MS. BLANCAFLOR: I don't know if it is or
3 not, actually.

4 MR. FASSBURG: I'm asking the witness, not
5 Ms. Blancaflor.

6 MS. BLANCAFLOR: Sorry.

7 THE WITNESS: We're trying to pull it up.

8 MS. BLANCAFLOR: We're trying to pull it up.

9 All right. So let us pull up the other
10 exhibit.

11 THE WITNESS: I think we have the same one.
12 I think we're ready.

13 BY MR. FASSBURG:

14 Q. And does the cross-exhibit in -- in the native
15 image appear to be the same photograph that was in
16 Exhibit SR-8, page 15.

17 A. Let's go back to the other one for a second.
18 Yes, they look the same.

19 Q. And what time, based on the metadata that is
20 printed on the front page -- or on the front of the page
21 there, was this photograph taken?

22 A. On the one on your screen?

23 Q. Yes.

24 A. Let me go look at it.

25 MS. BLANCAFLOR: He has to go look at it,

1 Brian. I can't see it -- what does it say?

2 THE WITNESS: 5/21. Yes, it says May 21.

3 BY MR. FASSBURG:

4 Q. And what time?

5 A. It says -- it says 5:59 a.m.

6 Q. Now, as far as you know, these same containers
7 could have been collected by Basin Disposal that day;
8 correct?

9 A. They could have been, correct.

10 Q. And you don't know what Basin's records show as
11 to how many containers were collected from PCA that day,
12 do you?

13 A. I don't have those records in front of me, no.

14 Q. Would it surprise you if they would show that
15 they collected ten containers from PCA that day?

16 A. Yes.

17 Q. It would surprise you?

18 A. Yes.

19 Q. So if Andy Foxx were prepared to testify and
20 provide additional records in response to PCA's
21 testimony, which it wasn't afforded an opportunity to
22 do, you would be shocked, but Andy Foxx might just
23 testify they collected ten containers that day?

24 A. Yeah, that would be possible.

25 MS. BLANCAFLOR: Objection. Your Honor, it

1 calls for speculation. That's evidence not in the
2 record.

3 MR. FASSBURG: I'm sure Andy Foxx would be
4 happy to provide testimony on this subject.

5 JUDGE HOWARD: I'll allow the question.

6 MR. FASSBURG: I'll move on.

7 BY MR. FASSBURG:

8 Q. Mr. Wilhelm, have you heard some testimony
9 earlier from Mr. Rachford that after the February 2021
10 meeting it was PCA's expectation that Basin was going to
11 provide some sort of proposal and written estimate for
12 an alternative service; is that also your understanding?

13 A. Yeah. Getting the parties together at that
14 meeting, I was pretty excited about the different
15 opportunities that we had. And after looking at the
16 different possibilities, I think we were all looking
17 forward -- looking forward to coming up with something
18 that would work better for everybody.

19 Q. You would agree, though, that at that moment the
20 decision was made by PCA to move forward with using drop
21 boxes to collect OCC rejects from PCA; correct?

22 A. We didn't have any other options.

23 Q. So that's a yes?

24 A. Yeah, we didn't have any other options.

25 Q. Now, you didn't have any other options because

1 there wasn't enough time to put any other plan in place
2 for one; correct?

3 A. Not necessarily. I mean, I -- I think -- I was
4 surprised to see 20-yard dumpsters. I would have
5 preferred 40-yard dumpsters. You know, half as many,
6 take up half as much room. But that wasn't an option.

7 Q. Mr. Wilhelm, you would agree with me that it was
8 PCA who ordered the 20-yard dumpsters from BDI not that
9 DBI selected them for PCA; correct?

10 A. That was the option given to us so we had to go
11 with that, and so that's what we submitted the PO for.

12 Q. I'd like you to take a look at Exhibit CD-02 on
13 page 24.

14 A. I will pull it up here.

15 Yep, I see it.

16 Q. Halfway down the page, there's an email from
17 Skyler Rachford to Kris May. It says:

18 "Kris, can we get another delivery
19 set up for dumpsters at the OCC plant?
20 I would like to have 17 dumpsters
21 on-site before plant start-up on
22 March 1st. We currently have seven that
23 have been delivered. So we will need
24 ten more delivered to be allocated for
25 process rejects. If you do not have any

1 20-yard dumpsters available, 30-yard
2 will be acceptable."

3 Did I read that correctly?

4 A. You did.

5 Q. So you would agree that Skyler asked for 20-yard
6 dumpsters; correct?

7 A. Yeah, that was the only option presented to us.

8 Q. Now, did Mr. Rachford ask Ms. May for any kind
9 of other proposals or alternatives in his email?

10 MS. BLANCAFLOR: Objection, Your Honor.
11 Calls for speculation.

12 If Mr. Fassburg wanted to ask this question,
13 he could have asked it from Mr. Rachford but not
14 Mr. Wilhelm.

15 MR. FASSBURG: It's not a request for
16 speculation. The email speaks for itself.

17 JUDGE HOWARD: I will allow the question.

18 THE WITNESS: What was the question?

19 JUDGE HOWARD: Mr. Fassburg, you may also
20 want to stop sharing your screen.

21 MR. FASSBURG: Yes. Thank you. I had
22 forgotten about that.

23 BY MR. FASSBURG:

24 Q. Mr. Wilhelm, in this email, did Mr. Rachford ask
25 Kris May for a written proposal for alternatives?

1 A. No, he did not.

2 Q. Can you please turn to -- and it is the same
3 exhibit, page 30.

4 Are you there?

5 A. Not yet.

6 We are there now.

7 Q. Okay. About halfway down the page there's an
8 email from Skyler Rachford to Kris May dated March 1,
9 2021. Skyler Rachford writes:

10 "Kris, the plant start-up has been
11 pushed back to tomorrow or possibly
12 Wednesday due to a few roadblocks that
13 needed to be addressed. I appreciate
14 you checking in. I will keep you
15 updated on the plant start-up date and
16 our waste disposal needs. Have a great
17 day. Skyler."

18 Did I read that correctly?

19 A. You did.

20 Q. Did he say, hey, where's your written proposals
21 or what ideas do you have?

22 A. I don't think that this would have been the
23 right venue to request that.

24 I mean, from our meeting with that large group
25 in February, we made that request to Charlie. We would

1 have expected something a little bit more formal.

2 Q. And in -- I mean, there's quite a few exhibits
3 here back and forth between people at Basin Disposal and
4 PCA in Exhibit CD-02. I mean, this exhibit has hundreds
5 of pages.

6 Can you point to me a single page between --
7 representing an email sometime between February 19,
8 2021, and May 2021 where anyone discusses alternatives?

9 MS. BLANCAFLOR: Objection, Your Honor.

10 Does Mr. Fassburg want Mr. Wilhelm to look
11 through all 100 pages or would he like to rephrase?

12 MR. FASSBURG: You know, I will rephrase.

13 BY MR. FASSBURG:

14 Q. Mr. Wilhelm, have you reviewed Exhibit CD-02
15 before?

16 A. Yeah. I've looked through all of these.

17 Q. And you would agree with me that nowhere in that
18 date range is there any request by PCA for a written
19 proposal for alternatives?

20 A. I've looked through them. I don't have them
21 memorized. I would have to look. I don't know for
22 sure.

23 Q. If -- if you thought there was a written email
24 by which one of the parties was discussing a written
25 proposal, you would recall that, wouldn't you?

1 A. I probably would.

2 Q. Will you please turn to Exhibit CD-02 to
3 page 44?

4 A. All right. We're there.

5 Q. About halfway down the page we have an email
6 from Sam Holm to Charlie Dietrich and Kris May copying
7 Mr. Rachford on April 27, 2021. He states:

8 "Charlie and Kris, things are moving
9 faster here at the OCC plant and we need
10 your support to keep running smoothly.
11 Please read the comments below and
12 review the photo attached. We need to
13 have a solid plan from you around
14 dumpster management. Skyler is asking
15 to have more dumpsters emptied as a
16 result of increased production. Can you
17 provide service to empty/replace 7 to 8
18 dumpsters per day and ensure that we
19 have 10 empty dumpsters on site before
20 going into Sunday. Please review this
21 request and information today and then
22 let's plan on talking it through. Sam."

23 Did I read that correctly?

24 A. You did.

25 Q. Did Mr. Holm ask Mr. Dietrich "Where is this

1 written proposal that we've been waiting on?"

2 A. No, he did not.

3 Q. In fact, he asked for a plan around dumpster
4 management; correct?

5 A. Going into the weekend and going into our annual
6 outage, that's what it looks like.

7 Q. Yeah. I mean, his third paragraph states:

8 "We need to have a solid plan from
9 you around dumpster management period."

10 Correct?

11 A. Yes, we would have liked that.

12 Q. Yep. And what he asked for was a specific
13 number of dumpsters to be emptied and replaced per day;
14 is that right?

15 A. That's what it looks like, yes.

16 Q. Now, in May when Charlie Dietrich began to email
17 Mr. Thorne, starting on page 51 of this exhibit, up to
18 this point, PCA still has not emailed BDI asking for a
19 written proposal or for an alternative plan; correct?

20 A. Correct. We asked that during the February
21 meeting when we had Charlie and Steve come on-site to
22 meet with us.

23 Q. Sure. And PCA, up to this point, hasn't emailed
24 and has no written documentation of any request that a
25 written proposal be made by BDI for an alternative;

1 correct?

2 A. Correct.

3 Q. And in May, Mr. Dietrich is emailing, beginning
4 first with Mr. Thorne, offering to meet and discuss what
5 works and does not work, because BDI would like to
6 ensure things are working smoothly and is willing to do
7 whatever it takes to help PCA for years to come;

8 correct?

9 A. Yes, that's what this looks like.

10 Q. Now, you were copied on Mr. Dietrich's
11 June 10th, 2021, email on page 53; correct?

12 A. Let me pull it up here for a second.

13 Yes, I am.

14 Q. And you did not respond to Mr. Dietrich;
15 correct?

16 A. No, I did not.

17 Q. And as far as you were aware, you were not
18 copied on any response from Mr. Holm or Mr. Thorne in
19 response to that email; correct?

20 A. Yeah. Sam no longer worked at the company, and
21 Kurt and I were going -- were making some transitions
22 into our new roles so we were probably really busy at
23 the time.

24 Q. So you were, though, aware that Mr. Dietrich was
25 reaching out and offering to work with you to find out

1 what was working and what was not and to improve the
2 service in whatever way PCA needed; correct?

3 A. Yeah. But I think that we -- we had already
4 communicated with him through phone calls of what wasn't
5 working that we needed more -- we needed additional
6 drivers so we could clear out the backlog of OCC rejects
7 on the site.

8 Q. Do you disagree, then, with Mr. Rachford that
9 additional drivers were not going to help the problem?

10 A. No, they would have helped the problem.

11 Q. So do you disagree with Mr. Rachford?

12 A. On -- about what?

13 Q. You've known Mr. Rachford has testified that
14 additional drivers would not have solved the problem;
15 correct?

16 A. Well, I think he testified that BDI said they
17 would get additional drivers. We don't -- we never saw
18 an increase in driver frequency here on the mill site.
19 If we did, we would have seen a decrease in the rejects
20 on the mill site.

21 Q. And that's unless the containers can't be hauled
22 because they are full of wet OCC rejects; right?

23 A. Well, with the 17 containers we had here, I
24 don't think there was ever a point when all of them were
25 full of wet OCC rejects.

1 Q. My question is a little different.

2 They can't be hauled faster if they are wet;
3 correct?

4 A. I guess you need to be more specific. I
5 don't understand. I don't want to --

6 Q. If they are so wet that they are leaking from
7 the container, you can't haul them faster; correct?

8 A. If they were all wet where they were all leaking
9 from all the containers, we could not haul any of them.

10 Q. Any container that is so wet it is leaking onto
11 the roadway can't be hauled; correct?

12 A. That is my understanding.

13 Q. All right. So it doesn't matter how many there
14 are, it can't be hauled faster if it is going to leak
15 onto the roadway; correct?

16 A. Yeah. We can't haul containers that are
17 dripping.

18 Q. Okay. So if you have half the containers that
19 are wet, you can only use half the containers for
20 hauling; correct?

21 A. Correct.

22 Q. And if you hire more drivers, it doesn't allow
23 you to haul the ones that are full of wet OCC rejects
24 any faster; correct?

25 A. It depends on how fast we refill the empty ones.

1 Q. Now, you would agree with me that if the wet OCC
2 rejects were removed from a drop box onto the ground and
3 that material dewatered, it could have been put back
4 into a drop box and then potentially hauled to a
5 landfill without -- or transfer station without leaking
6 onto the roadway; correct?

7 A. If they were dry enough to haul, we could
8 then -- then BDI would probably be able to haul them if
9 they had the drivers.

10 Q. PCA never modulated its practices in loading BDI
11 drop boxes so that it only loaded materials from the
12 pile into the drop box; correct?

13 A. Can you restate that question? I don't want
14 to misspeak to it.

15 Q. PCA loaded materials directly from the mill into
16 drop boxes; correct?

17 A. Correct.

18 Q. And instead of bunkering them or allowing them
19 to dewater on the ground, it continued that process;
20 correct?

21 A. The process of loading from the mill into the
22 dumpsters?

23 Q. Yes.

24 A. Yeah, we continued that process.

25 Q. If PCA has experience with handling OCC rejects

1 in a way that allows them to be loaded dry, why were
2 there so many problems with moisture in PCA's OCC
3 rejects?

4 A. So early on, I think we had a lot of moisture
5 issues due to upsets trying to learn how to run the
6 process. But we quickly learned after working with BDI
7 that BDI could not haul wet rejects.

8 So it was in our best interest and BDI's best
9 interest to only put dry material into the dumpsters
10 that could be hauled. So -- so our operators that
11 loaded these, they didn't want dumpsters to sit full for
12 a long time. So we modified how we did things and we
13 got better at putting the dry material into the
14 dumpsters and -- so BDI could haul them.

15 Q. So let me ask you this. If -- if these
16 materials are dry enough that there isn't a problem with
17 moisture, what makes OCC rejects different from any
18 other solid waste?

19 A. They need -- at times when they are wet, they
20 need to be mixed properly so that we can haul them.

21 Q. So the issue is that when they come out of the
22 mill they are too wet, but as long as they are
23 sufficiently dried, they can be hauled?

24 A. Can you state that question again?

25 Q. Let me back up.

1 The process of mixing has what purpose?

2 A. To make sure that we're not hauling wet rejects
3 down the road.

4 Q. And the process is you are taking the rejects
5 that are too wet and mixing them with rejects that are
6 not too wet; correct?

7 A. Correct. Yeah, the processing of mixing them.

8 Q. By doing that, you're reducing the overall water
9 content of the load; correct?

10 A. Yeah. The average moisture content goes down
11 when you mix the dry rejects with the wet rejects.

12 Q. And that's something PCA was doing?

13 A. Correct.

14 Q. And, in fact, you could have used other
15 materials had you wanted to, like, say, sawdust or wood
16 chips to reduce the water content as well; correct?

17 A. Yeah, those materials are very expensive,
18 though. We wouldn't do that.

19 Q. You have them available but you wouldn't do it
20 for a cost-efficiency perspective?

21 A. Absolutely not.

22 Q. All right. And the mill has a lot of sawdust
23 and wood chips; correct?

24 A. Yeah. Those were probably -- actually, those
25 are the most expensive costs to the mill are the raw

1 materials for making paper.

2 Q. So from a cost perspective, what -- what works
3 best for PCA is to take the materials that are too wet
4 to mix them with the dry materials and then load them
5 into a drop box?

6 A. Correct.

7 Q. And just to be clear, the reason why PCA no
8 longer wants to do that is because it can pay someone
9 else to but, otherwise, it could do that; correct?

10 A. In theory, yes.

11 Q. Okay. Now, with respect to the material that's
12 been dried by -- or the average moisture content has
13 been reduced by this mixing process, there's nothing
14 special about that material, is there?

15 A. What do you mean by "special"?

16 Q. I mean, it could be hauled like any other
17 municipal solid waste; correct?

18 A. I mean, that's what we were doing. Right?

19 Q. So with respect to the -- the -- the material
20 that is placed dry in a drop box, that does not require
21 a specialized service for transportation, does it?

22 A. Yeah, the only thing that makes it unique is the
23 quantity that we are producing continuously.

24 Q. Sure. Now, if -- if you had enough drop boxes
25 for the volume that you're generating and it's loaded

1 dry, the only difference between that and using a truck
2 and trailer combination to haul to the landfill is
3 price; correct?

4 A. No. You know, we have enough dumpsters here; we
5 didn't have enough drivers. So the drivers are what
6 really got in the way of us being able to get rid of the
7 material.

8 Q. Are you claiming that by May, BDI had not hired
9 on and trained additional drivers to haul additional
10 materials?

11 A. If we would have seen a decrease in the amount
12 of OCC rejects out at the OCC plant, then I would agree
13 with you.

14 But since we didn't see a decrease in the
15 material, I would say, no, I don't think we got
16 additional loads and additional drivers.

17 Q. You're familiar with an email chain between you
18 and folks at Jammie's in which you were planning the
19 trial run for Jammie's loading; correct?

20 A. Yes.

21 Q. And in those emails -- we can find them if you
22 don't recall them -- I believe it was you, you can
23 correct me if I'm wrong, who pointed out that there were
24 actually not that many materials on the ground and you
25 needed to build them back up in order to provide an

1 opportunity for that trial; correct?

2 MS. BLANCAFLOR: Mr. Fassburg, can you
3 please tell us what email you're referring to so that we
4 can look it up and we can understand what exactly you're
5 referencing, please?

6 BY MR. FASSBURG:

7 Q. Mr. Wilhelm, do you recall that specific email?

8 A. I do.

9 Q. And do you recall what time frame that email was
10 sent?

11 MS. BLANCAFLOR: Can we please have the
12 exhibit, first, before we go further?

13 BY MR. FASSBURG:

14 Q. Why don't you turn to Exhibit CD-09?

15 JUDGE HOWARD: The page?

16 MS. BLANCAFLOR: What page. Thank you.

17 MR. FASSBURG: I'm sorry, I may have
18 misspoken again. CD-09, page 19.

19 THE WITNESS: Yeah, we're there now.

20 BY MR. FASSBURG:

21 Q. Okay. Now, halfway down the page, maybe
22 two-thirds, there is an email from you on June 17, 2021,
23 to Kasey Markland, Skyler Rachford, Kurt Thorne, Paul
24 Kuva, and Jammie Scott, as well as David Tobin where you
25 write:

1 "Kasey/Skyler, here is the purposed
2 trial" -- I think you probably meant
3 "proposed trial" -- "with Jammie's for
4 reject hauling. The purpose of this
5 trial is to determine what the load time
6 will look like, dump time at the
7 landfill, and turnaround times to
8 solidify our best path forward."

9 Did I read that correctly?

10 A. You did.

11 Q. And your email goes on to the next page.

12 But on the top of this page, Kasey Markland
13 responds on June 17, 2021.

14 "Skyler and I are thinking of the
15 28th will be the best time for this.
16 BDI actually did a decent job keeping up
17 this last week so we would have to build
18 a pile to do this."

19 Did I read that correctly?

20 A. You did.

21 Q. Are you suggesting in your earlier testimony
22 that BDI never brought down the pile?

23 A. I said it did a decent job of keeping up. It
24 doesn't say that they brought it down.

25 Q. But a pile would have to be built up to run a

1 trial with Jammie's in that time frame; correct?

2 A. Correct. And I don't know if at this time we
3 already had Jammie's helping reduce the pile size.

4 Q. But if you're basing your conclusions about
5 whether BDI was providing additional -- or adequate
6 resources to haul this stream from PCA, we would have to
7 acknowledge that at least by June 17th, there's an email
8 suggesting they were keeping up; correct?

9 A. So, yeah. Out of the four months that we'd been
10 operating, there's one email that says they kept up for
11 one week of those four months.

12 Q. And in this same time frame, how many emails are
13 there that say they were not?

14 A. I think a lot of our communications with BDI was
15 done over the phone. That was the best way to get a
16 response from them.

17 Q. So if we're just measuring this on how many
18 emails there were, like you were a moment ago, the only
19 one is on April 26th from Skyler Rachford to Sam Holm;
20 correct?

21 A. I would have to look through them all.

22 Q. You don't remember there being any other written
23 complaints about BDI not keeping up between the time it
24 started in -- March 3rd and this time frame in June, do
25 you?

1 A. No, I -- I knew they weren't keeping up. I
2 don't need an email to know that.

3 Q. Yeah, no. You think that this email being the
4 only one represents they weren't keeping up?

5 I'm just making sure we're speaking about this
6 fairly.

7 There's only one email to BDI complaining about
8 whether it's keeping up and that was on April 26th;
9 correct? Or thereabouts.

10 A. Okay.

11 JUDGE HOWARD: Mr. Wilhelm, I'll just
12 interject here. If -- our rules allow the witness to --
13 to answer questions "subject to check."

14 So if you aren't certain about something
15 like this, you can say "subject to check," and then
16 within five business days, I believe it is, if -- if you
17 need to correct your answer, your -- your lawyer can
18 help you file something in the docket correcting your
19 answer.

20 So I just wanted to say that. Because we're
21 talking here about specific documents and things like
22 that.

23 THE WITNESS: Okay. Thank you.

24 Yeah, it's hard to remember what's in all
25 these emails over the course of four or five months, and

1 I don't know exactly how to answer those questions.

2 BY MR. FASSBURG:

3 Q. Do you recall any emails from Basin Disposal to
4 PCA talking about the need for additional or more
5 drivers or more dumpster collections other than the one
6 that was sent on, I believe, it was April 26th or 27th
7 of 2021 that we discussed a moment ago?

8 A. I think we would have to check. So subject to
9 check.

10 Q. So my question is do you recall?

11 A. Can you say the question, again?

12 Q. Do you recall there being such an email, other
13 than the one that we talked about a minute ago on
14 April 26th or 27th of 2021?

15 A. That says what?

16 Q. That is an email from -- anyone at PCA to BDI
17 asking for it to provide more drivers or more
18 collections?

19 A. Yeah, we'll have to look. Subject to check. I
20 don't know, we would have to look at that. But nothing
21 I recall.

22 Q. Going back to that email, I think that -- let's
23 talk about that email a moment longer.

24 A. Okay.

25 Q. It's Exhibit CD-02. Let's go to page 45.

1 Just to be clear, Mr. Rachford's email
2 internally at PCA that was forwarded to BDI, only talks
3 about dumpster collections and disposal, not alternative
4 services; right?

5 A. In his email?

6 Q. Yes.

7 A. Give me a second to read it. Hold on.

8 All right. I read it.

9 What was the question?

10 Q. This email only talks about additional dumpster
11 collections and not alternative services; correct?

12 A. Correct. It was Skyler, emailed myself, Mitch
13 Lockhart, and Sam Holm, so me and two guys in
14 purchasing, copy Kurt Thorne and Kasey Markland on us
15 needing to get more dumpsters and to get dumpsters
16 hauled is what I read.

17 Q. Okay. Now, on page 47 of the same exhibit, Kurt
18 Thorne emails Andy Foxx, Charlie Dietrich, copying
19 Skyler Rachford and Sam Holm on April 28th, 2021, and
20 writes:

21 "Andy, thanks for the email.
22 Understand we are still working out the
23 kinks as well. Sounds like you are well
24 on your way to be able to handle the
25 added volume. Good to hear. Kurt."

1 Did I read that correctly?

2 A. Yes.

3 Q. Now, just to be clear, in these emails, there is
4 nothing from PCA saying that there is an imminent fire
5 hazard that needs to be mitigated by BDI; correct?

6 A. Correct.

7 Q. And there's nothing in here that says our
8 drivers are being put in unsafe conditions because they
9 have to operate loaders around piles of OCC rejects in
10 our yard; correct?

11 A. Yeah, I don't see that in this email.

12 Q. And there's nothing in here that would suggest
13 there was an alarming danger or anything of that nature;
14 correct?

15 A. Not in this email, no.

16 Q. And if -- if Kurt Thorne or Sam Holm who were
17 emailing Charlie and Andy had thought there was a major
18 risk -- a major hazard that needed to be resolved right
19 away, don't you think they would have said something?

20 MS. BLANCAFLOR: Objection, Your Honor.
21 Calls for speculation.

22 Mr. Wilhelm has no idea what Mr. Thorne or
23 Mr. Holm would have done in this particular instance.

24 JUDGE HOWARD: I will allow the question.

25 THE WITNESS: Internally at the time, at the

1 end of April, going into May, we had had discussions
2 knowing that we were going to be going into our annual
3 outage at the time. So there was going to be a full
4 week of us not producing any OCC rejects. And so we
5 thought this was going to be a good opportunity for us
6 to catch up and zero out the pile, haul the materials
7 out, and start fresh.

8 So internally that's where we were --

9 MR. FASSBURG: Objection. Nonresponsive.

10 THE WITNESS: Internally those were the
11 discussions we were having at this time when the email
12 was sent out.

13 MR. FASSBURG: Objection. Nonresponsive.
14 Move to strike his response.

15 BY MR. FASSBURG:

16 Q. My question was don't you think that if these
17 hazards were great that somebody would have put
18 something into writing to Basin Disposal when they were
19 complaining about the piles on the ground?

20 MS. BLANCAFLOR: Your Honor --

21 JUDGE HOWARD: And I'm going to interject
22 and -- I'm going to grant that objection, then move to
23 strike. So -- so, Mr. Wilhelm, if you could focus -- I
24 know I just interrupted Mr. Fassburg again, but if you
25 could focus on the question he posed to you.

1 You may need to repeat it.

2 BY MR. FASSBURG:

3 Q. Mr. Wilhelm, my question is a little bit more
4 specific and different than your response.

5 I am asking you, in these emails where Kurt
6 Thorne and Sam Holm are communicating with Basin
7 Disposal about what they would like to see, if there
8 were truly hazards associated with a fire hazard or two
9 PCA's employees, don't you think they would have raised
10 them in the same email where they talk about the piles
11 on the ground?

12 A. No.

13 Q. I'm going to move on.

14 In your pre-filed testimony, you state -- let me
15 find the right page. On page 6 you testify regarding
16 several ideas for handling OCC rejects at PCA's plant.
17 First one is loading the OCC rejects in the back of the
18 building directly into trucks.

19 Did I read that correctly?

20 A. Yes.

21 Q. Now, that idea involved piling the OCC rejects
22 into a warehouse; correct?

23 A. It could have. We have loading docks where we
24 were having our -- kind of our meeting and this
25 discussion where we could push materials directly into a

1 trailer.

2 Q. From the inside of a warehouse?

3 A. The inside of the OCC building, yes.

4 Q. And if there was a great fire hazard involved
5 with OCC rejects being piled on the ground, wouldn't it
6 be an even greater risk to have that pile be inside your
7 building?

8 A. Yeah. It was just a brainstorming where we
9 talked about a lot of different ideas.

10 Q. And so the ideas that were thrown out there
11 weren't necessarily ones you thought were going to work?

12 A. I -- I didn't think of the fire risk at that
13 time. There was a lot of ideas that we thought about
14 that weren't fully thought through.

15 Q. Whose idea was it in your recollection to build
16 a bunker in the back of the building to store the OCC
17 rejects?

18 A. I think it was just a collaboration of the whole
19 group. I don't know who said it first, but we all
20 discussed it.

21 Q. And why didn't you internally explore that idea
22 further?

23 A. Because a bunker doesn't haul the rejects. The
24 bunker doesn't necessarily solve the problem.

25 Q. Doesn't a bunker solve a problem of having

1 nowhere to put OCC rejects when the containers are full?

2 A. We didn't know the containers would get full and
3 wouldn't get hauled.

4 Q. You are using a bunker now; correct?

5 A. Correct.

6 Q. And you didn't build that bunker until February
7 of 2022; correct?

8 A. That's when it was finished, I believe.

9 Q. Yeah, and you didn't -- and Jammie's didn't
10 build a bunker or bring -- the Conex bunker on-site
11 until mid August of 2021; correct?

12 A. Correct.

13 Q. But this idea had been discussed since February
14 of 2021; right?

15 A. Yeah, we -- we discussed it.

16 Q. And you'll acknowledge that BDI continued to
17 bring this up in emails, brought it up with Skyler
18 Rachford in July of 2021 before the Conex bunker was in
19 place; correct?

20 A. What email are you referring to?

21 Q. We'll go back to Exhibit CD-02, page 56.

22 A. Okay. I see it now.

23 Q. You'll acknowledge that in July, at the very
24 least -- the first time in writing, perhaps, but by
25 July 14, 2021, BDI is talking about using a bunker at

1 PCA; correct?

2 A. Yes.

3 Q. I think we've already covered this with
4 Mr. Rachford, but you didn't accept their proposal, did
5 you?

6 A. Well, we still didn't understand a lot of the
7 details around what was being proposed.

8 Q. Okay. Now, give me just a moment.

9 You testified on page 13 of your pre-filed
10 testimony frustrated -- and, I'm sorry, this is the
11 second sentence about halfway down the page.

12 "Frustrated, we scheduled an on-site
13 meeting in July 2021 to discuss
14 solutions as BDI's service was not
15 improving. The meeting was very
16 unproductive because BDI came to the
17 meeting with no new ideas or options for
18 handling the OCC rejects. BDI offered
19 to do what Jammie's was already doing
20 for us. Nothing more."

21 Did I read that correctly?

22 A. Yes, you did.

23 Q. Well, the email on July 14, 2021, shows that BDI
24 was proposing new ideas; correct?

25 A. No, not necessarily. I mean, Jammie's already

1 had the idea to use a bunker and a loader in the
2 trailer, so BDI came with the exact same -- same idea.
3 Something we were already doing.

4 Q. So your testimony right now is that Jammie's was
5 already using a bunker on-site at PCA on June 14th,
6 2021?

7 A. No, the bunker wasn't built until August, like
8 you mentioned.

9 Q. Right. So when BDI came on July 14th or spoke
10 with you on July 14th and met with you, the idea of
11 using a bunker was not already being used by Jammie's,
12 was it?

13 A. We were already piling material on the ground
14 at -- almost as a bunker, there just wasn't walls there.
15 But it was a very similar idea. I mean, that's
16 basically what we were doing.

17 Q. And so your -- your point here about they came
18 with no new ideas means you are discounting their
19 proposal to use a bunker and a tractor-trailer because
20 you already had material on the ground?

21 A. That's exactly what Jammie's was already doing,
22 so that is not a new idea.

23 Q. So to be clear, Jammie's was already using a
24 bunker is your testimony?

25 A. No, they were putting material on the ground

1 and they brought in the bunker in August. That was not
2 BDI's idea.

3 Q. And your complaint about leaving the material on
4 the ground instead of putting it inside a bunker is the
5 potential violation of your clean air permit and the
6 potential fire hazard; correct?

7 A. At that time, we also had issues pushing the
8 material and loading it into the bucket of the loader
9 while we were loading because we didn't want to push up
10 against the building and cause damage to the building.
11 That's one of the main reasons we built the bunkers
12 also.

13 Q. So use of a bunker is not exactly the same as
14 using a pile on the ground, is it?

15 A. It's slightly different.

16 Q. Right. And so BDI did not come to you only with
17 the same idea Jammie's was already using if it's
18 proposing using a bunker; correct?

19 A. Say that again?

20 Q. I want to make sure we're clear on this.

21 You agree there's a benefit to using a bunker;
22 correct?

23 A. Yeah, that's why we built one.

24 Q. Yeah. And Jammie's wasn't using a bunker on
25 June 14, 2021; right?

1 A. No, but we had things in motion to build one.

2 Q. And you are saying BDI knew about that and stole
3 their idea?

4 A. I think BDI saw us piling materials on the
5 ground and said, hey, it'd look good if that was in a
6 bunker.

7 Q. And this wasn't the same idea as was previously
8 discussed in February, apparently?

9 A. In February we discussed having a bunker outside
10 the back room by where the loading docks and loading
11 trucks were, to possibly put material out there so we
12 could push right off that, basically, storage room area
13 into the bunker, but then we also talked about bunkers
14 out by the Sebright. I mean, there was lots of ideas
15 that we discussed.

16 Q. Does it matter where the bunker is located other
17 than in terms of the loading logistics?

18 A. Does it matter where the bunker is located?
19 Yes.

20 Q. In what way would it make it different if it
21 were in the back of the building as opposed to where it
22 is?

23 A. You want to keep it close to where the Sebright
24 press discharge is.

25 Q. Okay. So the point there is just that you can

1 transport the material a shorter distance?

2 A. Correct. That material.

3 Now, if we would have put the bunker in the back
4 of the building, it would have been easier for us to put
5 material from the sedimentator and the junk trap and the
6 ragger tail into that location, because that location
7 would have been closer.

8 Q. Back -- back to my question a moment ago. I
9 want to make sure I understand your testimony. You're
10 claiming that BDI didn't come to you with new proposals
11 in July because in August Jammie's started doing
12 something that was already in motion?

13 A. Say that again? Sorry. I got lost there.

14 Q. I just want to make sure I understand your
15 testimony.

16 You claim Basin didn't come to you with new
17 ideas as to how to handle your OCC rejects because
18 Jammie's, at a later date, started doing the same thing
19 Basin was proposing?

20 A. No.

21 Q. You would agree with me, in fact, Basin came
22 with you in July with the idea of using a bunker and a
23 tractor-trailer; correct?

24 A. Correct.

25 Q. All right. Could you turn to page 16 of your

1 pre-filed testimony?

2 A. I'm there.

3 Q. I know you have corrected your testimony to
4 August, so I'll read it as if it read "August."

5 You state on page 16 at the August meeting BDI
6 came to PCA with a proposal doing the same thing
7 Jammie's was already doing. This was a common pattern
8 for BDI.

9 So again, here, will you acknowledge that this
10 proposal that it provided in August was for the same
11 thing it discussed with you in July before Jammie's was
12 doing it?

13 A. What do you mean "before Jammie's was doing it"?

14 Q. Before Jammie's used a bunker.

15 A. And we were just putting material on the ground?

16 Q. My question is different.

17 You say this was a common practice that BDI came
18 to you with a proposal to do the same thing PCA was
19 doing.

20 I'm asking you, in this place in your testimony,
21 will you also agree BDI made a proposal to use a bunker
22 before Jammie's used a bunker?

23 A. I mean, in a bunker we're putting the material
24 on the ground. What we were doing before was putting
25 material on the ground. It's pretty much the same

1 thing. It's just there's walls around the pile.

2 Q. So if it is the same thing, you don't need a
3 bunker?

4 A. The bunker helps us and makes it easier for us.
5 It makes it easier for everybody.

6 Q. Right. So Basin's proposal was not the same
7 thing Jammie's was already doing, was it?

8 A. Basically the same thing.

9 Q. If it is basically the same thing, you could get
10 rid of the bunker?

11 MR. STEELE: Your Honor, asked and answered.

12 I mean, how many times is Mr. Fassburg going
13 to ask the same question?

14 MR. FASSBURG: Your Honor, I'm just trying
15 to get a clear record here on his testimony.

16 JUDGE HOWARD: I'm going to allow the
17 question. You may need to repeat it.

18 BY MR. FASSBURG:

19 Q. Mr. Wilhelm, you keep testifying that using a
20 bunker is basically the same thing as using the ground
21 and I want to make sure I understand your testimony.

22 So when you claim that BDI's proposal in August
23 was just basically copying what Jammie's was already
24 doing and that it's a common practice of BDI to just
25 propose what someone else is already doing, in this case

1 Jammie's, is it your testimony that you're basing that
2 on the fact that Jammie's was loading off the ground?

3 A. Yeah. They both were going to the loader and
4 load it into a belt trailer to haul the material. I
5 compare those to being the same thing. I don't see the
6 bunker and the ground being very much different. The
7 bunker doesn't haul the material and that's kind of what
8 we were focused on.

9 Q. Now, you go on to state the pricing in the
10 proposal wasn't clear and it was uncertain whether BDI
11 even had the equipment to perform the work in the
12 proposal.

13 Did I read that correctly?

14 A. Correct.

15 Q. The pricing -- the pricing information in the
16 proposal was to apply its tariff from the UTC -- or
17 approved by the UTC to haul under its time charge and a
18 disposal fee; correct?

19 A. Do you have that referenced somewhere?

20 Q. Unfortunately, I don't think that written
21 proposal is in the record.

22 Is that your recollection?

23 A. You need to tell me. I don't know.

24 Q. Well, I'm not a witness.

25 Do you recall whether the written proposal in

1 August was very similar to the written proposal made in
2 November?

3 A. Can I see them?

4 Q. I don't have the August proposal in the record.
5 I'm asking your recollection.

6 A. Okay. Sorry, can you restate the question so I
7 can try to best answer it?

8 Q. Sure. I'm trying to establish what was in the
9 August proposal, because, unfortunately, it's not in the
10 record. I would be happy to try to supplement that but
11 it would be late.

12 The August written proposal was similar to the
13 one that BDI proposed in August; correct? I'm sorry,
14 August versus November are similar; correct?

15 A. I don't know.

16 Q. Okay. Do you recall what BDI proposed in
17 November?

18 A. I do.

19 Q. Do you recall that they proposed to apply their
20 Commission-approved tariffs time charge and disposal fee
21 to a haul using a tractor-trailer?

22 MS. BLANCAFLOR: Your Honor -- Mr. Fassburg,
23 can you please point us to where that proposal is in the
24 exhibits so we may refer to it, please?

25 MR. FASSBURG: Sure. It is Exhibit CD-02.

1 And let me find the page for the November.

2 THE WITNESS: We're pulling it up. Just a
3 minute.

4 MR. FASSBURG: I'm having trouble finding
5 it. I know the proposals were all very similar. I can
6 find the January one. Why don't you turn to page 97.

7 MS. BLANCAFLOR: I was going to say, I
8 don't -- let's go ahead.

9 The January proposal?

10 MR. FASSBURG: Yeah. Let's look at the
11 January one.

12 BY MR. FASSBURG:

13 Q. Do you have that on page 98 -- 97 through 1 --

14 A. Yes, I do.

15 Q. Okay. In this proposal, BDI proposed to use a
16 53-foot trailer, two to three hauls to the landfill and
17 pricing subject to its commission tariff that applies an
18 hour charge and a disposal fee, plus an hourly rate for
19 on-site personnel; is that correct?

20 A. Yeah, I see that.

21 Q. And do you recall that there are other proposals
22 for this service all applied the same tariff charges?

23 A. I don't know.

24 Q. Okay. When you say that their proposal in
25 August was confusing and you didn't understand how the

1 pricing worked, was that because you don't understand
2 how a time charge would apply to a long haul?

3 A. No. I think the main concern there was, is that
4 they were assuming that every trailer would be full to
5 the brim, maximum capacity for every load. And I mean,
6 it -- the proposal they gave us was a best-case
7 scenario. I don't think we would have gotten every load
8 completely full. I don't think it would have been as
9 optimized as they had a look in the proposal itself.

10 Q. You can finish your answer.

11 A. So it was just very difficult to even compare it
12 to what we were really doing, because it didn't look
13 like it was apples to apples.

14 Q. Sure. Well, you understand if -- if Basin is
15 required to follow its Commission tariff and its pricing
16 is based on a per hour charge and a tip fee, they can't
17 estimate for you in advance what those are going to cost
18 because there's variable components to that pricing;
19 correct?

20 MS. BLANCAFLOR: Objection, Your Honor.
21 This calls for information beyond expertise of the
22 witness. He is not an expert in tariffs or hauling fees
23 or in that line of business.

24 MR. FASSBURG: I think he's the witness on
25 that, not you, Ms. Blancaflor.

1 MS. BLANCAFLOR: I'm objecting to
2 your question, Mr. Fassburg. I am not testifying.

3 MR. FASSBURG: You're representing his
4 expertise and knowledge.

5 JUDGE HOWARD: In either event, please
6 direct your objections to me rather than each other.

7 I will allow the question because the
8 witness did make a claim about the clarity of the
9 pricing from BDI.

10 THE WITNESS: Can I get the question, again,
11 please?

12 MR. FASSBURG: Ms. Court Reporter, I hate to
13 do this, but would you mind reading it back for me?

14 (Question was read back.)

15 THE WITNESS: Yeah, I understand that BDI
16 charges based on all the fees that are set for them.

17 BY MR. FASSBURG:

18 Q. And you understand that because a trip might
19 take longer from one time to the next in each -- each
20 time it goes to the landfill, the weight of its
21 container will be different, it can't provide you a
22 precise charge. They can only charge you after it has
23 provided the service; correct?

24 A. Correct.

25 Q. And in fact, Jammie's charges you an hourly rate

1 and a disposal fee; correct?

2 A. I would need to look at the records and see how
3 they bill us.

4 Q. You don't know off the top of your head?

5 A. I do not. I think it's time and material and
6 something similar to that, yes.

7 Q. Okay. So subject to check, you would agree with
8 me that if Jammie's charges both an hourly fee and a
9 disposal rate, you would have a similar problem
10 determining the exact amount in advance; correct?

11 A. Yeah. But we have the data for what Jammie's
12 charged us so we know what that is.

13 Q. And when you say you have the data, you mean
14 because it has already provided service for some time
15 you now know how much it is going to charge you;
16 correct?

17 A. Correct.

18 Q. And you did not know that before you began using
19 Jammie's service to collect and transport your OCC
20 rejects for disposal; correct?

21 A. We got ballpark numbers of what it would be
22 before it started.

23 Q. Now, you testified:

24 "I have subsequently learned via
25 BDI's testimony they could not even

1 provide on-site OCC reject handling
2 service as stated in their proposal
3 because they had not yet applied for a
4 new tariff rate."

5 Did I read that correctly?

6 A. Where in the testimony is that?

7 Q. On page 16.

8 A. Correct.

9 Q. Are you familiar with BDI's tariff?

10 A. Vaguely.

11 Q. You do understand that the proposal that it made
12 to you in August applied its -- its then existing
13 tariff; correct?

14 A. I don't know.

15 Q. What about the proposal we were just talking
16 about in January?

17 A. I believe so, yes.

18 Q. And do you know whether Basin requested the
19 Commission adjust its tariff between your August meeting
20 and January?

21 A. It was my understanding that they had not.

22 Q. So if Basin believed in January that it could
23 provide the service under its existing tariff, do you
24 think there was something different that would have
25 prohibited it from doing so in August?

1 A. I believe they had the ability to do so in
2 August if we granted them that opportunity.

3 Q. All right. So in your written testimony here
4 where you say they couldn't have done it, that's --
5 that's inaccurate; correct?

6 A. That was my understanding from discussions with
7 Katherine McPherson from the UTC.

8 Q. So when you say "I have subsequently learned via
9 BDI's testimony," that statement is inaccurate if you
10 learned this from a discussion from Katherine McPherson?

11 A. I -- I may have read about it then as well.

12 Q. Where in BDI's testimony did they say they can't
13 provide a service via tractor-trailer due to the fact
14 they did not yet have a tariff item?

15 A. They never shared with us what those tariffs
16 were at the time, so we assumed they did not have them.

17 Q. Well, in January of 2022, the written proposal
18 includes a copy of their tariff, does it not?

19 A. Correct.

20 Q. All right. And you don't recall whether the
21 same exact pages were included in their August proposal,
22 do you?

23 A. I do not.

24 Q. But if they did, then there -- I'm sorry. I'll
25 rephrase that.

1 Bottom line is you don't know whether or not
2 Basin had any kind of limitation based on its tariff
3 that would have prohibited it from providing that
4 service in August of 2021; correct?

5 A. No, there's a lot of things about Basin's
6 business that I don't know or understand.

7 Q. You talk -- let's see. Beginning on page 19 of
8 your pre-filed testimony, you state:

9 "We first became aware of the WUTC
10 after Jammie started receiving letters
11 from BDI threatening Jammie's to stop
12 hauling the OCC rejects for PCA."

13 Did I read that correct?

14 A. Correct.

15 Q. Would you please turn to page 15 of your
16 testimony?

17 Here on page 14 you have imbedded in your
18 testimony an email from Charlie Dietrich to Paul Kuva on
19 August 24, 2021; correct?

20 A. Correct.

21 Q. And that email continues on to page 16.

22 Will you please turn to page 16?

23 The first paragraph there on page 16 states, in
24 the second sentence, "As discussed under the UTC tariff,
25 we are the only authorized hauler period"; correct?

1 A. Correct.

2 Q. And so it is inaccurate that you only first
3 became aware of the UTC after BDI issued a cease and
4 desist letter; correct?

5 A. Just because Charlie said -- mentioned the UTC
6 in that email, we didn't take that as being any sort of
7 official communication that that's who we needed to be
8 working with.

9 Q. So you would agree this is not the first time
10 Charlie Dietrich relayed to you that Basin Disposal was
11 the only solid waste collection company with authority
12 to provide service in Walla Walla County; correct?

13 A. I think that opens up a lot of questions. I
14 mean, that's why we're here.

15 Q. You didn't pursue those questions at the time,
16 did you?

17 A. At the time we didn't know who to talk to to
18 pursue those questions.

19 Q. And -- but -- but nonetheless, your testimony on
20 page 19 that you first became aware of the WUTC after
21 Jammie's started receiving letters from BDI, that is
22 simply inaccurate; isn't it?

23 A. Once we realized that they were the right people
24 to work with on this matter, we -- we openly worked with
25 them to try to resolve what we needed to do.

1 I mean, we needed that guidance. We're not an
2 expert on these topics. And so we looked to them for
3 guidance.

4 MR. FASSBURG: Objection. Nonresponsive.
5 Move to strike.

6 MS. BLANCAFLOR: Your Honor, I -- I mean,
7 Mr. Wilhelm is answering to the best of his ability
8 Mr. Fassburg's question.

9 MR. FASSBURG: He's attempting to explain
10 but he's not answering the question.

11 MS. BLANCAFLOR: He's attempting to explain
12 his answer to the question.

13 MR. FASSBURG: Well, he has to answer it
14 first to explain it.

15 JUDGE HOWARD: I will grant the objection
16 and -- and please focus on answering the question as
17 posed first and then your attorney will -- for PCA will
18 have an opportunity to redirect.

19 THE WITNESS: Will do, sir. Thank you.

20 BY MR. FASSBURG:

21 Q. So, Mr. Wilhelm, it is simply inaccurate that
22 you first became aware of the UTC after Jammie's
23 received letters from BDI; correct?

24 MS. BLANCAFLOR: Objection. That's
25 argumentative.

1 JUDGE HOWARD: I will allow it.

2 THE WITNESS: For myself, I didn't
3 understand UTC's role in this whole matter.

4 MR. FASSBURG: Same objection, Your Honor.
5 He hasn't answered my question.

6 JUDGE HOWARD: I will grant the objection.
7 And I would encourage the witness to focus on the
8 question as posed.

9 MS. BLANCAFLOR: Can you ask, again,
10 Mr. Fassburg?

11 MR. FASSBURG: I'm happy to.

12 BY MR. FASSBURG:

13 Q. Mr. Wilhelm, you'll agree with me based on the
14 fact that Charlie Dietrich had raised it with you
15 multiple times, including in an email that is in your
16 own testimony from August of 2021, you did not first
17 become aware of the UTC after Jammie's received letters
18 from BDI?

19 A. Yes.

20 Q. Now, you go on to discuss the tour that
21 Ms. McPherson went on of the mill. You state near the
22 end of page 19:

23 "For further confirmation, I reached
24 out to Katherine in February 2021. We
25 invited her to tour the OCC plant so she

1 could see the operations and have
2 firsthand knowledge of the situation and
3 services provided by Jammie's."

4 Did I read that; correct?

5 A. Yes.

6 Q. The reality is Ms. McPherson requested to come
7 to the facility, did she not?

8 A. I think she called me and then I called her.
9 But by the time we got ahold of each other, I -- we were
10 more than happy to have her come on-site and try to help
11 us out with this issue.

12 Q. Sure. And in the interest of full disclosure
13 and transparency, don't you think it's important to
14 point out that Ms. McPherson was investigating and this
15 wasn't some welcoming invitation that you made to her?

16 MS. BLANCAFLOR: Objection, Your Honor.
17 This calls for speculation as to what Ms. McPherson's
18 intent was when contact between the two parties were
19 made.

20 JUDGE HOWARD: I will grant the objection.
21 I think perhaps if there's going to be questions on
22 this, they could be a bit more precise.

23 BY MR. FASSBURG:

24 Q. Mr. Wilhelm, why did you not disclose to the
25 Commission in your written testimony that Ms. McPherson

1 is the one who contacted you requesting the site visit?

2 A. I didn't remember at the time. But I think -- I
3 remember calling her. And once I got ahold of her,
4 invited her on the mill site.

5 Q. But you will admit she's the one who initiated
6 the contact, not the other way around; correct?

7 A. That may have been the way it was done, correct.

8 MR. FASSBURG: Your Honor, if I may take a
9 brief break. I do have more questions. I just want to
10 make sure I get re-organized before I continue. I don't
11 think I have much more. But maybe ten minutes at the
12 most.

13 JUDGE HOWARD: Feel free.

14 MR. FASSBURG: Okay. I am ready again.

15 JUDGE HOWARD: Please go ahead.

16 BY MR. FASSBURG:

17 Q. Mr. Wilhelm, will you please turn to page 8 of
18 your written testimony?

19 A. Will do. Yes. I'm there.

20 Q. If you will look at the last sentence there on
21 page 8, you stated:

22 "BDI effectively took the same
23 approach with the OCC rejects as it does
24 with general trash. This turned out to be
25 a mistake."

1 Did I read that correctly?

2 A. Correct.

3 Q. Just to be clear, here you're talking about the
4 fact that BDI provided drop box service that was
5 requested of it by PCA; correct?

6 A. Well, it was the only option given to us. So
7 yeah, we -- we said, okay, that's what we will do. But
8 I mean, it was the only option.

9 Q. In reality, BDI was open to other possibilities
10 and came to you in May wanting to talk about it;
11 correct?

12 A. That's not the way I really remember it.

13 Q. Well, we talked about the May email to you that
14 you didn't respond to; correct?

15 A. Which one is that, again? Can we pull it up?

16 Q. Exhibit CD-02. I'll find the page for you
17 again. I believe it's around 44. That's probably the
18 wrong page. Let me find it.

19 Page 53.

20 A. Okay.

21 Q. Okay. So you'll excuse me, I'm --

22 A. You referred to a "May email" and this one is
23 January.

24 Q. Well, and so Mr. -- you understood Mr. Dietrich
25 had been emailing other people other than you at PCA in

1 May, here on pages 52, 51, and an email to you on
2 June 10th, an email to Mr. Rachford and Kasey Markland
3 on June 30th before he got a response; correct?

4 A. Yeah, I wasn't aware of all the different emails
5 he was sending other people.

6 Q. Yeah. I don't need to get too deep into that.

7 My point being here, you are saying they didn't
8 give you any other options. They did proactively reach
9 out offering to work with you on options; correct?

10 A. No.

11 Q. These emails in May and June were not them
12 reaching out proactively, offering to talk to you about
13 options?

14 A. We were -- we were wanting solutions a lot
15 sooner than this.

16 Q. Now, if you will turn to page 8 of your
17 testimony.

18 A. I'm there.

19 Q. You state, about halfway through the first
20 paragraph:

21 "PCA is not an expert on hauling
22 waste and was open to any idea that
23 would help solve the OCC reject problem
24 and more efficiently dispose of the OCC
25 rejects."

1 Did I read that correctly?

2 A. Correct.

3 Q. Now, Mr. Thorne has experience at other mills
4 that are not owned by PCA with respect to how they
5 dispose of their OCC rejects, doesn't he?

6 A. He does.

7 Q. And did he ever talk to you about any of those
8 alternatives?

9 A. Yeah.

10 Q. And did he suggest to you that there was some
11 reason why you guys shouldn't make a specific request to
12 Basin and just wait for them to make a proposal?

13 A. Say that last part again.

14 Q. Yeah. If Mr. Thorne has ideas -- alternatives
15 as to how this material could be handled, he never
16 suggested that you shouldn't make a request to use those
17 options, did he?

18 A. Well, he's familiar with what they did in these
19 other states. You know, he worked down south where
20 there's different laws and different ways to dispose of
21 materials.

22 I mean, if you have an on-site landfill that can
23 dispose of waste like this, a lot of mills do that. You
24 know, we can't do that in our landfill.

25 And there's different distances to different

1 landfills. And there's just different dynamics as far
2 as who has permits and authorization to do different
3 things.

4 So I guess that's why we were looking to BDI for
5 these solutions. Because even though Kurt's worked at
6 other OCC plants, he's not an expert on how to handle
7 waste.

8 Q. Mr. Thorne, though, didn't actually instruct you
9 not to explore those ideas, did he?

10 A. No.

11 Q. No.

12 And so did Mr. Thorne ever bring up with you the
13 idea of using a dewatering bunker back when you guys
14 were having to first start putting OCC rejects on the
15 ground?

16 A. Yeah, we always talked about a bunker. I mean,
17 we needed -- but we needed to have a concrete path
18 forward before we spend that amount of capital. I mean,
19 those aren't cheap and they don't just get put up
20 quickly.

21 Q. Sure. Now, if this was an idea you guys were
22 talking about, why didn't you go to Basin and ask for a
23 proposal for loading into a truck to use that bunker?

24 A. It was my understanding that we had to use the
25 20-yard dumpsters. I didn't know that Basin had the

1 ability to use a -- a larger truck.

2 Q. And you didn't ask, did you?

3 A. I mean, for our contractors, we rely on our
4 contractors to be experts in their fields and help us
5 with these solutions. That's why we hire contractors
6 rather than do it ourselves, is because the contractors
7 are supposed to be the experts.

8 MR. FASSBURG: I'm going to object as
9 nonresponsive and move to strike again.

10 BY MR. FASSBURG:

11 Q. My question was you didn't ask, did you?

12 A. We didn't know what to ask.

13 JUDGE HOWARD: I'm going to grant the
14 objection just for the sake of clarity.

15 THE WITNESS: Sorry.

16 MR. FASSBURG: Thank you.

17 BY MR. FASSBURG:

18 Q. For clarity, as we sit here today, you
19 understand that Basin Disposal had a tariff item that
20 would have allowed it to provide a tractor-trailer and
21 loader to transport this material directly to a
22 landfill; correct?

23 A. I guess so. I don't know. I don't know that
24 for sure. I guess based on the proposal that I saw from
25 January of this year, they had those numbers in that

1 proposal.

2 So at that point I would say they did. Did they
3 have them, you know, last year when we -- last May when
4 we were looking into this, I don't know.

5 Q. So if Basin didn't do anything to seek
6 permission to change its tariff from the Commission
7 during that time frame, wouldn't it be logical to
8 conclude that even back then it could have done it?

9 MS. BLANCAFLOR: Objection. It calls for
10 speculation.

11 MR. FASSBURG: It's a hypothetical, Your
12 Honor.

13 MS. BLANCAFLOR: And it is speculative.
14 Objection, Your Honor.

15 MR. FASSBURG: Well, Your Honor, you can
16 take public notice of the fact Basin did not request a
17 change to its tariff in that time frame.

18 JUDGE HOWARD: I mean, the Commission
19 will -- can -- I'm not sure if I necessarily want to get
20 into official notice of this. I will grant the
21 objection in terms of speculativeness around whether BDI
22 would have been changing its tariffs during that time.

23 MR. FASSBURG: I will rephrase anyway.

24 BY MR. FASSBURG:

25 Q. Mr. Wilhelm, you have no actual basis to dispute

1 that Basin could have provided a service under its
2 tariff for direct landfill tractor-trailer haul in May
3 or June or July of 2021; correct?

4 MS. BLANCAFLOR: Objection, Your Honor.
5 Calls for expertise beyond Mr. Wilhelm's experience.

6 He is not an expert hauler and doesn't
7 understand tariffs like BDI.

8 JUDGE HOWARD: I will deny the objection.
9 It was focused on his -- his familiarity and his level
10 of knowledge about it.

11 THE WITNESS: Question, again, Mr. Fassburg.
12 I'm sorry about that.

13 BY MR. FASSBURG:

14 Q. You don't have any basis to deny that Basin
15 could have provided that service under its tariff?

16 A. In theory, under the tariff, I think they could
17 have got it approved to haul. Whether they are capable
18 of providing the service to a level that we -- we need
19 and require, I don't know.

20 Q. My -- my question, I think, was a little
21 different, but I'll move on just a little.

22 Mr. Wilhelm, you have no knowledge or basis to
23 dispute that Basin could have easily obtained the
24 equipment that it needed to provide a long haul direct
25 to landfill tractor-trailer service and provide a loader

1 on-site to transport this material in May, June, or July
2 of 2021, do you?

3 MS. BLANCAFLOR: Objection. It calls for
4 speculation. There's no way Mr. Wilhelm knows what BDI
5 can and cannot do.

6 JUDGE HOWARD: I'm going to deny the
7 objection. I believe there were claims in his testimony
8 about what BDI could do and the question is about his
9 basis for any assertions.

10 THE WITNESS: It was my understanding that
11 they could not.

12 BY MR. FASSBURG:

13 Q. And your understanding that they could not is
14 based on the fact that in a data request response, BDI
15 admitted that it hadn't yet obtained the equipment; is
16 that correct?

17 A. You know, we were also told that everything had
18 to be under this ten-ton weight limit and that it had to
19 go to the transfer station.

20 MR. FASSBURG: Objection. Nonresponsive.
21 Move to strike.

22 JUDGE HOWARD: Granted.

23 BY MR. FASSBURG:

24 Q. Mr. Wilhelm, your basis of denying BDI could
25 provide the service is based on a data request response

1 from BDI that simply stated they hadn't yet obtained
2 some of the equipment; correct?

3 A. Yes.

4 Q. And as we sit here today, you actually don't
5 have a basis to dispute that Basin could easily have
6 obtained that equipment; correct?

7 A. I don't know.

8 Q. Thank you.

9 As we sit here today, you would agree that Basin
10 was always willing to provide alternatives to collect
11 the solid waste from PCA in a way that would have
12 allowed it to be efficiently disposed of; correct?

13 A. Sorry. Say that again.

14 Q. Let me rephrase it.

15 You don't have any basis to dispute that Basin
16 was always willing to provide service in a way that
17 would have been efficient; correct?

18 A. I mean, with the systems that we set up, they
19 weren't able -- you know, that they provided to us, that
20 they proposed to us, that they gave us, it wasn't a
21 reliable setup. It wasn't flexible enough to meet our
22 needs, so I don't know.

23 Q. Mr. Wilhelm, did Basin ever refuse to provide
24 service that was requested of it from PCA?

25 A. It wasn't refused. But a lot of times it just

1 didn't happen.

2 Q. Did Basin tell you that they were unwilling to
3 provide alternative methods of service?

4 A. No. The service just would not take place.

5 Q. Did Basin ever tell you they were unwilling to
6 meet your needs?

7 A. No. Our needs just weren't met.

8 Q. And did BDI ever tell you that when Jammie's was
9 providing a different method of service that it was
10 going to quit hauling for you?

11 A. No. We --

12 Q. I'm sorry. Go ahead.

13 A. No, they still haul for us now. There's waste
14 streams from the OCC plant that BDI continues to
15 service.

16 Q. In fact, BDI has always expressed its
17 willingness to serve its customer, PCA; correct?

18 A. Correct.

19 Q. Now, the specific methods that are used by
20 Jammie's, has BDI ever said that it is unwilling to
21 provide the equipment and personnel necessary to provide
22 service via the same methods?

23 A. No.

24 Q. Is there anything so unique about these services
25 that Jammie's is providing to PCA that BDI or any other

1 licensed hauler could not provide them?

2 A. I don't know.

3 Q. And just to be clear, Jammie's is not using
4 equipment that BDI could not obtain, is it?

5 A. I don't know.

6 Q. And Jammie's is not using processees that are
7 unavailable to Basin, is it?

8 A. Probably not.

9 Q. And there's no special training that its
10 personnel have that Basin's personnel could not receive;
11 correct?

12 A. I don't know.

13 MR. FASSBURG: I think that's all my
14 questions. Thank you.

15 JUDGE HOWARD: All right. Thank you.

16 Do we have any redirect for Mr. Wilhelm
17 following this cross?

18 MS. BLANCAFLOR: Yes, Your Honor, we do.

19 May we take a short recess, maybe 10 or
20 15 minutes, where I can review my notes?

21 JUDGE HOWARD: Yes. Let's take a ten-minute
22 break, if that works for everyone.

23 And let's -- let's say 15-minute break.

24 Let's reconvene at 3:15.

25 MS. BLANCAFLOR: Thank you.

1 JUDGE HOWARD: We are off the record.

2 (A break was taken from

3 3:01 p.m. to 3:15 p.m.)

4 JUDGE HOWARD: Let's be back on the record.

5 We're returning after a short mid-afternoon

6 break and we left off with the redirect of Mr. Wilhelm.

7 You may proceed.

8 MS. BLANCAFLOR: Thank you, Your Honor.

9 Just a couple questions on redirect.

10 REDIRECT EXAMINATION

11 BY MS. BLANCAFLOR:

12 Q. Mr. Wilhelm, Mr. Fassburg asked you questions
13 regarding complaints PCA had made to BDI.

14 Can you explain, please, the nature of
15 complaints that were made by PCA?

16 A. Yeah. So Skyler Rachford and Kasey Markland out
17 at the OCC plant, they made complaints weekly when they
18 were communicating with BDI that we needed more drivers,
19 needed more hauls because we weren't keeping up.

20 So I know that there's only one formal written
21 complaint, but there was multiple phone conversations
22 weekly where we tried to address the -- the issues that
23 were compounding out there.

24 MR. FASSBURG: Objection. Mr. Wilhelm's
25 testimony is all hearsay based on what other people have

1 apparently discussed with BDI, not Mr. Wilhelm's own
2 discussions, as I think we also acknowledged in his
3 written testimony.

4 MS. BLANCAFLOR: Your Honor, both
5 Mr. Rachford and Ms. McFarland report directly to --

6 THE WITNESS: Markland.

7 MS. BLANCAFLOR: Markland, sorry. Markland
8 report directly to Mr. Wilhelm. So as their supervisor,
9 he would know their communications with BDI.

10 MR. FASSBURG: That's not been established
11 through Mr. Wilhelm.

12 JUDGE HOWARD: I am going to deny the
13 objection on hearsay grounds.

14 We do not strictly apply the rules of
15 evidence here. If you would like to establish those
16 points in your redirect, feel free.

17 BY MS. BLANCAFLOR:

18 Q. Mr. Wilhelm, does Mr. Rachford report directly
19 to you?

20 A. Yes, he does. At that time he did.

21 Q. Does Ms. Markland report directly to you?

22 A. Yes, she did.

23 Q. Did they give you updates on projects and status
24 of what's happening in the OCC plant?

25 A. Yes. Especially when there's issues.

1 Q. So as a part of their report to you, would they
2 communicate to you problems?

3 A. Yes.

4 Q. And can you share what sort of problems they
5 communicated to you?

6 A. So, for an example, when we were having issues
7 with the hauling of the OCC rejects, I would see the
8 increase in the amount of rejects out at the OCC plant,
9 I made sure that they were communicating with BDI to get
10 extra drivers and to try to get caught up on the nature
11 of our issue.

12 I told both Kasey and Skyler that we had to make
13 sure that the dumpsters were full and ready to haul at
14 all times so that BDI did not have an excuse to not haul
15 them.

16 So I didn't want my team to be complaining about
17 lack of drivers if the dumpsters weren't full. So I
18 made sure that they were full all the time so that we
19 could get the material moved off the mill site.

20 Q. Thank you.

21 Mr. Fassburg also had questioned you earlier
22 about PCA's request to BDI for alternative options for
23 disposal, specifically whether PCA asked in writing for
24 proposals from BDI.

25 Do you remember those questions?

1 A. I do.

2 Q. Can you describe to me the purpose and intent of
3 the meeting that occurred between PCA and BDI in
4 February?

5 A. Correct. So myself, you know, and Kurt Thorne,
6 the operations manager -- I was the paper production
7 manager at the time -- and our OCC team, we invited
8 Charlie and the BDI team out to the OCC plant to give
9 them a tour and try to find additional ideas for how to
10 handle the rejects. That was the whole purpose of the
11 meeting. I mean, had a lot of high profile people there
12 to try to find a solution.

13 So I think it was pretty clear of what the
14 intent of that meeting was. It wasn't to continue doing
15 what we were doing. There wouldn't have been any reason
16 for that. The meeting was to find other options.

17 So I think everybody walked away from that
18 meeting fully understanding what the purpose of it was.

19 When we never heard back from BDI on other
20 options, we assumed that they weren't capable of
21 performing any other functions. We assumed that what
22 they were doing is what they were capable of doing and
23 they weren't capable of doing -- hauling the OCC rejects
24 any differently. That's honestly just what we thought,
25 because we didn't have anything else to go off of.

1 Q. And once you ask a vendor or contractor to
2 provide ideas or options, is it a normal practice to
3 continue to ask them for the same thing you've already
4 asked them for?

5 MR. FASSBURG: Objection. Leading.

6 MS. BLANCAFLOR: Sorry. Can you --

7 BY MS. BLANCAFLOR:

8 Q. After you ask a proposal for a contractor,
9 what's the typical process?

10 A. If they want the work, they get back to us.

11 So yeah, for any -- if we need work done on the
12 mill site, you get a proposal if they want the work.

13 If we don't get any proposal or anything to go
14 off of, we're -- we're going to assume that we're just
15 going to continue doing what we're doing. And that's
16 what we did but, unfortunately, it wasn't working. And
17 during that time, we lost confidence in BDI's ability to
18 perform the work.

19 Q. Thank you.

20 MS. BLANCAFLOR: No further questions, Your
21 Honor.

22 JUDGE HOWARD: All right. Thank you.

23 Mr. Whittaker, do you have any cross of this
24 witness?

25 MR. WHITTAKER: No, no cross for this

1 witness, Your Honor.

2 JUDGE HOWARD: Okay. Mr. Wilhelm, thank you
3 for your testimony today.

4 THE WITNESS: Thank you.

5 JUDGE HOWARD: That concludes the PCA
6 witnesses. And we are now moving on to the BDI
7 witnesses.

8 Is Mr. Dietrich on the line, on the call?

9 THE WITNESS: Yeah. Can you hear me?

10 JUDGE HOWARD: Yes. All right.

11 Could you please raise your right hand? And
12 I'll swear you in.

13 Do you swear or affirm that the testimony
14 you will give today will be the truth, the whole truth,
15 and nothing but the truth?

16 THE WITNESS: I do.

17 JUDGE HOWARD: All right. Thank you.

18

19 CHARLIE DIETRICH, witness herein, having been first
20 duly sworn on oath, was examined
21 and testified as follows:

22

23 JUDGE HOWARD: Mr. Fassburg, you may
24 introduce the witness.

25 //

1 EXAMINATION

2 BY MR. FASSBURG:

3 Q. Good afternoon.

4 Will you please state your full legal name?

5 A. Charlie Dietrich.

6 Q. And do you have before you today your pre-filed
7 testimony, both direct and response, and the exhibits --
8 you'll have to excuse me. I don't have my numbers in
9 front of me -- all of your pre-filed exhibits here
10 today?

11 A. Correct.

12 Q. And are you accepting or adopting your testimony
13 under oath here today?

14 A. I do.

15 MR. FASSBURG: I will tender the witness.

16 JUDGE HOWARD: Ms. Barnett indicated cross
17 for this witness and you may proceed.

18 CROSS-EXAMINATION

19 BY MS. BARNETT:

20 Q. Mr. Dietrich, my name is Donna Barnett. Good
21 afternoon. I just have a few questions for you.

22 Could you please turn to what has been marked as
23 Exhibit CD-49X?

24 And let me know when you're there.

25 A. All right. I have it open.

1 Q. Do you recognize this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It is a response to -- let me see here. A
5 response to a complaint filed by a customer to the UTC.

6 Q. Could you turn to Exhibit 50-X and let me know
7 when you're there.

8 A. Yep, I'm here.

9 Q. Do you recognize this document?

10 A. Yes, I do.

11 Q. What is that?

12 A. Same thing. A response -- or a complaint sent
13 to a customer about us to the UTC.

14 Q. I'm sorry. Did you say it was a complaint sent
15 to a customer?

16 A. No, a complaint sent to the UTC on behalf of a
17 customer. Or a customer sent a complaint.

18 Q. This is a different complaint than 49-X; is that
19 right?

20 A. Yes. Yep. If my memory serves me right, yes.

21 Q. And could you turn to Exhibit 51-X. Let me know
22 when you are there.

23 A. Yep, I'm here.

24 Q. Do you recognize this?

25 A. Yes, I do.

1 Q. Is -- what is this?

2 A. This is a response by the UTC to, I believe,
3 50-X.

4 Q. Okay. And 52-X, please. This is the last one.
5 Are you there?

6 A. Yep.

7 Q. And what is this?

8 A. This is also a response to a complaint. The
9 response from the UTC back to us.

10 Q. And this is a different complaint than the
11 others; correct?

12 A. I believe so, yes.

13 Q. These -- all these customer complaints were from
14 service involved in 2021; isn't that right?

15 A. I believe -- let's see. I believe 52 was from
16 2022, or it might have been right at the end of 2021.

17 Q. If you turn to number -- let's look at that.
18 52-X, can you read the second sentence there?

19 A. The -- of the email?

20 Q. Yeah.

21 A. The disposition is "Company upheld."

22 Q. Do you know what that means? "Company upheld."

23 A. That means that they found that we, as a
24 company, didn't do anything wrong.

25 Q. Okay. Can you turn to 53-X and explain what

1 that is?

2 A. Is that -- that's an additional one; correct?

3 Q. No, this is the same complaint and its
4 correction that was sent just four minutes after that
5 first one saying, "I apologize. Please disregard my
6 previous email. The complaint is being closed with a
7 disposition of consumer upheld."

8 A. Correct.

9 Q. Do you understand what that means?

10 A. Yes, I do.

11 Q. Okay. And you understand all the complaints
12 that you provided -- or that -- of these exhibits were
13 consumer upheld; correct?

14 A. Not -- I think this was the only consumer upheld
15 one. But I -- I can't remember off the top of my head.

16 Q. Do you know if any of them were company upheld?

17 A. I believe -- I believe so.

18 Q. Which one would that be?

19 A. Well, 51-X was neither customer upheld or
20 company upheld because it wasn't in the UTC's
21 jurisdiction.

22 Q. So that doesn't mean that the customer
23 was wrong, it just means that the Commission had no
24 jurisdiction; isn't that right?

25 A. That would mean there was no investigation to

1 prove either/or.

2 Q. Right. So it was not company upheld; correct?

3 A. Nor was it consumer upheld.

4 Q. Correct.

5 A. No investigation -- no formal investigation was
6 done.

7 Q. Any others that were company upheld that you
8 know of? Any in 2021 at all?

9 A. I'm just reviewing it just to make sure I don't
10 misspeak.

11 JUDGE HOWARD: Mr. Dietrich, I would also
12 observe -- I don't want to interrupt the questioning
13 very often here, but you can also answer "subject to
14 check" and within five business days you can correct
15 yourself if you discover you are -- you were incorrect
16 in your answer.

17 THE WITNESS: Okay. Yeah, subject to check.
18 50-X, I don't believe -- at least what we've just talked
19 about, there was a ruling on that or -- that it was
20 stated.

21 But yeah, subject to check.

22 BY MS. BARNETT:

23 Q. So 50-X was the one you said was
24 nonjurisdictional?

25 A. I believe -- let me see here. 51-X was the

1 response. It was nonjurisdictional. And, yes, you are
2 correct that 50-X was the beginning of that.

3 So based on that, the only one that was consumer
4 upheld was 53-X.

5 Q. Okay. Do you know how many consumer -- formal
6 complaints were made to the Commission in 2021 on --
7 against BDI?

8 A. Not off the top of my head. But we were
9 compelled to provide them, so these would be it.

10 Q. So -- well, I don't -- are you telling me that
11 these are the only ones that BDI had in 2021?

12 A. That were turned into the -- to the Commission
13 to my -- to my knowledge.

14 Q. Okay. But you can check if there were more in
15 2021?

16 Do you know how many -- so you don't know off
17 the top of your head how many customer complaints there
18 were against BDI in 2021?

19 A. Are we talking generic customer complaints or
20 complaints filed to the UTC?

21 Q. I don't know.

22 Do you -- are they different? Is that number
23 different?

24 A. I don't have knowledge -- of an exact number,
25 but I know the UTC number is -- is -- is public record.

1 Q. So were these four or five exhibits, is that a
2 high number of formal complaints made to the Commission,
3 a low number, or is that pretty typical for BDI for a
4 year?

5 A. I would say that -- I can only speak to BDI's
6 experience; right? And I think --

7 Q. That's all I'm asking, just to clarify.

8 A. I apologize.

9 I think that's pretty -- pretty standard.

10 Q. Okay.

11 MS. BARNETT: No further questions. Thank
12 you.

13 JUDGE HOWARD: All right. Thank you.

14 Do we have any redirect following that
15 cross?

16 MR. FASSBURG: No. No redirect to that
17 topic, Your Honor.

18 I want to reiterate the fact that Basin
19 Disposal has not been afforded an opportunity to respond
20 in testimony to the shipper testimony provided by PCA.

21 There's quite a few issues in dispute. A
22 lot of the testimony that was provided by those
23 witnesses, particularly Mr. Rachford and Mr. Wilhelm,
24 are the subject of -- of great dispute.

25 And had Basin been offered an opportunity to

1 respond, would have provided testimony that contradicted
2 much of what those witnesses stated.

3 And I don't know if there's an opportunity
4 here to provide an offer of proof, but I want for the
5 record to reflect that Basin disputes many of the
6 statements made under oath by Mr. Rachford and
7 Mr. Wilhelm.

8 JUDGE HOWARD: All right. Well,
9 Mr. Fassburg, I can appreciate your -- your interest in
10 making a record of your objection for your client.

11 But I will not be revisiting that ruling
12 right now.

13 I believe we had ten minutes of cross
14 indicated by PCA for this same witness.

15 Ms. Blancaflor, did you wish to cross?

16 MS. BLANCAFLOR: No. No questions on cross,
17 Your Honor.

18 JUDGE HOWARD: Okay. Well, Mr. Dietrich,
19 thank you for your testimony today.

20 Let's continue on to our last witness today,
21 Andy Foxx.

22 MS. BARNETT: And, Your Honor, Jammie's has
23 no cross. Upon reflection of today's testimony, we have
24 no cross of Mr. Foxx.

25 JUDGE HOWARD: Okay. Does PCA intend to

1 cross Mr. Foxx?

2 MS. BLANCAFLOR: No questions on cross, Your
3 Honor.

4 JUDGE HOWARD: Just to make sure I heard
5 right, no questions.

6 MS. BLANCAFLOR: No questions.

7 JUDGE HOWARD: All right. Well, in that
8 case, then, we do not need to call Mr. Foxx today.

9 I'd like to thank all the witnesses for
10 their testimony.

11 Are there any issues we should address
12 before we adjourn?

13 MR. FASSBURG: Your Honor, only the same
14 point I just made with respect to Mr. Dietrich, it
15 applies also to Mr. Foxx.

16 JUDGE HOWARD: All right. Thank you. Thank
17 you, Mr. Fassburg.

18 Mr. Steele?

19 MR. STEELE: Your Honor, just a very, very
20 minor note. I notice that, I think, the reply date for
21 briefing is February 20th.

22 I believe that the State holiday -- we don't
23 have any problem with the date at all, but wasn't sure
24 if that -- if -- if it should bump to the 21st or --
25 either way, we just wanted to flag that.

1 JUDGE HOWARD: You know, I'm showing my
2 ignorance of official state holidays right now, but --

3 MR. STEELE: Again, it is not critical. I
4 just wanted to flag it. We're fine on the date. We
5 just wanted to --

6 JUDGE HOWARD: I believe -- I believe --

7 MR. STEELE: I think it's Presidents' Day.

8 JUDGE HOWARD: Presidents' Day.

9 All right. In that case, I would be
10 comfortable saying that -- if it's an official
11 holiday -- if it's a state holiday and the Commission is
12 going to be closed, the filing deadline would be
13 continued to the next business day or workday. And
14 thank you for raising that.

15 Were there any other questions or issues
16 before we adjourn today?

17 MR. STEELE: Not for Jammie's.

18 MS. BLANCAFLOR: Not for PCA.

19 MR. FASSBURG: None for Basin.

20 MR. WHITTAKER: Nor WRRRA.

21 JUDGE HOWARD: All right. In that case, I
22 will take this all under advisement and issue an order
23 after the post-hearing briefing is completed.

24 We are off the record. Thank you.

25 (Volume III hearing concluded at 3:35 p.m.)

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STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, CRYSTAL R. McAULIFFE, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the Virtual Evidentiary Hearing, Volume III, on DECEMBER 19, 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 5th day of January, 2023.

Crystal McAuliffe



CRYSTAL R. McAULIFFE, RPR, CCR #2121