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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
JAMMIE’S ENVIRONMENTAL, INC.,  
For Authority to Operate as a Solid Waste  
Collection Company in Washington

DOCKET TG-220243

BASIN DISPOSAL, INC.,  
Complainant,

DOCKET TG-220215

v.

JAMMIE’S ENVIRONMENTAL, INC.,  
Respondent.

DECLARATION OF DAVID S. STEELE  
IN SUPPORT OF JAMMIE’S  
ENVIRONMENTAL, INC.’S MOTION  
TO COMPEL

I, David S. Steele, do hereby affirm and declare as follows:

1. I am an attorney representing Jammie’s Environmental, Inc. (“Jammie’s”) in the above-captioned consolidated cases. I make this declaration based on my personal knowledge and on the files and records in this case.

2. Attached hereto as **Exhibit A** are select excerpts from the Prehearing Conference Transcript; Volume 1; May 24, 2022; pages 11-16 (“Hearing Transcript”).

DECLARATION OF DAVID S. STEELE IN  
SUPPORT OF JAMMIE’S  
ENVIRONMENTAL, INC.’S MOTION TO  
COMPEL – 1

157665504.2

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Phone: +1.425.635.1400  
Fax: +1.425.635.2400

1           3.       On July 7, 2022, Jammie’s served on Basin Disposal, Inc. (“BDI”) its First  
2  
3 Set of Data Requests (DRs 001-020). Jammie’s data requests sought documents,  
4  
5 communications, and information from BDI including relating to (1) Jammie’s; (2) BDI’s  
6  
7 collection, hauling, and disposal of OCC Rejects for PCA; (3) BDI’s solid waste service  
8  
9 performance; and (4) general information about BDI’s tariffs, staffing, and agreements with  
10  
11 PCA.  
12

13  
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15           4.       On July 21, 2022, BDI served on Jammie’s its Responses to Jammie’s First  
16  
17 Set of Data Requests.  
18

19  
20           5.       In response to fifteen (15) of Jammie’s twenty (20) data requests, BDI  
21  
22 objected on the grounds that the Commission has not authorized discovery in Jammie’s  
23  
24 Application for Solid Waste Authority, Docket No. TG-220243. In response to sixteen (16)  
25  
26 of Jammie’s Data Requests, BDI objected on the grounds that “the fitness of the protestant is  
27  
28 not at issue in application proceedings.” BDI did not produce any documents in response to  
29  
30 eight of these data requests and largely referred to documents produced in response to Data  
31  
32 Request No. 002. Attached hereto as **Exhibit B** is a true and correct copy of one such  
33  
34 objection in BDI’s Response to Jammie’s Data Request No. 010.  
35  
36

37  
38           6.       On July 22, I sent an email to Blair Fassburg, counsel for BDI, requesting a  
39  
40 meet and confer to discuss these two categories of objections specifically, as well as BDI’s  
41  
42 other objections and responses to Jammie’s First Set of Data Requests.  
43

44  
45           7.       The parties met that afternoon to confer on these discovery issues. While the  
46  
47 parties resolved many of their discovery issues, they were unable to reach an agreement as

1 to BDI's aforementioned two objections. Attached hereto as **Exhibit C** is a true and correct  
2  
3 copy of my email to Mr. Fassburg documenting the parties' meet and confer, and Mr.  
4  
5 Fassburg's response.  
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David S. Steele, WSBA #45640

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DECLARATION OF DAVID S. STEELE IN  
SUPPORT OF JAMMIE'S  
ENVIRONMENTAL, INC.'S MOTION TO  
COMPEL – 3

# **Exhibit A**

**Docket No. TG-220243 - Vol. I**

**In the Matter of the Application of: Jammie's  
Environmental, Inc.**

**May 24, 2022**



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1 could impact things, but -- but -- but that's not at  
2 issue before the Commission.

3 The question is -- is a straightforward,  
4 narrow question, whether Jammie's can haul the waste at  
5 issue. And no company in the state, aside from BDI,  
6 will be impacted by that. And BDI is here and can  
7 represent their interests.

8 And so I've not -- I've not heard how  
9 another waste company needs representation here. They  
10 will not be impacted by the application.

11 JUDGE HOWARD: All right. Thank you all.

12 After considering all of these arguments and  
13 the written filings, I am granting both petitions to  
14 intervene. And I find that both of the petitioners have  
15 a substantial interest in the outcome of the proceeding,  
16 and I will provide more detail in the order that will  
17 follow our prehearing conference today.

18 The next issue to address would be an issue  
19 I would like to raise of consolidating two dockets.

20 So I'm aware that Basin Disposal, or BDI,  
21 has filed a formal complaint against Jammie's  
22 Environmental, and that is currently pending in  
23 Docket TG-220215.

24 Would the parties have any objection to my  
25 consolidating this docket with the formal complaint

1 docket? It does appear that these two dockets have the  
2 same underlying facts and legal issues.

3 Mr. Fassburg, what would be your position?

4 MR. FASSBURG: I don't believe that we have  
5 a specific objection. I know we did not specifically  
6 move to consolidate the two cases. My primary concern  
7 is ensuring that the fitness standards that are going to  
8 apply to Jammie's, which, I think, the complaint  
9 proceeding, which was, of course, filed first, has great  
10 bearing on the fact that they're illegally hauling solid  
11 waste, should be considered in the application case.

12 And the Commission certainly could not  
13 adjudicate an application by a company that's illegally  
14 hauling without fully hearing out the formal complaint  
15 against them for doing so.

16 But if you believe those issues are so  
17 intertwined they should be consolidated, we don't have  
18 an objection. But otherwise, we would insist the  
19 application hearing proceed first.

20 I'm sorry. Let me rephrase that because  
21 I -- the words came out wrong. We would insist the  
22 complaint hearing proceed first.

23 JUDGE HOWARD: If it was in the alternative,  
24 that would be your -- your recommendation?

25 MR. FASSBURG: Yes.

1 JUDGE HOWARD: Okay. Mr. Steele, do you  
2 have any position?

3 MR. STEELE: Yeah. We -- we believe that  
4 consolidation is -- is premature at this time. We think  
5 that the application's pending. We think how the  
6 Commission rules on the application could significantly  
7 impact the complaint proceeding and could moot all or  
8 part of it.

9 And so at least at this time, we think the  
10 proper course is to proceed with the application.

11 We also note that -- that it doesn't appear  
12 that Staff has -- has decided to commence an  
13 adjudication in that case yet. It still seems to be  
14 sitting out there. And so Staff has not weighed in on  
15 whether to move that forward.

16 And so at least at this time, our position  
17 would be to maintain the status quo and let the  
18 application proceeding play out.

19 JUDGE HOWARD: All right. Thank you.

20 Would either of the intervenors like to  
21 respond to these points?

22 MR. WHITTAKER: Thank you, Judge Howard.

23 I will say that WRRRA doesn't take a position  
24 either on whether the dockets should be consolidated or  
25 not, but we do agree with Basin, that the -- the



1 enforcement action -- or the complaint should proceed  
2 first because that plays into questions that are  
3 relevant to the application itself.

4 MS. BLANCAFLOR: Your Honor, thank you.

5 We -- PCA doesn't have a strong opinion one  
6 way or the other, but our preference would be to keep  
7 the cases separate and not consolidate. We believe that  
8 the -- the complaint actually should be handled first.  
9 I think the pivotal question in the complaint may  
10 resolve the issue of whether there is even a need for a  
11 permit for a license.

12 And so we would prefer that the cases  
13 proceed separately and not be consolidated.

14 JUDGE HOWARD: All right. I'd like to thank  
15 everyone for their comments.

16 After considering this, I would consolidate  
17 both of these dockets. I would find that they have the  
18 same essential facts, and on -- on a -- there's a large  
19 amount of overlap in the remedy and the legal issues.  
20 It's not a complete overlap. And it also serves the  
21 purposes of judicial economy. More detail will follow  
22 in my written order.

23 So with that, let's turn to the issue of  
24 discovery in the consolidated dockets. I know that the  
25 formal complaint requested discovery. Would any of the

1 parties object to having the Commission's discovery  
2 rules available?

3 MR. STEELE: No objection from Jammie's.

4 JUDGE HOWARD: All right. Thank you.

5 Hearing no objections, I will plan to  
6 include that in my written order.

7 I have not seen any requests in the docket  
8 for a protective order. Would any of the parties  
9 request a protective order?

10 MR. FASSBURG: Your Honor, I don't yet  
11 anticipate that any of the discovery that would be  
12 relevant to the two proceedings would require the  
13 production of information that might be considered  
14 confidential.

15 But knowing that a protective order is  
16 available, in solid waste proceedings, I think it would  
17 be wise to go ahead and have one in place in the event  
18 it is necessary. I think it's better to have one in  
19 place rather than having to scramble and deal with it if  
20 someone ultimately needs one.

21 MR. STEELE: And Jammie's would agree with  
22 that.

23 JUDGE HOWARD: All right. Would any of the  
24 intervenors like to respond to that?

25 MS. BLANCAFLOR: We support that.

1           JUDGE HOWARD: All right. Thank you. I  
2 will plan on issuing a protective order, using our  
3 standard language for confidential information.

4           So with that, let's turn to the procedural  
5 schedule for the two consolidated dockets. Have the  
6 parties has an opportunity to discuss this already or  
7 should we take a recess to have the parties discuss  
8 this?

9           MR. STEELE: We have not discussed it yet,  
10 Your Honor.

11          MR. FASSBURG: I agree. And whether or not  
12 we need to recess I think depends, in part, on when  
13 we're talking about the hearing being set and how much  
14 time each party needs.

15          I know, because Jammie's continues to haul  
16 in violation of the law, despite the ongoing complaint  
17 under the premise that they can, we'd like these  
18 hearings -- the consolidated hearings to take place as  
19 soon as possible.

20          And so whether or not we need to confer much  
21 probably depends on how quickly we can get this  
22 scheduled so that we can work out what those timelines  
23 might look like.

24          JUDGE HOWARD: Well, why don't -- let's go  
25 off the record. We're off the record.

# **Exhibit B**

DATE PREPARED: July 21, 2022	WITNESS: Charlie Dietrich
DOCKET: TG-220215 and 220243	RESPONDER: Basin Disposal, Inc. and
REQUESTER: Jammie's Environmental, Inc.	Charlie Dietrich

**DATA REQUEST NO. 010:**

Describe in detail the service BDI provided relating to OCC Rejects for PCA including a comprehensive description of the containers and any other equipment or vehicles used, the number of containers used for collecting and hauling OCC Rejects, the frequency by which BDI picked up the containers for hauling, the number of BDI personnel involved in providing the service, and whether there were any changes to the service BDI provided over time.

**RESPONSE:**

Objection. This request seeks information that is irrelevant in the discovery sense to the issues raised in Basin Disposal's formal complaint against Jammie's, which proceeding involves only the question of whether Jammie's is authorized to provide solid waste collection service to PCA to transport OCC Rejects for disposal.

The Commission has not specifically authorized discovery in Docket TG-220243, Jammie's Application for Solid Waste Authority. *See* WAC 480-07-400(2). Thus, this data request is inappropriate and the exceeds the scope of permissible discovery. To the extent such discovery, were authorized this request exceeds the scope of information relevant to an application proceeding. Specifically, Jammie's has not applied for authority to provide solid waste collection service beyond the facility operated by PCA near Wallula, WA. Thus, the information sought by this request cannot establish any fact in controversy. Additionally, the fitness of the protestant is not an issue in application proceedings. *See In Re: Application E-18894 of Carl Oscar Lundell, d/b/a Lundell Trucking, for Extension of Auth. Under Common Carrier Permit No. 36044.*, Order M.V. No. 129479 (Apr. 6, 1984). Finally, this request seeks information that is publicly available from the Commission and is therefore equally available to Jammie's from a more convenient source.

Subject to and without waiving the foregoing objection, see Basin's response to Data Request No. 2.

# **Exhibit C**

**From:** [Fassburg, Blair](#)  
**To:** [Steele, David S. \(BEL\)](#)  
**Cc:** [Barnett, Donna L. \(BEL\)](#); [Gilbert, Carolyn S. \(SEA\)](#); [Gruber, Maggi](#)  
**Subject:** RE: Follow-up to JEI-BDI Meet and Confer  
**Date:** Monday, July 25, 2022 4:51:00 PM

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Hi David,

I hope you all had a good weekend. I thought it was a productive call on Friday and we should likely be able to resolve many of our mutual concerns about unanswered data requests.

I do have one clarification as to the three objections you addressed first. Although you generally characterized our position correctly, and we stand by the premises that the Commission typically does not authorize discovery in application proceedings and that the protestant's fitness is not an issue to be adjudicated, applicants are not limited to public record evidence. They can obtain evidence directly from generators and shippers who have experience with the protesting party within the applied-for service territory.

With respect to the other itemized summaries, I don't have my notes from our call with me today and can't comment at the moment, but if I do have any corrections or clarifications I will try to let you know this week.

Thanks,

-Blair

**Blair I. Fassburg**

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**WASHINGTON OREGON**

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**From:** Steele, David S. (BEL) <DSteele@perkinscoie.com>  
**Sent:** Monday, July 25, 2022 3:52 PM  
**To:** Fassburg, Blair <BFassburg@williamskastner.com>  
**Cc:** Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>; Gilbert, Carolyn S. (SEA) <CarolynGilbert@perkinscoie.com>; Gruber, Maggi <MGruber@williamskastner.com>  
**Subject:** Follow-up to JEI-BDI Meet and Confer

Blair,

Thank you for hopping on the phone on Friday to confer on BDI's responses to Jammie's First Set of Data Requests. Based on our notes, this email serves to memorialize that meet and confer. Please let us know if your memory or notes are different from ours.

First, we expressed our concern with three objections that BDI repeated throughout many of its responses to Jammie's data requests:

1. BDI's objection that the Commission has not specifically authorized discovery in Docket TG-220243, Jammie's Application for Solid Waste Authority. BDI asserted this objection in response to 15/20 of Jammie's data requests. We were unable to reach agreement on this issue.
2. BDI's objection that the fitness of the protestant is not an issue in application proceedings. BDI asserted this objection in response to 16/20 of Jammie's data requests. We understand your position to be twofold, (a) that the fitness of the protestant is never at issue in an application proceeding, and (b) Jammie's is limited to public record sources to support its Application. Jammie's disagrees as to both points. We were unable to reach agreement on this issue.
3. BDI's objection that various requests exceed the reasonable "test period." We asked for BDI's proposed reasonable test period for this case; you responded that a period of one year was reasonable. We are evaluating BDI's position and will respond this week.

Second, we discussed BDI's specific responses to Jammie's data requests as follows:

1. BDI's primary objection to this is overbreadth. Jammie's agreed to revise and provide more detail as to what Jammie's is seeking.
2. BDI raised several objections to this, including objection #2 above, but produced some responsive documents. BDI is still reviewing its records and will supplement the production.
3. BDI raised several objections to this, including objections #1 and #2 above, and did not produce any documents. You confirmed that BDI does not haul OCC Rejects for any other customers.
4. BDI raised several objections to this, including objections #1 and #2 above, and produced a few documents. You agreed to confirm whether there are additional documents and provide narrative descriptions of communications.
5. BDI raised several objections but produced documents. You agreed to supplement the response with narrative descriptions of communications.
6. BDI raised several objections to this, including all objections above, and did not produce documents. Jammie's is evaluating BDI's position.
7. BDI raised several objections to this, including all objections above, and did not produce documents. Jammie's is evaluating BDI's position.
8. BDI raised several objections to this, including all objections above, and did not produce documents, but you stated you were not aware of any responsive documents.
9. BDI raised several objections to this, including all objections above, and did not produce documents. Jammie's is evaluating BDI's position.



10. BDI raised several objections to this, including objections #1 and #2 above, and did not provide a narrative response, as requested. You stated the information should be in the records produced but would confirm BDI's response and supplement, as needed.
11. BDI raised several objections to this, including objections #1 and #2 above, and did not provide a narrative response, as requested. You stated the information should be in the records produced but would confirm BDI's response and supplement, as needed.
12. BDI raised several objections to this, including objections #1 and #2 above, and did not provide a narrative response, as requested. You stated the information should be in the records produced but would confirm BDI's response and supplement, as needed.
13. BDI raised several objections to this, including objections #1 and #2 above, and produced a few documents. You stated that additional documents are being collected and that BDI will supplement.
14. BDI raised several objections to this, including objections #1 and #2 above. Jammie's agreed to revise its request.
15. BDI raised several objections to this, including objections #1 and #2 above, but provided a narrative response.
16. BDI raised several objections to this, including objections #1 and #2 above, but agreed to produce.
17. BDI raised several objections to this, including objections #1 and #2 above, but agreed to produce.
18. BDI raised several objections to this, including objections #1 and #2 above, and did not produce documents, but you stated you were not aware of any responsive documents.
19. BDI answered.
20. N/A.

Following our discussion of BDI's responses to Jammie's data requests, you asked a few clarifying questions about Jammie's responses to BDI data requests. We agreed to get back to you with answers by this Friday.

Thanks,

David

**David Steele | Perkins Coie LLP**

**COUNSEL**

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