

Note: King County and Snohomish County collaborate in development of revenue sharing agreements because the same haulers serve areas in both counties. The comments below have been shared with Snohomish County staff. Snohomish County has expanded upon some of our comments, and we have also incorporated some of their input.

I. Recycling Revenue Sharing Plans

A. What is the meaning of “increase recycling” under RCW 81.77.185?

1. Please identify and describe all ways a solid waste collection company could “increase recycling” within the meaning of the statute.

It is important to recognize that the primary guiding statutes relating to recycling are in RCW 70.95, which assigns the primary responsibility for adequate solid waste handling to local government and provides direction for development of local comprehensive solid waste plans. Recycling, as defined in RCW 70.95.030(18), means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

One of the legislative findings in the chapter [70.95.10(5)] states:

Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

King County, like other counties throughout the state, has developed local comprehensive plans that have aggressive goals for recycling. King County’s goal in its proposed 2011 comprehensive solid waste plan is to recycle 70% of generated waste by 2020. The current recycling rate in King County is approximately 50%, up from 18% in 1987 before recycling became a primary waste management strategy. Although there has been significant growth in recycling, King County has a long way to go to fulfill the state legislature’s intent and meet its own recycling goals. Consequently, the King County plan includes a robust strategy for increasing recycling that includes infrastructure improvements, ongoing education and promotion, incentives, and mandates. Actions that could be taken by a solid waste collection company to increase recycling include:

- **Increase the amount of recyclable material collected.** It is important to consider increasing quantities of recyclables within the context of the state's solid waste management hierarchy as stated in RCW 70.95.010(08), which establishes waste reduction as the first priority for collection, handling and management of solid waste. By definition, waste reduction means reduction of all discarded materials, whether they would otherwise have been disposed or recycled. Consequently, a more meaningful way of evaluating success at increasing recycling amounts is to track increases in the recycling rate, or the percentage of solid waste that is recycled instead of disposed or incinerated.

Actions that collection companies can take to increase quantities of materials collected include:

- Increase convenience of residential recycling by providing customers with wheeled carts with sufficient capacity
- Increase frequency of recycling collection
- Accept additional recyclable materials in recycling containers
- Increase the number of subscribers to organics collection by promoting collection programs and providing incentives to sign up
- Educate residents about what materials are accepted in recycling containers
- Motivate residents to maximize use of recycling containers

It should also be noted that motivation and education programs are needed in order to maintain recycling at current levels. Jurisdictions throughout the country have seen slippage in recycling rates linked to decreases in budgets for promotion and education.

- **Increase the marketability of materials collected for recycling.** Recycling entails the transformation of materials with no value into a positive value. A key element in increasing recycling is to increase the value of the material. Turning garbage into gold is better than turning garbage into lead. Actions that collection companies can take to increase include:
 - Educate customers about how to prepare recyclable materials and which materials should not go in the recycling container
 - Tag recycling and organic containers with excessive contamination and refuse pick-up for repeat offenders
 - Increase the value of recycled material processed by MRFs for sale to end users through equipment and process improvements

- **Increase the sustainability of recycling systems**
 - Reduce greenhouse gas emissions associated with recycling
 - Diversify markets for recycled materials

2. For each way identified, please identify or suggest quantifiable measures for determining whether a recycling revenue sharing program could demonstrate that the plan will increase recycling in that way.

Table 1 at the end of this document summarizes the measures that we believe are appropriate for assessing the activities above.

3. If the measure is inherently difficult to quantify due to being a new program or a program intended to modify consumer behavior, please suggest a framework by which the Commission can assess results using objective criteria, or perhaps refer to assessment models that have been used in other industries.

Most of the program elements are intended to modify consumer behavior. It is extremely difficult to link program expenditures directly with outcomes because there are many, many other factors concurrently influencing consumer behavior. This problem is compounded by the short timeframe of revenue sharing agreements and the unavoidable delays inherent in gathering and analyzing recycling data.

However, King County has had years of experience in hiring and managing consultants to implement work programs to change residential behavior. The major increases in recycling we have achieved over the past 25 years suggest that these efforts to educate and motivate residents are effective.

In the early 1990's, King County opted not to contract for residential recycling collection services and to allow certificated haulers to collect residential recyclables in unincorporated areas under WUTC regulation. As a result, we do not have the direct contractual arrangement with recycling service providers that most cities in King County do. The revenue sharing agreements provide an opportunity to establish a proxy contractual relationship with the certificated haulers to carry out educational and motivation programs as well as infrastructure improvements.

We believe that it is King County's responsibility to work with the haulers to develop programs that we mutually believe will increase recycling. It is also primarily King County's responsibility to assess whether programs have had a positive effect.

B. Should companies be required to prepare a budget of anticipated retained revenues and expenditures under the recycling revenue sharing plan?

Yes.

- 1. If actual revenues materially differ from those anticipated, should the company, in consultation with the County, independently manage and prioritize expenditures on plan activities to reflect actual revenues, or can and should the company and the County formally modify the budget and revenue sharing plan during the plan period?**

Plans should require the company to compare actual revenues and expenditures with projected revenues and expenditures on a quarterly basis. If revenues are less than projected, the budget and work plan should be adjusted and WUTC staff should be notified. If revenues are significantly higher than projected, the company and the County should be allowed to revise the plan and re-file it with WUTC along with a County certification that the revised plan is consistent with the local comprehensive plan.

- 2. If plans are modified during the plan period to accommodate unanticipated circumstances, to what extent should the company be required to seek, and the Commission be obligated to grant, approval of such modifications?**

It is our hope that this dialog will result in more clear direction about what sort of incentives are appropriate for companies. Our belief is that the County should have authority to approve revisions in plans to increase or decrease expenditures on programs. Incentives offered to the company should be based primarily upon a percentage of those expenditures. WUTC should be notified of changes in expenditure levels. As long as the incentive structure is maintained and expenditures fall under the maximum percentage allowed to be retained under the agreement, WUTC approval should not be required.

C. What are permissible expenditures under recycling revenue sharing plans?

- 1. What general types of expenditures (e.g., annually recurring expenses, equipment costs, cash payments to affiliates or third parties to be used for recycling related activities, personnel, advertising, etc.) can and should be funded with retained recycling revenues, rather than**

included in general base rates for recycling service, and why?

- **Recycling education and motivational programs.** We believe that this is the primary function of revenue sharing programs and that it has proved to be very beneficial to recycling. It includes staffing and development of materials for a variety of media. When revenue sharing programs were initiated in the early 2000's, certificated haulers had limited resources and expertise in educating the public about recycling, relying primarily on local government to provide this function. In the intervening years, companies have become more sophisticated in their public education, due in large part to competitive pressures to fulfill requirements of city collection contracts. At the same time, the county's budget for recycling education and motivation programs, funded primarily by tipping fees from decreasing amounts of garbage, has been reduced. The revenue sharing programs, as they have evolved over the last few years, allow us the opportunity to utilize the companies' expertise in a quasi-contractual relationship and focus their efforts on activities that we believe will most greatly benefit recycling. It is hard to imagine how the County could have as great a level of influence if these activities were funded through base rates.
- **Data collection, reporting, and evaluation.** Although our county code has provisions for data collection, it is questionable whether we have the authority to collect the countywide data (including contract cities) that we need for planning purposes. The revenue sharing agreements provide us with leverage to get higher quality data from companies, including requests for specific sub-areas of the county and company cooperation in measuring contamination in the recycling stream. We do not believe we could ensure an equivalent level of responsiveness if all costs for these efforts were in the rate base.
- **Equipment costs.** We agree that, generally speaking, equipment should be included in the rate base. However, if the company demonstrates that purchase of specific equipment could increase the amount of material recycled or the value of material recycled, we believe it is an allowable expenditure.
- **Material recovery facility improvements.** Both Allied/Republic and Waste Management, the companies serving most of King County, send most collected recyclables to MRF's owned by affiliates. We believe that is appropriate to have a portion of expenditures for MRF improvements paid by revenue sharing. The portion should be equivalent to the proportion of material processed that came from the area covered by the revenue sharing agreement.

2. **What types of performance incentives (i.e., funds a company may retain in excess of amounts spent on plan activities) are acceptable?**

a) *Should a company be entitled to a performance incentive bonus solely for completing activities required under the plan?*

In King County's case, no. We believe the primary bonus should be based upon a pre-determined percentage of expenditures spent in completing the activity. Any expenditures over the initial budget would need to be pre-approved by the county.

b) *Should performance incentives be limited to achieving or exceeding plan goals or objectives?*

No. Performance incentives should be based primarily upon the company fulfilling its work plan tasks on time and in budget. These work plans are developed with substantial input from the county and represent our best attempts to move the recycling needle based upon our professional judgment.

We also think it is appropriate to provide a bonus for achieving measurable gains in recycling or in subscription levels for organics programs. However, short term changes in household recycling behavior can be driven by many other factors, most notably by changes in the economy, but also by regional recycling education efforts funded by county government or contract cities. Consequently, we think this is a less reliable measure than a bonus based upon fulfilling work program tasks.

c) *Should the amount of performance incentives be limited to a fixed dollar amount or percentage of revenues, and if so, what level or range would be most appropriate?*

The primary performance incentive should be a percentage of allowable expenditures, not revenues. If revenues are lower than projected, allowable expenditure levels should be reduced. In recent plans we have submitted, we have proposed an incentive equal to 5% of expenditures. It is difficult to make an apples-to-apples comparison of this proposed number with the profit levels in our consultant contracts, who are also allowed compensation for overhead expenditures. We would be pleased if WUTC staff determined an incentive level based upon guidelines they believe to be appropriate, bearing in mind that the companies are in essence serving as consultants to the county.

3. **Is a general return on plan expenditures permissible?**

a) *Under what circumstances, if any, should the company be granted a general return on its expenditures under the plan?*

As discussed in our response to Question 2, a pre-determined percentage return based upon budgeted plan expenditures should be the primary incentive payment to the company. If the county is dissatisfied with company performance on plan tasks, the county may recommend to WUTC that the incentive and/or other company plan-related expenditures be returned to ratepayers.

b) *Should the amount of any general return be limited to a fixed dollar amount or percentage of revenues, and if so, what level or range would be most appropriate?*

As discussed in our response to Question 2, a general return should be a percentage of expenditures, not revenues.

c) *Do companies have incentives to participate in recycling revenue sharing programs other than earning a return on plan expenditures (e.g., complying with county solid waste plans, using retained revenues to finance equipment or other costs, as a means of experimenting with different recycling techniques, etc.)?*

In our opinion, companies do have incentives to participate in some elements that we have incorporated into our recycling plans, such as using retained revenues to improve MRF equipment. However, without a return on expenditures, there is little incentive for companies to spend resources improving their educational and motivational outreach to WUTC-regulated areas. A primary driver for the improvements in company recycling outreach in recent years has been competitive pressures to meet contract city expectations. Those competitive pressures do not exist in WUTC-regulated areas. Without direct financial incentives to focus on WUTC customers, it is likely that a disproportionate amount of company educational efforts will focus on contract cities, and consequently recycling levels in WUTC-regulated areas may lag behind.

II. Process Issues

A. What is the role of the Counties under RCW 81.77.185?

1. How should Counties consider or negotiate financial conditions in the plan?

The company should be required to submit a line item budget for performing work tasks. The County should review the work program tasks for reasonableness, using our professional experience in managing consultant contracts to determine whether budgeted costs are fair and reasonable. Incentive levels should be established by WUTC through rules or guidelines through the process we are now engaged in. Initial budgets should be reviewed by WUTC staff when revenue plans are submitted. The company and the county should respond to any concerns about budget detail or assumptions within WUTC deadlines.

2. Are there ways in which the Counties and the Commission could collaborate on development and approval of plans, rather than have each governmental entity conduct its own independent process?

Any collaboration that would help reduce the frequency of suspended revenue sharing plans would be an improvement. If the process we are currently engaged in results in more clear guidelines for the structure of plans, we will have made a significant step forward. However, at the least the plan approval process should include a timeline for the company and county to present a draft plan and budget to WUTC staff, and a timeline for receiving comments back from WUTC staff.

B. What is the role of Commission Staff in development and County review of plans?

1. Should Staff participate in negotiations between a County and a company in the development of a plan?

No. The Commission should come up with clear guidelines about incentives and the types of activities that qualify as increasing recycling, recognizing that County staff are the subject experts on what is going to help increase recycling within the County. WUTC staff does not need to be involved in negotiating plan activities. It does need an opportunity to pre-review the Plan to ensure that it address the guidelines.

2. **Should the County and/or the company seek Staff input on drafts of the plan and, if so, at what point(s) in the process, and how much time should be allowed for Staff to review the draft(s)?**

Yes, WUTC staff should have an opportunity to review a close-to-final draft. The length of time needed depends upon whether clear guidelines have been developed. We defer to Staff as to how much time is needed.

3. **Should the Commission formalize such a consultative process either in a policy statement or rule, or should Staff and County officials be authorized to establish processes on a case-by-case basis?**

We believe it may be helpful to formalize the process.

C. When and what must companies file with the Commission?

1. **Must companies file the final plan and County certification as part of the original filing seeking approval of the plan?**

No opinion.

2. **What supporting documentation should companies include in their filings to make the requisite demonstration of how the retained revenues will be used to increase recycling?**

The plan document, budget, county certification, and revenue projections are sufficient documentation. Work plan items should include a statement of why the company and the county believe the work will benefit recycling.

3. **Should all companies be required to use the same plan period (e.g., a calendar year)?**

We are uncertain whether this should be required, but believe that synchronized plan periods would be beneficial for coordinating regional public education campaigns.

4. **When should companies make their filing to enable Staff and the Commission to review and make a determination on those filings?**

No opinion.

D. Which of the issues in Sections I and II A-C above would be appropriate for resolution in policy or interpretive statement to be issued by the Commission?

All.

E. Are there any other issues that the Commission should address in a policy or interpretive statement?

It would be good to have some direction about disposition of unspent revenues and options if expenditures exceed revenues. For example:

- If revenues drop drastically during the plan period and expenditures surpass revenues, can the company use revenues from the next plan period to compensate the loss? We think this would be acceptable.
- If revenues increase dramatically and the company wants to propose expenditures that would carry forward into the next plan period, could carry revenues forward? We think this would be acceptable if the expenditure meets our approval.

F. Should the Commission conduct a rulemaking?

1. Should the Commission promulgate a rule on filing requirements for recycling revenue sharing plans?

We are uncertain whether or not a rule is preferable to a policy document.

2. Should the Commission revise its existing customer notification rules to enable County input on the content and frequency of notices on recycling?

We think it unlikely that changing the rule would in itself result in the document quality and coordination with the County that we get from revenue sharing programs.

3. Are there other aspects of recycling revenue sharing programs that the industry or Counties request that the Commission address through a rulemaking?

We urge the Commission to consider the additional issues in Section III of Snohomish County's response.

TABLE 1: PROGRAM OBJECTIVES AND MEASURES

Program Objective	Examples of use of funds	Quantifiable measures for determining whether program demonstrates that it will increase recycling
Increase convenience of residential recycling by providing customers with wheeled carts with sufficient capacity	<ul style="list-style-type: none"> • Cart purchase • Customer notification & education materials • Labor costs for pick-up and delivery 	<ul style="list-style-type: none"> • Meet quantity, timelines and budgets specified in plan
Increase frequency of recycling collection	<ul style="list-style-type: none"> • Customer notification & educational materials and associated labor costs 	<ul style="list-style-type: none"> • Meet quantity, timelines and budgets specified in plan
Accept additional recyclable materials in recycling containers	<ul style="list-style-type: none"> • Customer notification & educational materials and associated labor costs 	<ul style="list-style-type: none"> • Meet quantity, timelines and budgets specified in plan
Increase number of subscribers to organics collection by promoting program or providing incentives to sign up	<ul style="list-style-type: none"> • Customer notification & educational materials and associated labor costs 	<ul style="list-style-type: none"> • Meet quantity, timelines and budgets specified in plan • Performance bonuses based upon increase percentage of garbage customers that subscribe to organics collection when compared with a baseline period
Educate residents about what materials are accepted in recycling containers	<ul style="list-style-type: none"> • Customer notification & educational materials and associated labor costs 	<ul style="list-style-type: none"> • Meet quantity, timelines and budgets specified in plan
Motivate residents to maximize use of recycling containers	<ul style="list-style-type: none"> • Motivational programs and materials and associated labor costs 	<ul style="list-style-type: none"> • Meet quantity, timelines and budgets specified in plan • Performance bonuses based upon increased diversion rate when compared with a baseline period
Educate customers about how to prepare recyclable materials and which materials should not go in the recycling container	<ul style="list-style-type: none"> • Educational materials and associated labor costs 	<ul style="list-style-type: none"> • Meet quantity, timelines and budgets specified in plan
Tag recycling and organic containers with excessive contamination and refuse pick-up for repeat offenders	<ul style="list-style-type: none"> • Cost of producing tags • Labor costs associated with tagging and monitoring 	<ul style="list-style-type: none"> • Hauler documents incidents and provides information about to County about effectiveness in changing behavior

TABLE 1 (continued)

Program Objective	Examples of use of funds	Quantifiable measures for determining whether program demonstrates that it will increase recycling
<p>Improve the value of recycled material processed by MRFs for sale to end users</p>	<ul style="list-style-type: none"> • Collect samples of collected recyclables according to County-approved protocol to assess quality of incoming materials • Upgrade sorting equipment and processes • Monitor and report on MRF residuals and cross-contamination levels 	<ul style="list-style-type: none"> • Meet timelines and budgets specified in plan for sampling protocol • For MRF improvements, costs included in plan should be a proportional allocation based on tons or customer count.
<p>Reduce greenhouse gas emissions associated with recycling</p>	<ul style="list-style-type: none"> • Upgrades to equipment • Upgrades in routing efficiency 	<ul style="list-style-type: none"> • Proportional allocation of costs to customers in area covered by plan
<p>Diversify markets for recyclable materials</p>	<ul style="list-style-type: none"> • Increased use of regional and local end user markets for recyclable materials 	<ul style="list-style-type: none"> • Increased proportion of recycling tonnage from MRF going to regional or local end-users