

Pierce County Response to Notice of Opportunity to Comment

Docket Number: TG-112162
 Commenting Party: Stephen C. Wamback
 Solid Waste Administrator
 Pierce County Department of Public Works and Utilities
 Date: February 22, 2012

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.
 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.
 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.

Pierce County submits the following table to address all three parts of Question I.A.

Ways to “increase recycling”	Quantifiable Measurements <i>(Measurement Framework where no quantifiable measurement exists)</i>
Facilitating Participation (i.e. increasing the number of customers using recycling carts)	Ratio of active participants to non-participants
Minimizing Contamination	Percentage of materials placed in carts deemed to be “non-program materials” Percentage of materials placed in carts that cannot be recovered during sorting due to cross-contamination. Weight of materials diverted from recycling processing facilities to landfill.

Ways to “increase recycling”	Quantifiable Measurements <i>(Measurement Framework where no quantifiable measurement exists)</i>
Increasing recycling tonnage	<p>Weight of materials successfully recovered at processing facilities.</p> <p>Changes in ratio of successfully diverted tonnage to contamination tonnage.</p> <p>Change in pounds per capita per month successfully recovered at processing facilities.</p> <p>Change in the pounds per capita per month disposed as garbage (placed in garbage container) by participating households.</p> <p>Change in the ratio of pounds per capita per month successfully recovered to pounds per capita per month placed in garbage container.</p> <p>Weight of new or pilot materials collected.</p> <p>Measurement Framework: <i>For new or pilot materials, an assessment of the technical, economic, and environmental sustainability of collecting the materials.</i></p>
Increasing commodity value	<p>Change in the value of materials exiting processing facility.</p> <p>Measurement Framework: <i>For new or pilot materials, an assessment of the technical, economic, and environmental sustainability of collecting the materials.</i></p>
Decreasing Garbage Disposal	<p>Change in the pounds per capita per month disposed as garbage (placed in garbage container) by participating households.</p> <p>Change in the ratio of pounds per capita per month successfully recovered to pounds per capita per month placed in garbage container</p> <p>Identification of median service level (e.g. one 32 gallon can collected weekly) and change over time</p> <p>Identification of low-volume service levels (e.g. mini-can, every-other-week, monthly, recycle-only) and change over time.</p>
Customer satisfaction with levels of service, including satisfaction with choice of service options and materials identified as accepted in program	<p>Measurement Framework: <i>Standardized surveys delivered over time to measure change.</i></p>

I. Recycling Revenue Sharing Plans

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

Pierce County submits the following response to Question I.B.

Companies, in consultation with the Counties which are charged by law with certifying the Company Recycling Plan, should be required to prepare and explain a list of tasks and activities through which Companies shall work to “increase recycling.” The *Task/Activity Component* is to be one component of an integrated Company Recycling Plan. The other Component, to be explained in response to subsequent questions, is the *Performance Component*.

Concerning the *Task/Activity Component*, Companies and Counties should monitor Company progress throughout the period in which a Company Recycling Plan is in effect. As a first step, when proposing a Company Recycling Plan, and throughout implementation, Companies and Counties must align the level of effort required by the *Task/Activity Component* to consume a certain, defined, percentage of anticipated and actual revenue. Further, Company Recycling Plans should include a specific action plan that describes what happens when revenues or expenses deviate from the levels anticipated by the approved Company Recycling Plan. The chart on the next page proposes potential elements which should be included as part of such an action plan.

In order to safeguard the Companies and Customers, the Commission does need to establish a formal process through which a Company may “petition” the Commission in the event that a negative gap between expenditures and revenue is so great that expenditures would consume all revenue allocated to the *Task/Activity Component* and all revenue allocated to the *Performance Component*. Companies and Customers should not be placed into a position where a Company is required to spend more to enhance recycling than is earned through the sale of recyclable commodities. This also would place additional responsibility on Counties to be more proactive in monitoring expenses incurred through the Company Recycling Plan.

Material Difference	Anticipated Action
Revenue Exceeding Expenditures	<p>No Change in Plan: At end of period, Commission Orders Excess Revenue Returned to Customers.</p> <p>Change in Plan: County must approve increased level of effort to enhance gains. Provides letter to Commission explaining and authorizing change. The goal would be for the added level of effort to consume the anticipated added net revenue.</p>
Expenditures Exceeding Revenues	<p>No Change in Plan: At end of period, Commission Orders a reduction in how much Company is allowed to retain per the Performance Component. This sub-option essentially penalizes the company for not returning to the Commission with an amended plan.</p> <p>Change in Plan (with County approval): County must approve decreased or refocused level of effort in line with revenues. Provides letter to Commission explaining and authorizing change. The goal would be to hold constant as much of the plan as possible.</p> <p>Change in Plan (without County approval): The Commission should establish a formal process through which the Company may petition the Commission to prevent a situation in which the Company would spend more on tasks and activities than the total collected in commodity revenue.</p>

I. Recycling Revenue Sharing Plans

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?

Pierce County has identified five types of permissible expenditures in response to question I.C.1.

1. Specialized customer education and outreach beyond basic services contemplated in a Minimum Service Level Ordinance.
2. Targeted or supplemental outreach materials geared to increasing recycling among Companies' regulated customers.
3. Pilot expansion of programs to collect and process recyclable materials until the economic or environmental sustainability of such collection can be determined.
4. Enhancements to collection or processing programs specifically geared to improving the quality or marketability of recyclables collected from regulated customers.
5. Ancillary recycling services (e.g. drop-off sites or specialized and targeted collection programs) designed to attract away from curbside collection programs certain recyclables which cross-contaminate, reduce marketability, or reduce value, or commodities accepted in curbside programs. Examples could include programs to collect glass at drop-sites, drop-off days for shredded paper, or specialized collection programs for agricultural plastics (e.g. feedbags) from family farms receiving residential collection services.

The rationale, or "why" for the above are similar. Minimum Service Level Ordinances establish "baseline" program and performance requirements, usually those identified as most important in an adopted comprehensive solid waste management plan. These baseline services are deemed by the local government as essential components of curbside garbage and recycling service and thus should be funded from the base program cost detailed on customer bills. The Company Recycling Plan provides an opportunity for the County and the Company to identify enhanced services that rise above the baseline as pilot programs or as programs of lesser importance such that, if revenue from the sale of recyclable commodities declines, these added programs can "go away" without negatively impacting the basic level of service.

I. Recycling Revenue Sharing Plans

- C. What are permissible expenditures under recycling revenue sharing plans?
 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?
 - b. Should performance incentives be limited to achieving or exceeding plan goals or objectives?
 - 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?

Pierce County submits the following response to question I.C.2.

As part of a Company Recycling Plan, each County and Company should include a *Performance Component* which statistically and objectively measures “increased recycling” among regulated customers.

Companies should not be entitled to a performance incentive bonus solely for completing activities, but should instead be measured against performance goals established in the Company Recycling Plan.

The *Performance Component* should establish specific performance measures. For achievement of each measure, Companies should be allowed to retain a pre-defined percentage of recycling revenues. These performance measures could be “awarded” in either of two ways: (1) x percentage of retention for achieving a specific goal or exceeding a specific performance level (i.e. either the company reaches the benchmark and receives the incentive or not); or (2) a graduated percentage of retention providing a larger percentage for achievement of tiered benchmarks (i.e. the better the company performs, the higher the retention).

Counties and Companies should be required to develop a range of performance measures which measure performance against a baseline case (before the current program was implemented), revised baselines reflecting periods in time in which Companies and Counties agree to modify programs, and year-over-year “continuous improvement” targets.

I. Recycling Revenue Sharing Plans

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

Pierce County submits the following response to Question I.C.3.

Under the proposals detailed in previous responses, Pierce County does not believe a *general return* on plan expenditures is permissible. In previous Orders, the Commission deemed Commodity Revenue as separate from general revenue, and removed consideration of such Commodity Revenue from consideration in general rate cases (i.e the types of expenditures which would be assessed to determine a general return). Pierce County agrees with previous Commission decisions: expenditures which spend this “non-general revenue” should not be subject to calculation of returns.

Put more plainly, the *Task/Activity Component* should be designed to achieve a break-even status. The *Performance Component* should be designed as an incentive for achieving benchmarks. Neither should be subject to general return under Lurito-Gallagher.

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?
 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?

- 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?
 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)?
 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?

Pierce County submits the following response to Questions II.A. and II.B.

This workshop and inquiry provides an opportunity for the Commission, Counties, and Companies to work together in a partnership concerning the development, review, and implementation of Company Recycling Plans. Pierce County emphatically restates its position that Counties should take the lead role in the development of Company Recycling Plans since Counties are best positioned to understand and interpret Comprehensive Solid Waste Management Plans and Minimum Service Level Ordinances.

In direct response to Question II.A.1, Counties need to do two things when considering or negotiating financial conditions in a Company Recycling Plan:

1. Within the *Task/Activity Component*, the County must establish a level of task/activity effort necessary to advance the recycling collection system and that matches the level of anticipated commodity revenue, either based on historic data (such as the manner the Commission uses to set the Commodity Credit or Debit that appears on customer bills) or by using projections based on third-party credible data sources.
2. Within the *Performance Component*, Counties must be prepared to state the societal value it assigns to recycling more and disposing less, and then translate those values into retention percentages. As stated above, because Counties develop and implement Comprehensive Solid Waste Management Plans and Minimum Service Level Ordinances, Counties have already adopted policy acknowledging and assigning these societal values and are best prepared to present arguments to customers.

Rather than attempting to answer Questions II.A.2 through II.B.3 individually, Pierce County submits the following review of previous decisions and a proposal to adopt a more partnership-oriented approach to developing, reviewing, and implementing Company Recycling Plans.

Background

The Commission's current interpretation of RCW 81.77.185 has effectively decoupled the opportunity for partnership between Commission staff and the Counties. The Commission has determined by Order that Counties certify the Company Recycling Plan "as being consistent with the local government solid waste plan" while the Commission determines whether the Company Recycling Plan "demonstrates how the revenues will be used to increase recycling." After these determinations, the Commission "shall allow solid waste collection companies collecting recyclable materials to retain up to fifty percent of the revenue paid to the companies for the material."

In this interpretation and configuration, it is possible for the Commission to come to a conclusion that activities and tasks which a County certify as consistent with the solid waste management plan are not sufficiently "demonstrative."

Pierce County considers this an overstep of authority granted by the Legislature. State Law does not grant the Commission authority to approve local government solid waste management plans. Nor does it have a statutory relationship with Counties to effect changes to those plans. Under RCW 70.95.096, the Department of Ecology, not the County, provides to the Commission a copy of each "preliminary draft local comprehensive solid waste management plan." The Commission is then charged solely with reviewing "the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW." The Commission's communication with Counties is limited to advising "the county or city submitting the plan and the department [of Ecology] of the probable effect of the plan's recommendations on those rates."

Further, under RCW 81.77.030 (5), the Commission's regulatory role is to require compliance with local solid waste management plans and related implementation ordinances.

Additionally, under RCW 81.77.030(6), the Commission is charged with regulating solid waste collection companies to "use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans."

Existing State Law, therefore, appears to give great jurisdictional deference to local government's authority to develop and implement solid waste management plans, a key feature of which are to develop recycling programs.

It is through this reading of Chapters 70.95 and 81.77 RCW that Pierce County presented the Commission an argument that Counties, not the Commission, have been charged with the two tasks concerning Company Recycling Plans:

- 1) determining whether the Company Recycling Plan is consistent with the local government solid waste plan; and
- 2) determining whether the Company Recycling Plan demonstrates how the revenues will be used to increase recycling.

In an environment where State Law grants to the Commission advisory, not regulatory, authority over solid waste plans, and compels the Commission to regulate solid waste collection companies' compliance with those solid waste management plans, it seems clear the Legislature has established Counties, not the Commission, as the entities with the expertise to develop and implement recycling programs.

Under this interpretation, Commission action concerning Company Recycling Plans is akin to its obligations enforcing local government solid waste management plans and service level ordinances: require regulated companies to abide by local government decision-making. Thus, if the local government deems a Company Recycling Plan as consistent with its solid waste management plan, and deems the array of programs as being used to increase recycling, it appears to be the Commission's obligation, not an option, to regulate Companies in such a way so as to retain up to fifty percent of commodity revenues.

This, however, is not a "rubber stamp" obligation. There are many circumstances in which the Commission may have to step in to ensure a Company "remains whole" and that Customers are adequately protected and represented.

- The Commission must exercise its authority to ensure a Company cannot be compelled to spend more on its Company Recycling Plan obligations than it earns in commodity revenue.
- The Commission must ensure that the final set of rates are fair, just, reasonable, and sufficient while factoring in the sometimes contradictory laws which divide regulatory responsibility for recycling programs.
- The Commission must ensure that Companies' books are audited to demonstrate to the public, including the Counties, that revenues and expenses were those reported by the Company, that no double-counting is taking place, and that "affiliated interest" transactions occur in the public interest.
- The Commission must advise Counties whether the Cost Assessment Element prepared for a Comprehensive Solid Waste Management Plan has adequately estimated the impact of local government policy proposals on the cost of collecting solid waste and recyclables.
- Finally, the Commission must ensure that regulated customers fund and receive the predominant benefits of Company Recycling Plans.

While it is true that these important responsibilities can be performed after the fact during Commission review of Company filings, it would be better to identify key issues and see the Commission fulfill its obligations under State Law in conjunction with the Counties and the Companies during the development of a Company Recycling Plan.

Partnership Approach

Taking a cue from the Commission's *Cost Assessment Guidelines for Local Solid Waste Management Planning* (Second Edition, Revised; August 2001), Pierce County recommends the Commission develop a similar advisory manual or instruction book for preparing Company Recycling Plans. Like the *Cost Assessment Guidelines*, this manual could contain a mix of compulsory policy statements and advisory information templates. The advantage to preparing and distributing templates for Company Recycling Plans would be much the same as stated within the *Cost Assessment Guidelines*:

The WUTC staff developed this questionnaire to assist local planners in completing the cost assessment from which the Commission will calculate the potential rate impact(s). This questionnaire provides you with the questions that need to be answered so the Commission staff can perform the assessment of the SWM plans and determine the impact it may have on rates.

The Commission staff submits this document to the local governments to facilitate the transfer of a great deal of information, and to make the assessment process as transparent and understandable as possible. Although the Commission prefers the local government to submit information in the provided format, RCW 70.95.090 does not mandate the use of this questionnaire. You may provide the requested information in any format you choose. However, it is mandatory that, you prepare a cost assessment. (Cost Assessment Guidelines, page 9)

Pierce County proposes the manual and planning templates as the foundation for a stronger partnership between the Commission, Counties, and Companies. In addition to providing an overview of Commission regulatory responsibility and a brief history of Commodity Credits and Company Recycling Plans, the manual could summarize the results of this Workshop and Inquiry with the following helpful information:

- Identification of the essential elements of a Company Recycling Plan.
 - Suggestions to better estimate future recycling commodity revenue.
- Template for easier submittal of essential elements.
 - Forms for describing tasks and activities and reporting on related expenditures.
 - Forms for describing performance benchmarks and reporting results.
 - Standard format for County certification.
- Identification of the Commission's review and consideration of each element of a Company Recycling Plan.
 - Step-by-step list of the questions typically asked by Commission staff when reviewing this type of filing.
 - Typical schedule for review and approval.
- Pathway to ensure Company Recycling Plans contain safeguards to ensure a Company is not acting outside the bounds of financial propriety required by State Law and related implementing regulations (Chapter 81.77 RCW and Chapter 480-70 WAC)
 - Suggestions to keep everyone out of hot water.

II. Process Issues

- 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?
 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?
 3. Should all companies be required to use the same plan period (e.g., a calendar year)?
 4. When should companies make their filings to enable Staff and the Commission to review and make a determination on those filings?

Pierce County submits the following response to Question II.C.

In keeping with current practice, to the extent practicable, Companies should submit one package – forty-five days prior to the effective date of the next Company Recycling Plan – which includes a review (to date) of the Company Recycling Plan for the previous year, the County-certified Company Recycling Plan for the next year, and documentation which demonstrates compliance with the County-certified Company Recycling Plan. Ideally, the requisite documentation will be detailed within the Plan itself, so when the Commission is asked to approve the filing, it will be approving, in advance, the “template” for the next years’ reporting.

Pierce County strongly disagrees that all regulated companies, across all Counties, should file on a calendar year basis. Pierce County, however, would like all Companies doing business in Pierce County to file with an effective date of March 1 to coincide with parallel filings concerning disposal fee increases.

II. Process Issues

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

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

- F. Should the Commission conduct a rulemaking?
 - 1. Should the Commission promulgate a rule on filing requirements for recycling revenue sharing plans?
 - 2. Should the Commission revise its existing customer notification rules to enable County input on the content and frequency of notices on recycling?
 - 3. Are there other aspects of recycling revenue sharing programs that the industry or Counties request that the Commission address through a rulemaking?

Pierce County submits the following response to Questions II.D. through F.

Pierce County believes that all issues covered in this Docket can be addressed through a policy or interpretative statement, enhanced by publication of an instructional booklet as recommended above.