



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(206) 753-6423 • (SCAN) 234-6423 • TDD (206) 586-8203

October 12, 1994

Mary F. Perry
Kathryn A. Killinger
King County Prosecuting Attorney's Office
E550 King County Courthouse
516 3rd Ave.
Seattle, WA 98104

Dear Ms. Perry and Ms. Killinger


Subject: Petition for Judicial Review
King County Superior Court No. 94-2-250141

Pursuant to RCW 34.05.566(3) the Commission requests payment in advance for the preparation of the record which will be submitted to King County Superior Court under Cause No. 94-2-250141.

The Commission's photocopying charge is \$.20 per image. The approximate number of copies is 2272. The total is \$ \$490.27, which includes 7.9 percent sales tax. (Invoice #8733)

Please remit payment for the above amount upon receipt of this letter.

Sincerely,


Steve McLellan
Secretary

Enclosure

cc: Clerk King County Superior Court



M E M O R A N D U M

October 4, 1994

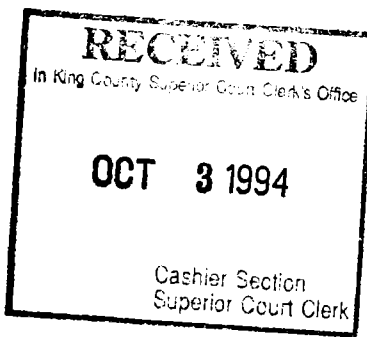
TO: Bob Wallis
Terrence Stapleton (w/attachments)
Marilyn Meehan
Chairman Nelson
Commissioner Hemstad
Anne Egeler (w/attachments)
Paul Curl

FROM: Roswitha McGill, Records Center

SUBJECT: King County Department of Public Works
v. WUTC and Seattle Disposal Company d/b/a Eastside
Disposal and Container Hauling (TG-940411)
Petition for Judicial Review
No. 94-2-25014-1

A petition for judicial review has been filed in King County Superior Court on October 3, 1994, by Kathryn A. Killinger, Attorney for Petitioner listed above. The petition was received by the Commission on October 4, 1994.

Please contact the Records Center if you would like copies of the attachments.



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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KING COUNTY DEPARTMENT OF)
PUBLIC WORKS, SOLID WASTE)
DIVISION,)

NO. **94 2-25014 1**

Plaintiff,)

PETITION FOR REVIEW OF)
ADMINISTRATIVE DECISION)

vs.)

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION AND)
SEATTLE DISPOSAL COMPANY,)
RABANCO LTD., d/b/a EASTSIDE)
DISPOSAL AND CONTAINER)
HAULING,)

Respondents.)

RECEIVED
CIVIL DIVISION
OCT 11 1994

Pursuant to RCW 34.05.542 and 34.05.546, King County hereby petitions this court to set aside the Washington Utilities & Transportation Commission's ("the Commission") Third Supplemental Order Dismissing Complaint on Condition in Docket No. TG-940411, and alleges as follows:

PARTIES

1. Petitioner. King County is a political subdivision of the State of Washington exercising independent constitutional

1 authority under its home rule charter. The King County Department
2 of Public Works, Solid Waste Division, is an administrative agency
3 of King County. The Solid Waste Division is responsible for
4 operating and managing municipal solid waste landfills owned or
5 operated by King County, including the Cedar Hills Landfill. It's
6 mailing address is 400 Yesler Way, Room 600, Seattle, Washington
7 98104-2637.

8 2. Petitioner's Attorneys. King County is represented by
9 Senior Deputy Prosecuting Attorney Mary F. Perry and Senior Deputy
10 Prosecuting Attorney Kathryn A. Killinger of the King County
11 Prosecuting Attorney's Office, E550 King County Courthouse, 516
12 Third Avenue, Seattle, Washington 98104.

13 3. Agency. The Washington Utilities & Transportation
14 Commission is an agency of the State of Washington, created by the
15 Legislature pursuant to Chapter 80.01 RCW, and located at 1300 S.
16 Evergreen Park Dr. SW, P.O. Box 47250, Olympia, Washington 98504-
17 7250.

18 4. Parties to Agency Adjudicative Proceedings. In addition
19 to King County and the Commission, Seattle Disposal Company, Rabanco
20 Ltd., d/b/a Eastside Disposal and Container Hauling, represented by
21 Elizabeth Thomas, Preston Gates & Ellis, 5000 Columbia Center, 701
22 Fifth Avenue, Seattle, Washington 98104-7078, was a party to the
23 agency adjudicative action.

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VENUE AND JURISDICTION

5. Standing. Petitioner has standing to bring this petition for review pursuant to RCW 34.05.530.

6. Venue. Venue in this court is proper, and this court has jurisdiction, pursuant to RCW 4.92.010 and RCW 34.05.514(1).

FACTS

7. Tariff Revision Filing. On December 28, 1993, Seattle Disposal Co., Rabanco Ltd., d/b/a Eastside Disposal and Container Hauling ("Eastside") filed for increased garbage and residential rates in Commission Docket No. TG-931585.

8. King County's Expressions of Concern Prior to Hearing. Upon receiving notice of Eastside's tariff revision filing, representatives of King County had repeated communications with WUTC staff regarding Eastside's proposed tariff revision. In the course of those communications, King County expressed concerns that the proposed tariff revision would create a disincentive for achievement of the state and local goals of waste reduction and residential recycling.

9. Tariff Revision Hearing. On February 9, 1994, the WUTC held a hearing on the proposed tariff revision. Rod Hansen, Ph.D., Manager of the King County Solid Waste Division, appeared at that hearing and made a statement in opposition to the tariff revision. King County opposed the tariff revision because it violated RCW 81.77.030, which statutorily mandates the WUTC to supervise and

1 regulate solid waste collection companies by requiring certificate
2 holders to use rate structures and billing systems consistent with
3 the solid waste management priorities set forth under RCW 70.95.010
4 and with the minimum levels of solid waste collection and recycling
5 services pursuant to local comprehensive solid waste management
6 plans and by requiring compliance with local solid waste management
7 plans and related implementation ordinances.

8 10. Adopted Rates. On February 9, 1994, the WUTC adopted the
9 WUTC staff recommended rate increases, with an effective date of
10 February 15, 1994. The prior and new rates are as follows:

	<u>Prior Rates</u>	<u>New Rates</u>
<u>Residential</u>		
Monthly rate for weekly pickup		
Mini can	\$ 5.64	\$ 9.65
One can	9.01	10.90
Two can	12.28	12.75
Three can	15.80	15.80
Yard Waste Component	6.00	6.00
Recycle Component	4.03	4.44

11 11. RCW 81.77.030 . RCW 81.77.030 statutorily mandates the
12 WUTC to supervise and regulate solid waste collection companies by
13 requiring certificate holders to use rate structures and billing
14 systems consistent with the solid waste management priorities set
15 forth under RCW 70.95.010 and with the minimum levels of solid waste
16 collection and recycling services pursuant to local comprehensive
17 solid waste management plans and by requiring compliance with local
18 solid waste management plans and related implementation ordinances.
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1 12. RCW 70.95.010. RCW 70.95.010 establishes priorities for
2 solid waste management in the State of Washington. That statute
3 establishes waste reduction as the highest priority and recycling,
4 with source separation of recyclable materials as the preferred
5 method, as the second highest priority.

6 13. The King County Comprehensive Plan and Implementing
7 Ordinances. The King County Comprehensive Solid Waste Management
8 Plan establishes goals for the reduction of the waste stream in King
9 County, and King County has adopted ordinances to implement the
10 achievement of the goals contained in the Comprehensive Solid Waste
11 Management Plan. Specifically, King County Code ("KCC")
12 §10.18.020 directs certificated haulers to file tariffs that include
13 the following percentages of increases between levels of service: a
14 minimum of sixty percent between mini and one can; a minimum of
15 forty percent between one and two cans or equivalent; and a minimum
16 of twenty-five percent between two and three cans or equivalent.
17 The code provision strongly encourages the Commission to approve
18 tariffs that are consistent with the policies set forth in the code
19 chapter and that meet the percentages specified in KCC §10.18.020.

20 14. Financial Disincentives. The rates adopted by the
21 Commission create a strong financial disincentive for customers to
22 reduce waste and to recycle. For example, a mini-can customer with
23 yard waste collection will pay \$16.90 per month, while a three-can
24 customer who does not have yard waste collection will pay only

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1 \$15.80 monthly. The willingness of customers to increase recycling
2 and to reduce garbage production is strongly influenced by financial
3 incentives contained in the garbage collection rate structure.
4 These strong financial disincentives will result in increased waste
5 disposal, reduced recycling and increased illegal disposal of waste.
6 Most of that increased waste will be deposited in the Cedar Hills
7 Landfill.

8 15. Petition for Reconsideration. On February 18, 1994, King
9 County filed with the Commission a Petition for Reconsideration and,
10 in the Alternative, Rehearing and Amendment or Rescission of tariff
11 revision, Docket TG-931585.

12 16. Denial of Petition for Reconsideration. By letter, dated
13 March 9, 1994, the Commission denied King County's Petition for
14 Reconsideration and, in the Alternative, Rehearing and Amendment or
15 Rescission, but noted "that the County may further pursue the issues
16 raised in its petition by filing a formal complaint against Eastside
17 Disposal's rates pursuant to RCW 81.04.110 and WAC 480-09-400."

18 17. King County's Complaint Against Eastside's Rates. On
19 March 23, 1994, King County filed a formal complaint against
20 Eastside's rates.

21 18. Commission Hearings. Hearings were held before Commission
22 Chair Sharon Nelson, Commissioner Richard Hemstad and Administrative
23 Law Judge Alice L. Haenle on May 9, July, 14, July 15, July 18, and
24
25

1 July 19. The hearing on July 19 included the opportunity for
2 members of the public to testify.

3 19. Decision of Commission Dismissing Complaint. On September
4 14, 1994, the Commission issued its Third Supplemental Order
5 Dismissing Complaint on Condition in Docket No. TG-940411. In its
6 Order, attached as Exhibit A to this Petition, the Commission
7 concluded that King County cannot require the Commission to adopt
8 rates that conform to the specific rates structure set forth in KCC
9 \$10.18.020; that King County cannot require Eastside to propose
10 rates with a steeply inclining structure when Eastside has been
11 informed by the Commission that the Commission will not approve such
12 a rate structure; that if different rate structures are called for
13 by a Commission order and by the King County Code, Eastside must
14 comply with the Commission-approved structure; that Eastside's
15 current rate structure and billing system are consistent with the
16 solid waste management priorities set forth in RCW 70.95.010(8) and
17 conform with the requirements of RCW 81.77.030; and that Eastside's
18 current rate structure and billing system are consistent with the
19 minimum levels of solid waste collection and recycling services
20 established by the County's Comprehensive Solid Waste Management
21 Plan.

22 20. The Commission's Order. The Commission ordered that King
23 County's complaint be dismissed when the following two conditions
24 were met: (1) Eastside shall rerun its cost-of-service study using
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1 the Meeks methodology time related allocators "Total Pick-up Time"
2 and "Total Dump Time" as adopted by the Commission in Docket No. TG-
3 2016, and shall file results of that rerun consistent with the
4 Commission's order; and (2) Eastside shall revise its billing format
5 to separately list all service elements, and shall report to the
6 Commission with its new tariff submittal a timetable to complete the
7 revision to its bills no later than January 1, 1995.

8 **REASONS RELIEF SHOULD BE GRANTED**

9 21. Grounds for Relief. The Commission's order should be set
10 aside because (1) it is outside the statutory authority or jurisdic-
11 tion of the Commission conferred by any provision of law; the
12 Commission has erroneously interpreted and applied the law; (3) the
13 order is not supported by evidence that is substantial when viewed
14 in light of the whole record; and (4) the Commission's order is
15 arbitrary and capricious. See RCW 34.05.570(3).

16 22. Violation of RCW 81.77.030 and 70.95.010. The Commission
17 approved a tariff that is contrary to RCW 81.77.030 and contrary to
18 the priorities for solid waste management contained in RCW
19 70.95.010.

20 23. The Commission Has Misinterpreted Controlling Statutes.
21 The Commission has erroneously interpreted and applied the law by
22 approving a tariff that is contrary to RCW 81.77.030 and contrary to
23 the priorities for solid waste management contained in
24 RCW 70.95.010.

1 24. King County Has Shown that the Commission has Misinter-
2 preted Controlling Statutes. King County has carried its burden of
3 showing that the Commission has approved a tariff that is contrary
4 to RCW 81.77.030 and contrary to the priorities for solid waste
5 management contained in RCW 70.95.010 and that creates a dis-
6 incentive to waste reduction and recycling.

7 25. Arbitrary and Capricious Nature of the Order. The
8 Commission's approval of a tariff revision that is contrary to solid
9 waste management priorities established by statute is outside the
10 Commission's statutory authority and is arbitrary and capricious.

11 26. Prejudice to King County. King County is substantially
12 prejudiced by the Commission's Third Supplemental Order Dismissing
13 Complaint on Condition. Specifically, the order will result in the
14 increase of waste deposited at the Cedar Hills Landfill, a decrease
15 in the amount of waste reduction and recycling by residents in
16 affected areas, and will jeopardize King County's ability to meet
17 its waste reduction goals.

18 RELIEF REQUESTED

19 King County requests relief pursuant to RCW 34.05.574 as
20 follows:

21 (1) An order vacating the Commission's Third Supplemental
22 Order Dismissing Complaint on Condition in Docket No. TG-940411;

23 (2) An order remanding the matter to the Commission and
24 directing entry of a Commission order approving a new tariff in
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1 compliance with RCW 81.77.030, in compliance with the King County
2 Comprehensive Solid Waste Management Plan and implementing ordi-
3 nances, and in compliance with the priorities for solid waste
4 management contained in RCW 70.95.010.

5 (3) An order granting King County its costs and disbursements
6 incurred herein; and

7 (4) Such other and further relief as the court may deem just
8 and equitable.

9 DATED this 3rd day of October, 1994.

10 Respectfully submitted,

11 NORM MALENG
12 King County Prosecuting Attorney

13 By: Kathryn A. Killinger For
14 MARY F. BERRY, WSBA #15376
15 Senior Deputy Prosecuting Attorney
Attorneys for King County

16 NORM MALENG
17 King County Prosecuting Attorney

18 By: Kathryn A. Killinger
19 KATHRYN A. KILLINGER, WSBA #16342
20 Senior Deputy Prosecuting Attorney
21 Attorneys for King County

IN T. SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

King County Department of Public Works, Solid
Waste Division }
Petitioner(s), }
vs. }
Washington Utilities and Transportation }
Commission and Seattle Respondent(s). }
Disposal Company -----

94 2-25014-1
NO.

ORDER SETTING CASE SCHEDULE
(Administrative Appeal)

I. BASIS

It is the Policy of the King County Superior Court that the Clerk shall issue a case schedule when a decision of an administrative agency or appeal board is appealed to the King County Superior Court. Individuals involved in this action must comply with the following schedule:

II. SCHEDULE

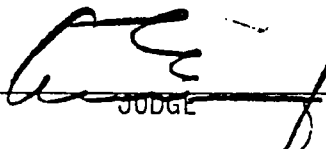
CASE EVENTS	DUE DATE
Filing of Notice of Appeal/Petition for Review.....	Mon 10/03/94
*Affidavit of Service or Confirmation of Service.....	Mon 10/31/94
*Filing of Notice of Appearance (if applicable).....	Mon 10/31/94
*Filing of Administrative Agency Record.....	Mon 12/05/94
*Deadline for Filing Jury Demand (if applicable).....	Tue 12/27/94
*Deadline for Filing Petitioner's Trial Brief.....	Mon 3/13/95
*Deadline for Filing Respondent's Trial Brief.....	Mon 4/03/95
*Deadline for Filing Petitioner's Reply Brief.....	Mon 4/17/95
Review Hearing or Trial (8:45 a.m., Presiding Dept, E-942).....	Mon 5/01/95

* Requires the filing of a document with the Clerk

III. ORDER

It is ORDERED that all parties shall comply with the foregoing schedule and that failure to meet these event dates will result in the dismissal of your appeal. It is FURTHER ORDERED that the party filing this action must serve this order setting case schedule on on all other parties.

DATED: 10/03/94



JUDGE

(IMPORTANT: See Notices on Back)

I understand that a copy of this document must be given to all parties:

(Signature)

rev: 10/18/93

Docket Code: *ORSCS

NOTICE OF APPEAL - ADMINISTRATIVE AGENCIES/BOARDS

IV. NOTICES

1. The person appealing a decision of a administrative agency/appeal board must:
 - a. File a Notice of Appeal with the administrative agency/appeal board within the time frames as instructed by applicable statutes.
 - b. Serve a copy of the Notice of Appeal and Order Setting Case Schedule (Schedule) on all other parties. You, as the person who started this appeal, must make sure the other person or agency is notified of your action and gets a copy of the Schedule. You may choose certified mail, personal delivery by someone other than you, or a "process serving service" (see telephone book). Please initial here _____ to show you understand that you must make sure the other person and/or agency gets a copy of this form.
 - c. Pay the statutory filing fee to the Clerk of the Superior Court in which the notice of appeal is filed, unless the party filing the notice secures an order of in Forma Pauperis from the Presiding Judge of the Superior Court or the filing fee is exempt by statute.
 - d. On the date of your review hearing or trial, you must appear in the Presiding Department, Rm E942, at 8:45 a.m., unless your appeal has been assigned to a particular judge or the appeal has been previously dismissed.
2. All attorneys and parties should make themselves familiar with the rules of the court -- especially those referred to in this Schedule. In order to comply with the Schedule, it will be necessary for attorneys and parties to pursue their appeals vigorously from the day they are filed. All events must occur promptly. If they are late, the Clerk of the Court is authorized by the King County Superior Court Local Rules to schedule the appeal for a dismissal hearing.

3. **ALL PENDING DUE DATES AUTOMATICALLY CANCELLED UPON FINAL DECISION:**

All the due dates on the case schedule are binding unless amended by court order. When a final Order, Judgment, Decree or Decision on Appeal disposing of the appeal is filed with the Clerk, all pending due dates are automatically cancelled, including the scheduled trial or Review Hearing. It is the responsibility of the parties to promptly file dispositive documents within 45 days from resolution of the case.

4. **DISMISSALS**

Dispositive documents: If dispositive documents are not timely filed, the case may be dismissed without prejudice upon Clerk's Notice of Dismissal.

Scheduled Trial Date: The Clerk is authorized by the King County Superior Court Local Rule 41(b)(2)(A) to present an order of dismissal, with notice, for failure to appear at the scheduled trial date.

SERVICE DATE

SEP 14 1994

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KING COUNTY DEPARTMENT OF PUBLIC)
 WORKS, SOLID WASTE DIVISION,)
)
 Complainant,)
))
 v.)
))
 SEATTLE DISPOSAL COMPANY, RABANCO)
 LTD., d/b/a EASTSIDE DISPOSAL AND)
 CONTAINER HAULING,)
))
 Respondent.)
)

DOCKET NO. TG-940411

THIRD SUPPLEMENTAL ORDER
DISMISSING COMPLAINT
ON CONDITION

RECEIVED
SEP 16 1994
NORM MALENG PROSECUTING ATTORNEY CIVIL DIVISION

SUMMARY

PROCEEDING: King County filed a formal complaint challenging the tariff revisions adopted in Docket No. TG-931585, for Seattle Disposal Company, Rabanco Ltd., d/b/a Eastside Disposal and Container Hauling (hereafter, "Eastside"). King County alleges the adopted rates are illegal on several bases.

Eastside filed an answer supporting the rates.

HEARINGS: The Commission held five days of hearings on the complaint, including a hearing in Bellevue for the purpose of taking testimony from members of the public. Hearings were held before Chairman Sharon Nelson and Commissioner Richard Hemstad, and Administrative Law Judge Alice L. Haenle of the Office of Administrative Hearings.

APPEARANCES: Complainant King County Department of Public Works, Solid Waste Division (King County), was represented by Mary F. Perry and Kathryn A. Killinger, Senior Deputy Prosecuting Attorneys, Seattle. Respondent Eastside was represented by Elizabeth Thomas, attorney, Seattle. The Commission was represented by Anne E. Egeler, assistant attorney general, Olympia.

COMMISSION: In this order, the Commission concludes that it, and not King County, has the statutory authority to establish rates. It finds that the Commission's goals and the County's coincide in many respects, and that the Commission's rate design methodology provides an appropriate incentive to achieve those goals. It also finds that the methodology complies with state law, including the Waste Not Washington Act, resulting in reasonable rates. Finally, it concludes that the County has not justified a departure from such methodology, and the complaint should be dismissed.

In examining the evidence of record, however, the Commission finds that Eastside has inappropriately made changes in the Commission-required methodology without announcing or justifying the changes. The company's changes may well skew the rates away from the County's preferred rate spread. The Commission therefore orders Eastside, as a condition of dismissal, to rerun its cost of service study, to recalculate its rates using the appropriate "Meeks" methodology, and to file the recalculated rates. The result is expected to move the rate structure toward the County's preferred structure. As a second condition of dismissal, the company must reformat its customer bills.

I. SCOPE OF PROCEEDINGS

A. Procedural History

On March 23, 1994, King County filed a formal complaint against Eastside's rates. The rates had been accepted in Docket No. TG-931585 after presentation at an open public meeting on February 7, 1994. The rates were based on a cost-of-service study conducted by Eastside.

Eastside filed an answer on April 12, 1994.

The Commission held hearings on May 9, July 14, 15, 18 and 19, 1994. The hearing on July 19 was held in Bellevue. It included the opportunity for members of the public to testify.

The parties filed simultaneous briefs on August 15, 1994.

B. Statutes and Ordinances

King County contends Eastside's rates violate various provisions of the Waste Not Washington Act (Laws of 1989, Ch. 431). The Waste Not Washington Act amended and supplemented the Solid Waste Management Act (Chapter 70.95 RCW), which established "a comprehensive statewide program for solid waste handling which will prevent land, air, and water pollution and conserve the natural and economic resources of this state..."¹

The current King County Comprehensive Solid Waste Management Plan was adopted in 1992 as King County Code (KCC)10.18.

¹ RCW 70.95.020, Purpose.

The Commission's ratemaking jurisdiction is specified in RCW 81.77.030².

C. Witnesses

King County sponsored the following witnesses in its direct case:

- Rodney G. Hansen, Manager of the King County Solid Waste Division, was the policy witness, addressing the solid waste planning process and the county's solid waste plan.
- Jeffrey A. Gaisford, King County Program Supervisor in Waste Reduction and Recycling, described the impact of incentive rates. He also provided information about customer mix by service level.
- Lisa A. Skumatz, consultant with Economic Research Associates, addressed solid waste rate designs and their impact on consumer behavior.
- Russell E. Davies, King County Program Analyst, described the county's waste stream.
- Kimberly R. Albert, King County Economist, testified about the county's waste generation model, the relationships observed between variable can rates, and household disposal and recycling.
- Nicholas S. Pealy, Director of Strategic Planning, Finance and Information Systems, City of Seattle Solid Waste Utility, addressed the extent to which solid waste rate design affects solid waste disposal and recycling in Seattle.
- David A. Dougherty, Director of the Clean Washington Center, addressed the Center's 1993 study The Economics of Recycling and Recycled Materials.

Respondent Eastside provided the testimony of Paul L. Glasgo, Controller for Rabanco Companies. Mr. Glasgo explained the reasons for the rate filing and described the company's customer mix.

The Commission Staff sponsored the following witnesses:

² Copies of KCC 10.18 and Chapter 70.95 RCW; RCW 81.04.250, 81.77.030, 81.77.040, 81.77.130 are attached to this order as Appendix A.

○ Layne C. Demas, Revenue Requirements Specialist, described the basis for the rate design approved for Eastside and described cost of service.

○ Phillip Popoff, Rate Research Specialist, analyzed King County's data and evaluated its incentive-based rate differentials.

○ Robert G. Colbo, Transportation Program Consultant, reviewed the history of the Commission's regulation of solid waste carriers, and efforts undertaken by the Commission to encourage waste reduction and recycling.

King County provided the following rebuttal witnesses:

○ Jeffrey A. Gaisford generally responded to witnesses of other parties.

○ Kimberly Albert responded to Mr. Popoff's testimony and criticized Eastside's can weight study.

○ Lisa Skumatz responded to other parties' comments about King County's studies, addressing incentive rates and cost-based rates.

II. IS THE COMPANY'S COST-OF-SERVICE RATE DESIGN LEGAL?

King County contends that Eastside's rates are illegal on several bases: First, the Commission-approved rate design does not incorporate percentage differentials among rate levels recommended by King County ordinance. This argument assumes that the Commission is required to enforce the King County ordinance. Second, a rate design incorporating King County's differentials would provide stronger incentives than would the rate design approved by the Commission, leading to more recycling. Third, the rates approved by the Commission are not reasonable and were not adopted in a reasonable manner.

The Commission concludes that Eastside's approved rates are not illegal, based on the following discussion.

A. Which Entity Has Authority Over Rate Design?

King County cites RCW 81.77.030(5) and (6), which require the Commission to require haulers to comply with local solid waste management plans and related implementation ordinances, and also require haulers to use rate structures

consistent with the solid waste management priorities set forth in RCW 70.95.010. King County contends the Commission must enforce the rate differentials in the ordinance because they are designed to implement King County's solid waste management plan.

King County also cites several portions of RCW 70.95.010, which contains legislative findings, priorities, and goals. RCW 70.95.010(6)(c) states that it is the responsibility of county and city governments to assume primary responsibility for solid waste management. Subsection (6)(d) requires that state government ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all. Subsection (10) provides that steps should be taken to make recycling at least as affordable and convenient as mixed waste disposal.

King County contends it has authority to include rate incentives in its comprehensive plan under RCW 70.95.010(8), which lists priorities for collection, handling, and management of solid waste. King County's ordinance directs haulers to file their tariffs with a certain rate design and "encourages"³ the Commission to approve the tariffs. At the time the ordinance was adopted, the differentials listed in the ordinance were similar to the rate spreads then embodied in Eastside's tariffs, which were consistent with the Commission's cost-of-service methodology.

Eastside cites RCW 81.77.030 in contending that the Commission has the sole authority to establish rates for haulers. Eastside, on brief, notes that RCW 70.95.900 specifically provides that nothing in Chapter 70.95 RCW changes the authority or responsibility of the Commission to regulate all intrastate carriers. Eastside argues that King County has no authority to order it to file rates that incorporate specific rate differentials, and that Eastside is barred by law from charging rates that differ from its tariff, despite contrary instructions from a local government. Eastside notes that King County ordinances purporting to govern rate design place the company in the untenable position of having to violate either state or local law.

The Commission Staff argues that RCW 81.77.030(6) requires the Commission to set rates that are consistent with the solid waste management priorities in RCW 70.95.010, but does not dictate that the Commission use any means necessary to achieve the maximum possible waste reduction. Commission Staff argues that the scope of King County's plan and ordinances extends far beyond its jurisdictional authority, and that the Commission is

³ KCC § 10.18.020(c).

not required to implement ordinances which exceed King County's authority. Commission Staff notes that RCW 70.95.090 contains a very specific list of the elements that must be included in solid waste management plans, and contends that King County lacks the authority to expand upon the specific list. None of the provisions of RCW 70.95.090 and nothing else in the statute gives counties rate setting authority.

King County's position must be rejected. The Commission has sole authority to establish rates for certificated solid waste companies. RCW 81.77.030(5) instructs the Commission to require compliance with local solid waste plans. Local solid waste plans are defined by RCW 70.95.090. That section contains a very specific list of the elements that should be included in solid waste management plans. At no point in this section, or in any other statute, is King County given the authority to set rates, or to require carriers to request specific rates from the Commission. King County lacks the authority to include elements that are not included in RCW 70.95.090 in its solid waste management plans and ordinances; it, therefore, lacks authority to force the Commission to enforce those requirements.

Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius* - specific inclusions exclude implication.

Washington Natural Gas Co. v. Public Util. Dist. No. 1 of Snohomish County, 77 Wn.2d 94, 459 P.2d 663 (1969), citing State v. Roadhs, 71 Wn.2d 705, 430 P.2d 586 (1967).

This conclusion is reinforced by the fact that in the immediately following section, RCW 81.77.030(6), the legislature advised the Commission of the standards it is to apply when designing rates for solid waste collection companies. By assigning this task to the Commission, the legislature made it clear that rate design is not the task of King County.

RCW 70.95.900, contained in the Growth Management Act, specifically provides that the act does not change the Commission's authority or responsibility to regulate all intrastate carriers. RCW 70.95.900 was not amended by the Waste Not Washington Act, and predates the Waste Not Washington Act. Inherent in the authority to set rates is the authority to choose an appropriate rate design.

King County's attempt to dictate rate design by providing specific differentials must fail, because King County does not have authority to establish rates for this carrier. The Commission is required to comply with state policies and state goals. Neither the Commission nor Eastside is required to comply with an ordinance that exceeds the scope of King County's authority.

King County Code § 10.18.020(c) places Eastside in the same position as the plaintiff in Seattle Electric Co., it must violate either state or local law.

If the plaintiff in this case obeys the ordinance in question, it violates the law of the state, because the charges are less than those fixed by the schedule on file; and if it obeys the law of the state it violates the city ordinance. Such a conflict of authority is not to be tolerated. For these reasons I am satisfied that the act of the municipality in enacting the ordinance in question as ultra vires . . .

Seattle Electric Co., v. City of Seattle, 206 F. 955 (W.D. Wash. 1913).

King County Code § 10.18.020(c) is ultra vires.

The Commission was actively involved in the drafting and development of the Waste Not Washington Act, which amended Chapters 81.77 RCW and 70.95 RCW and included most of the sections cited by the parties. The Commission sought, and received, continued sole authority over rate design. In return, the Commission agreed to assist the counties in assuring that the county solid waste management plans, as specifically defined in the statute⁴, complied with state law. The Commission's contemporaneous and consistent interpretation of the statute was that rate design was solely within the jurisdiction of the Commission.

The Commission notes that King County could assume control of and responsibility for residential recycling. Under RCW 81.77.130, the Commission's jurisdiction would not apply to collection or transportation of source separated recyclables from residences if King County contracted for such collection and transportation. To date, King County has not chosen to do so.

The Commission and Rabanco companies were both at the forefront of implementing curbside recycling, not just in Washington State but also in the nation. Much of the ground-breaking analysis done by Dr. Skumatz is based on the variable

⁴ RCW 70.95.090.

rate structures established in Washington State by the Commission. Our first experimental curbside recycling programs were implemented before the Waste Not Washington Act was passed. Since the passage of that act, multiple programs with various companies in numerous counties have been implemented. The Commission shares King County's enthusiasm for recycling and for the importance of recycling in the State's long range solid waste policy. But, it has adopted statewide rate design principles that are consistent with these views and with other equally important statutory policies the Commission applies.

B. Does the Commission's Cost-of-Service Methodology Violate State Law?

The Commission adopted its cost-of-service methodology (Meeks methodology) in the Consolidated Rate Cases (TG-2016), in 1988. A Commission Notice of Inquiry (NOI), completed in July 1992, also considered cost-of-service and rate design issues. The NOI has not yet prompted any changes in rate setting policy; no changes are presently contemplated.

The Meeks methodology resulted in a shift to more steeply inclining rate structures. This result was consistent with major increases in dump fees which were starting to take effect then.

King County argues that the Commission's cost-of-service methodology violates RCW 81.77.030 and 040. It claims that the Commission is required to develop a cost model that complies with state priorities, local plans, and local implementing ordinances. This argument appears to be based on the notion that the rates which result from application of cost-of-service principles fail to promote the goals of the King County ordinance.

The company contends that it is unclear whether King County is arguing that the Commission should not use cost-of-service rate methodologies, or whether it is simply criticizing the methodology the Commission does use. Eastside notes that KCC § 10.18.020 calls for an incentive rate structure "rather than a strict cost-of-service rate structure". Eastside argues that the Commission has discretion in selecting appropriate ratemaking methodologies, and that it has appropriately exercised its discretion.

The Commission Staff argues that the Meeks methodology sets rates which are properly tied to Eastside's actual cost of providing service. The Commission Staff notes that in TG-2016 the Commission stated that it expected to receive solid waste studies from large carriers. The Commission Staff notes that current can weights should be expected to be smaller than the Meeks can weights, because the Meeks study was performed prior to implementation of curbside recycling and yard waste reduction programs.

The Commission Staff emphasizes that the weight spreads in Dr. Skumatz' garbage-by-the-pound study are nearly identical to those found in Eastside's study and validate its reasonableness. Commission Staff also notes that King County did not perform a study of can weights or present estimated can weights. Using the only weights provided by King County, in Dr. Skumatz' study, would have a negligible effect on Eastside's rates.

King County's contentions should be rejected. The cost-of-service methodology used by the Commission does not violate state law. Basing rates on cost-of-service studies does provide incentives to consumers that further the statutory policy goals. The Commission has for many years used variable rates. As discussed in the next section, variable rates do provide incentives. A sufficient incentive is provided; there is no requirement that a slightly greater degree of incentive be obtained. The record establishes that King County is ahead of schedule in meeting the goals of Chapter 70.95 RCW. The Commission's role in approving variable rates and curbside recycling programs has made this success possible.

The Commission adopted the Meeks methodology only after extensive hearings and participation by a variety of parties. The Commission has found that cost-based price signals tend to be the most equitable and efficient. The Commission takes seriously its responsibility to send market signals where a market does not naturally exist.

King County's differentials among service levels, in contrast, were adopted after a purely political and theoretical process. According to Dr. Hansen, King County's preferred rate spread was adopted, "because we felt they would provide certainly a better incentive than what we saw in place, . . . at the time."⁵

⁵ Transcript page 102.

There is no indication studies were performed to support the differentials finally incorporated into the ordinance. Ironically, the spreads were chosen, at least in part, because the desired result seemed achievable because the Commission's cost-of-service methodology had led to such a rate structure in the area at the time.⁶

The county's preferred rate spread would grant the greatest financial reward (lowest price/highest subsidy) to the users of minican service. When directly asked if the county had conducted any study to determine the average disposal levels of a family of four, Dr. Hansen was unable to pinpoint any. The county simply contended that observations had been made about general behaviors of families.⁷ No concrete empirical study was provided which would support the usefulness of the county's preferred rate spread, or the likelihood that an average family could sustain a minican subscription level. In fact, the county's own witness, the city of Seattle's Mr. Pealy, testified that in Seattle the rate structure does not become "penalistic" until a customer goes beyond one can per week. The city considers those using one can or less are doing a good job of managing their waste.⁸

Although King County complained about the Commission's Meeks methodology, King County did not specifically propose another methodology. Other than a general reference to long-run incremental cost studies, King County limited its case to criticism of the Commission's methods. King County witnesses were not familiar with the specifics of the Meeks methodology, nor with the proceedings which led to its adoption. King County has not persuaded us that the Meeks methodology is inappropriate or should be abandoned in favor of the County's approach.

C. Are Variable Rates Incentive Rates, or Must An Artificial Subsidy be Added to Influence Behavior?

King County argues that "incentive rates" are an effective tool, necessary in order to reduce waste and encourage recycling. King County contends that Eastside's current rates "...do not provide adequate incentives and have created a disincentive to waste reduction and recycling."⁹ King County's

⁶ Transcript page 122.

⁷ Transcript page 125.

⁸ Transcript page 379.

⁹ King County brief, page 4.

economists contend that the less steep inversion of Eastside's rates will result in a waste disposal increase of approximately 9%. King County argues in effect that rates with its differentials are incentive rates, and that Eastside's current rates are not incentive rates. King County's witnesses do not address the issue of why this might be true, or how one would determine which is or is not an incentive.

Eastside argues that King County has adequate means to implement its solid waste goals and objectives without changes to Eastside's rates. Eastside also contends its rates are consistent with the priorities set forth in RCW 70.95.010. Eastside characterizes its current billing system and rate structure as consistent with the minimum service levels established by the King County plan.

Eastside suggests that King County could obtain more steeply inverted rates by increasing the tipping fees at its landfill. It argues that its rates need do nothing more than provide an incentive for waste reduction and recycling, and that they do so. It notes that its variable rates provide an incentive to reduce waste, and that the voluntary nature of its yard waste program encourages the County's first priority: backyard composting. It notes that recycling charges are mandatory, and that customers who use the recycling service -- for which they are required to pay -- save at least the cost of using the next higher level of solid waste service. Eastside calculates savings of \$1.25 to \$3.05 per month, and the County's testimony established that customers will react to price signals in that range.

Eastside concludes that the statutory mandates are satisfied; therefore, whether the County's preferred rate structure would provide a stronger incentive is irrelevant.

The Commission Staff argues that Eastside's inclining rate structure provides a strong, rational incentive to reduce and recycle waste. It claims that the County has not shown that adoption of the rate differentials it favors would create a significant increase in waste reduction and recycling. The Commission Staff agrees that variable can weights are appropriate. It argues that King County has not shown that increasing the existing differential among service levels will result in increased recycling.

In opposition to the testimony of Dr. Skumatz, the Commission Staff argues that garbage-by-the-pound cannot be used to estimate how customer behavior would be impacted by alterations in the rates used in a variable rate structure. The Commission Staff argues that economists' inability to measure the impacts of public education and advertising does not justify

ignoring the effects of these variables, and that, because they have not been measured, it is impossible to state what portion of the elasticity of demand is attributable to variations in price. Commission Staff also criticizes the County's failure to recognize the likelihood that demand elasticities will become less elastic over time.

King County argues that incentive rates are an effective tool, necessary to reduce waste and encourage recycling. It seems to argue that the County's rates are more legal than Eastside's because they are more steeply inclining. Although it is true that they are more steep, King County did not tie the results of that incline back to whether or not state recycling goals will be met. When queried as to whether or not the county expects to meet its 1995 50% recycling goal, Dr. Hansen stated that as of late last year, studies indicated the county was on track to meet its goal.¹⁰ King County presented testimony that a 9% increase in disposal could be expected due to the recent increase in rates and the flattened spread between those rates. However, Dr. Skumatz, testified that the likely reaction of customers to a rate increase would be to lower their consumption of solid waste service.¹¹ Neither King County, nor its witnesses, was consistent on the effect these rates would have on behavior and, thus, have not persuaded the Commission that the rates are a disincentive.

Under variable rate structures, customers pay more when they use more of the service. This is an incentive in itself. If we agreed that any steeper differential between rates would send more of a price signal than any less steep one, the Commission would be bound always to adopt the steepest curve proposed, based on a conclusion that any less steep incline provides less effective incentives and is, therefore, illegal. The Commission cannot accept this rationale.

King County offered no proof that more steeply inclining rates result in any change in subscription levels or tons of solid waste diverted. Limited evidence of record¹² shows that customers continue to shift to lower levels of service under the Commission's current rate setting methodology. This has been realized even since the rate change prompting this case. King County did not provide any analysis to justify its conclusion that its landfill would have a 9% increase in disposal or that

¹⁰ Transcript page 84.

¹¹ Transcript page 521.

¹² Exhibit 99 shows the change in subscription levels for the period of November 30, 1993, through April 30, 1994.

the state recycling goals will not be met without a change in rate structure. No factual analysis of actual data was provided. We cannot reach any conclusion from King County's bare conclusory statement that a steeper rate spread will send more of a price signal. Without the next step of showing that the price signal would result in the desired behavior, the strength of the price signal is not meaningful.

III. DOES THE CURRENT RATE DESIGN MEET THE COMMISSION STANDARD?

The Commission has concluded in previous sections of this order that rates set by its cost-of-service methodology are not illegal. The Commission next considers whether the rate design methodology used by Eastside is consistent with the Commission standard, and whether it achieves optimum waste reduction and recycling results, while ensuring that resulting rates are fair, just, reasonable and sufficient.

The Commission must evaluate whether rates resulting from the company's study are consistent with the Meeks methodology. To date, the Meeks cost-of-service approach has clearly encouraged people to use lower levels of solid waste service and, presumably, to reduce or recycle what once was thrown away. The Commission has done more than simply impose rates which reflect the cost of service to accomplish this. One cannot separate the effects of the availability of lower service levels, mandatory recycling expense, and unlimited recycling service from the beneficial effects of cost-of-service rate setting. The Commission is convinced that the cost of service approach, combined with the Commission's array of recycling rate policies, can ensure the satisfaction of all the objectives under law.

Complainant expresses dissatisfaction with the Eastside rates. After review of the documents in this record, it may be that it is not the Commission's cost-of-service study which might produce unwise results, but rather changes Eastside made to the Meeks methodology in performing its study which deserve more scrutiny. Those issues will be addressed in the following sections.

A. Did Eastside Properly Perform Its Cost-of-Service Study?

The Commission's current cost-of-service methodology relies on a series of detailed expense allocations, based on the time and disposal cost (service level weight) to serve each customer. As described above, this methodology was adopted with participation by many parties in an open public process (TG-2016).

King County argues that the cost-of-service model was applied in an unreasonable manner in developing Eastside's rates. King County contends that Eastside's can weight study was inadequate, and that the Commission Staff's review of the filing was inadequate. King County did not propose any different can weights or specific adjustments. Discussion of the can weight studies, and a possible problem with the company's application of the cost-of-service methodology follow.

King County appears to have limited its review of the Meeks methodology to the record in this proceeding regarding Eastside's application of the methodology in this case. King County witnesses apparently did not examine the record in TG-2016 to review the Meeks testimony and exhibits or the Commission order. It provided no evidence that the Meeks methodology itself is flawed. King County identifies as the primary problem the can weight study conducted by Eastside, accepted by the Commission Staff, and ultimately approved by the Commission.

Eastside's tariff revisions were presented at a Wednesday morning open meeting. Commission review of Eastside's presentation was necessarily more limited than is undertaken during a contested proceeding. On review of the record in this case, the Commission has discovered that Eastside apparently made a number of changes to the Meeks methodology. Those changes were not highlighted by Eastside or Commission Staff, either at the Wednesday open meeting in Docket No. TG-931585, or in this case. The changes do affect the results of the study.

1. Eastside's Can Weight Differentials May Be Used

Much of the testimony and cross-examination focused on the weight study conducted by the company and the effect that study had on the rates approved for Eastside's customers. It is important to note that the "can weights" issue is significant, because it is a major driver of the way cost is allocated among service levels. Specifically, the debate centered around the effect Eastside's weights had on the relative spread among service levels. The argument, simply stated, is that as the weight decreases among higher levels of service, so in turn does the allocation of weight-related expenses.

King County characterizes the weights included in Eastside's cost-of-service study as "indefensible" and based on a study which is "nonrepeatable" and "not statistically valid". King County seemed to identify the can weight study as an important factor leading to flawed results of the company's cost-of-service study. King County also criticizes the Commission

Staff for having accepted the weights, especially since a Commission Staff witness testified that he placed, "little or no confidence in the . . . study"¹³. King County does not make a recommendation, or request any specific resolution, of the can weight issue. It appears King County would prefer that Eastside use the Meeks weights rather than its own.

Eastside defends the use of its weights as those which reflect the actual total tonnages Eastside collected for disposal. Using the Meeks weights, it says, would allow the company to over-collect weight-related costs from each customer. Eastside contends that the use of the Meeks can weights, or those proposed by Dr. Skumatz in her "garbage-by-the-pound" study, would have done little to increase the differentials in rates among service levels.

The Commission Staff contends use of Eastside's can weights was appropriate because the weights fell within a zone of reasonableness, when compared to Meeks weights and weights approved for other carriers. The Commission Staff on brief argued that the Meeks weights would be invariably higher than the can weights which are presently occurring, because the Meeks study was performed prior to implementation of curbside recycling and yard waste collection programs.¹⁴ The Commission Staff notes the consistency between the weight spreads found in Dr. Skumatz's "garbage-by-the-pound" study and those used by Eastside.

The Commission concludes that Eastside's can weight study may be used. The weights are consistent with the number of tons of solid waste disposed. The differentials between rate levels are consistent with the results of the garbage-by-the-pound study. The company can weights are within a zone of reasonableness.

2. Eastside's Time Related Cost Allocation May Not Be Used

In the original Meeks study, only two time-related cost allocators were used: "Total Pick-up Time" and "Total Dump Time". Eastside created an additional cost factor it called "Total Route Time". This new category captures better than 60% of the total costs attributable to time. It was apparently created heavily out of what would have been Total Dump Time. This new category is allocated based on customers while Total Dump Time is allocated based on the weight of garbage.

¹³ Transcript page 727.

¹⁴ Commission Staff brief, page 25, footnote 7.

Because this is not addressed in the case, the Commission cannot evaluate the merits of this deviation. Its effect, however, is obvious. Total Route Time is factored to customers based on customer count, rather than on weight of garbage disposed. The end result is an unfair burden on once-a-month customers, compared to customers served weekly. This excursion from the Commission's approved cost-of-service methodology will not be allowed. It is probably responsible for the high once-a-month service level fees.

An additional result of this shift of costs out of "Total Dump Time" into the new category of "Total Route Time" is a shift of costs from large users to small users. The fact that this allocator is based on customers per service level, or even pick-ups, rather than service level weight, places a higher level of costs directly on all lower-end users (minican, one can a week, and once-a-month). Until such a change has been justified, it should not be made. Eastside did not address the change in its case.

The impacts did not go unnoticed by the public¹⁵, or by King County. Though apparently unaware the cost-of-service study used in this case was altered from the Meeks method, King County recognized that costs were allocated on customer, rather than weight, and that seemed to result in a higher amount of costs passed on directly without regard for volume of service consumed.

In its case, King County witnesses testified that too much cost was being attributed to low-end users. Dr. Hansen testified that it would be appropriate to allocate a significant portion of truck costs based on weight. This is what the Meeks study did. Lower-end users were assigned higher direct costs because of Eastside's revised allocation discussed above.

The Commission notes another, less serious change in Eastside's cost-of-service study. Eastside altered "Empty Time per Unit". The company conducted an independent time and motion study, resulting in company-specific service times. These times appear to be lower than those derived in the Meeks study.

The Commission is not questioning whether the company should use times specific for its service territories -- company-specific data are clearly always appropriate. However, the times generated by Eastside's study appear unreasonably low. This could be related to Eastside's creation of a third time allocator for route time.

¹⁵ Transcript of public hearing in Bellevue, pages 802, 819, and 826. See also exhibit 108, letters from the public.

The Commission is particularly concerned that the shift from weight-based cost allocation to customer count allocation in Eastside's cost-of-service study may affect the final rate spread. Eastside did not justify its changes. King County apparently recognized that lower-volume customers were being assigned an unusually large amount of cost, but incorrectly identified the can weight study as the problem. Dr. Hansen and the other King County witnesses were not familiar with the Meeks methodology.

The Meeks methodology was developed after the opportunity for full hearing. The Commission will not allow a company to unilaterally deviate from that methodology without making a record to justify that deviation. A company must highlight any proposed deviation from the Meeks methodology and specify the mechanics and result of that deviation. The justification for any deviation must be fully stated.

The Meeks methodology is the best approach to solid waste rate structure that the Commission has found to date. If the parties find a better rate design methodology, the Commission encourages them to present it for the Commission's review. Until another methodology is accepted, however, companies will be expected to use the Meeks methodology or fully explain and justify any deviations. This does not prevent the use of company-specific data within the methodology, but does prevent changes to the methodology itself. In the future the Commission will expect its staff to highlight at the open public meeting deviations of this nature proposed by a company, and the Staff's opinion about the appropriateness of such deviations.

The Commission will, therefore, order Eastside to rerun its cost-of-service study, using the Meeks methodology. Eastside may use company-specific data, but those data must be collected under the same categories as in the Meeks methodology, and must be allocated in the same manner as in the Meeks methodology. The company may use the can weights identified in its study, since they appear reasonable. The company may use the times from its "Empty Time per Unit" study or, if it chooses, it may use the Meeks times.

The Company shall complete its recalculation of rates, file two copies of its rate proposal and all pertinent workpapers with the Commission, and serve a copy of the proposal and workpapers on the parties, to be filed and received no later than 20 days after the date of this order, bearing a stated effective date 20 days after filing. The parties shall have ten days to review the filing and state objections to the Commission. The

Commission encourages the parties to consult among themselves, and to present a joint statement that they agree that the proposed filing meets the terms of this order. The Commission will, by order, approve or reject the compliance filing before it may take effect. This process does not foreclose or forestall petitions for reconsideration of this order.

Any changes in rates resulting from the compliance filing will be prospective only. The company requested that the Commission establish a balancing account, if any change in rates was made in order to implement King County's rate differentials. The Commission does not favor balancing accounts. Because the rates changes required by this order are cost based, no balancing account is needed, and none will be allowed.

The Commission is aware that can weights reflected in the Meeks study may be somewhat out of date. While recognizing a potential problem, the Commission will not at this time conduct a new independent can weight study. A new study may be ordered after resolution of issues caused by recent federal legislation preempting state economic regulation of intrastate trucking. If recycling may no longer be mandated, the market will again change. Any new weight study should be generic, and probably should be conducted through a Notice of Inquiry.

B. Should the Commission Adopt a Variation to the Current Cost-of-Service Model in Order to Secure Greater Incentives?

None of the parties testified that basing rates on cost of service was not appropriate. Witnesses for King County did suggest variations to cost of service for the Commission to consider, but did not supply evidence to support any alternatives. King County encouraged the Commission to deviate from a strict interpretation of cost of service. King County notes that RCW 81.04.250 encourages the pursuit of low fees, but not to the exclusion of other factors (presumably, such as the value of some customers subsidizing others).

King County did not specify any specific alternative methodology. Dr. Skumatz suggested use of long-run marginal costs and balancing accounts. The county also endorsed the testimony of Mr. Jack Weiss, Whatcom County Recycling Coordinator¹⁶, as reflecting a methodology which would accomplish its objectives. The county did not, however, provide any studies to support the effect any of these methodologies would have on waste reduction and recycling activities in the county.

¹⁶ Transcript pages 823-25.

The company contended that the use of a rate structure in any way similar to that proposed by King County would require the use of some type of balancing account. The company did not oppose the use of the county's proposed structure, so long as the company is able to remain whole if customers were to migrate to lower service levels.

The Commission Staff strongly opposed King County's suggestion of using Long-Run Marginal Cost. Included in the Commission Staff's discussion is a detailed list of the types of information the county would have had to provide in order to make any assessment on the feasibility of this type of rate setting for solid waste collection in King County. The Commission Staff noted that long-run marginal cost cannot be used successfully when waste flow cannot be controlled to a static disposal facility. Without flow control ordinances -- which were the subject of recent Supreme Court rulings -- neither the Commission nor the county could determine the expected long-term cost to service garbage customers in the county.

The only variation ordered by the Commission in this case will be the company's rerun of its study using Meeks methodology. The Commission is satisfied that basing rates on cost-of-service principles continues to be appropriate. Without providing any support for specific alternatives, King County has not convinced the Commission a change is required.

C. How Does Yard Waste Affect These Issues?

One of the originating issues in this case was the effect the yard waste rate would have on King County's overall solid waste disposal level and recycling programs. In its complaint, King County stated that a one-can customer with yard waste collection will pay \$1.10 more per month than a three-can subscriber who does not use yard waste service. King County did not address the issue of yard waste in its brief, and apparently dropped the issue.

Eastside notes that the county retains the means to implement its solid waste goals and priorities regardless of the outcome of this case, including encouraging residents to do their own composting of yard debris. Eastside also contended that if King County enforced its ban on putting yard waste in regular solid waste cans, more yard debris would be diverted from the waste stream. Eastside also suggested a lower disposal fee for yard debris disposal, which might result in a lower cost to those

subscribing to yard waste collection. On brief, Eastside noted that King County witnesses testified that a universal mandatory yard waste program would be inconsistent with King County's waste reduction and recycling goals. Eastside contended King County has dropped all claims based on yard waste service and pricing.¹⁷

The Commission Staff stressed that, even though King County is unhappy with the current yard waste collection fee, it supports the continued voluntary nature of the rate.¹⁸ The only other way the cost of this service could be lower is by simply pricing it below cost. The Commission Staff opposes this as illegal, confiscatory, and outside the Commission's jurisdiction.

The Commission agrees that King County has apparently abandoned its claims based on yard waste programs. King County is inconsistent in its analysis of yard waste and the messages it wants to send to consumers. If King County wants the cost to be lower (as their complaint indicated) it may wish to emulate Pierce County's approach. In Pierce County, the landfill tipping fee includes a fee to cover the county yard waste composting program, and in so doing does not charge a disposal fee for yard debris. This reduces the cost per user of the curbside collection program. If King County believes the price signal is important¹⁹ then the current rate levels are appropriate. The yard waste program offers many opportunities for incentives if King County chooses to follow up on those opportunities.

IV. MISCELLANEOUS ISSUES

A. Format of Solid Waste Bills

In the rebuttal testimony of Mr. Gaisford,²⁰ King County defended its preference for a combined fee of recycling and solid waste. It views solid waste and recycling as one system. King County also is concerned that customers will interpret a separate charge as an optional fee, rather than a

¹⁷ Transcript pages 170, 177, 231-232.

¹⁸ Transcript page 177.

¹⁹ Transcript page 100.

²⁰ Exhibit T-44, page 19.

mandatory one.²¹ Currently, bills in Eastside's territory reflect a combined fee for solid waste and recycling, but a separate line is disclosed for those who choose to have yard waste collection service. Another possible factor in this case, which came out in cross examination of the County's witnesses, is that King County's rate differentials were calculated assuming the fee for recycling is embedded in them. When the fee is removed, the rate spreads between services levels are higher percentages than when the recycling fee is included.

The Commission Staff, on brief, expressed concern that consumers are confused by the current form of billing. The Commission Staff cited a consumer's apparent failure to understand that a significant portion of the service charge pays for recycling, not for solid waste. Of the \$9.65 per month a minican customer is charged, \$4.44 is the charge for curbside recycling. The Commission Staff concludes that without total disclosure, the value (impact) of an unlimited-use service (recycling) versus an increasingly expensive service based on usage (garbage) will not be realized by customers.

The Commission continually balances the "customers' right to know" and its reluctance to burden utilities and consumers with additional requirements. At the end of the Notice of Inquiry on solid waste rate design, the Commission Staff recommended that solid waste bills clearly indicate the separate fee for each service received. To date, the Commission has not adopted that recommendation.

It is time for the Commission to address this issue. Consumers are struggling to understand why their rates seem to be escalating at a much faster pace than ever before, and yet they spend a greater amount of time preparing for collection. A commonly expressed concern among the consumers at the hearing and those who have written in with their comments is the comparable cost of different service levels. One of the problems with combining two separate services as one line item is the inability to compare "apples to apples". For example, the once-a-month customers (and all others as well) do not realize that \$4.44 of their current monthly fee of \$9.65 is for twice-a-month collection of recyclables. Understandably, customers are frustrated when they see the prices for other service levels.

²¹ Since it appears that recycling service is mandatory and solid waste service is not, customers interpretations are arguably correct.

Consumers are also missing the appropriate signals as tipping fees and other costs go up. Since customers only see one line, they do not realize it is the garbage portion which is most often increasing, while their efforts to recycle have been rewarded by not increasing in cost. Time is of the essence for consumers. If anything is going to create a disincentive to recycling, it is the continued lack of information about what people are paying for, and the comparable worth of limited services and unlimited services. Informed consumers can be expected to make the best choices.

The Commission therefore orders Eastside to change its bill format to separately reflect each service element²². With respect to the County's concerns regarding consumers believing the service is optional, language can be crafted on the bill or in educational materials to make it clear the recycling fee is not optional. The Commission recognizes there will be costs to the company to change the billing system. These are a recognized cost of doing business, a prudent amount of which may be recovered in rates. Eastside must notify the Commission with the tariff filing required by this order of a timetable for accomplishing the billing format change, which shall be implemented no later than January 1, 1995.

B. Is Mini-Can or One-Can Service the Basic Level of Service?

This is really a double-pronged issue. The first prong is the question of whether the Commission is meeting its legislative mandate. The second prong is to determine the point in a rate schedule at which an incentive structure should begin to provide penalties. Both are addressed briefly below.

The Commission must ensure that recycling is at least as affordable as a comparable unit of solid waste service (RCW 70.95.010). King County raised this issue in its complaint²³ and in its direct testimony²⁴. The question left unanswered is: what is a comparable unit of garbage service?

²² See WAC 480-70-770.

²³ Pages 4 and 5.

²⁴ Exhibit T-1, page 32.

Although not addressed on brief, Eastside addressed this issue in its direct testimony²⁵. According to the company, a minican customer who generates yard waste for curbside collection would need to become a 4-can-a-week customer if he/she discontinued yard waste collection service. In precise terms, it is 15 cents cheaper to be a minican customer with yard waste collection service, than to subscribe to 4-cans-a-week.

The parties did not directly address the issue of a comparable unit of solid waste. King County's Exhibit 50 suggests that a one-can-a-week customer choosing to stop recycling would require at least one additional can per week, thus requiring him/her to become a two-can-per-week service subscriber. The option of recycling and subscribing to one can per week is less expensive. The incremental cost of recycling is a flat fee, and in Eastside's territory it is \$4.44 per month. No solid waste subscription level is lower than \$4.44 per month.

The evidence demonstrates the Commission is meeting the mandate of RCW 70.95.010. It is less expensive to use the recycling programs than to use higher levels of disposal service.

The second issue is less clear. In the rate structure proposed by King County, the penalty (or increased rate) begins at the one-can service level; the minican is the basic level of service. Under the City of Seattle's program, a penalty (increased rate) is imposed only when the customer exceeds one full can per week; one thirty-two gallon can is the basic level of service.

After cross-examination of the King County witnesses, it was apparent that none of the King County staff nor their contracted witnesses believed that a minican was a likely service level for the average customer. Mr. Pealy, from the City of Seattle, clearly stated that in Seattle they believe that anyone using just one can per week is doing an acceptable job of waste reduction and recycling. When pressed, neither Dr. Hansen nor Mr. Gaisford defended King County's emphasis on the minican as the base level of service. In response to questions by Commissioner Hemstad, Mr. Gaisford agreed that the percentage differentials are directly impacted by the rate level for the minican, and that a higher minican rate creates greater spreads²⁶.

²⁵ Exhibit T-76, pages 13 and 14.

²⁶ Transcript page 262.

It is surprising that King County was concerned about the higher minican rate approved in this case. Apparently, King County wants the minican to be the base rate, with the price kept low, while somehow generating larger percentage spreads. All of this must occur while simultaneously recognizing that it is not a service level which a family may easily maintain²⁷. The Commission concludes it is unlikely these conflicting goals can all be achieved simultaneously.

The Commission finds more reasonable Seattle's approach, which considers one can to be the minimum service level. It is not logical to set a minimum service level so low that most customers cannot reach that level, no matter how enthusiastically they recycle. This is especially true, when all larger users would be then required to subsidize the few households using that service, and their lower usage may be due only to a smaller household size, and not to better waste management efforts.

C. Do Toters Provide the Wrong Incentives?

According to the Eastside's Exhibit C-87, the single largest subscription size in Eastside's territory is 90-gallon toters. The Commission is surprised that King County did not address this situation. Approximately 66% of Eastside's customers subscribe to a two-can or higher service level, including 60-gallon and 90-gallon toters.

The Commission is concerned about the high percentage of 60-gallon and 90-gallon toters. Toter customers cannot incrementally reduce their usage by one can. King County may wish to discuss this situation with Eastside. Such high subscription levels may be unparalleled in any other company's service territory. These high service levels indicate that Eastside has a long way to go toward moving customers off the higher end of the system. Although this rate may not have hindered the company's ability to generate recycling participation rates acceptable to the county's recycling goal, it might be a factor in Eastside's low yard waste sign-up rate. One could expect that a generator of yard waste could very easily hide yard debris in a toter container. Although a consumer might theoretically pay for a large toter that he/she rarely fills, the excess capacity must certainly be a disincentive to taking the

²⁷ Transcript pages 267 and 268.

time to prepare recyclables, even though the consumer must still pay for recycling. It would also seem much more likely that a toter customer would be tempted to fill the excess capacity with yard clippings. It would be very difficult for the driver to realize yard debris were in the toter if concealed in a plastic bag, or buried in the toter below visibility.

The Commission raises this issue because the number of toter customers could significantly affect King County's yard waste diversion goals, if not its overall recycling programs.

V. PUBLIC PARTICIPATION

On July 19, 1994, a hearing was held in Bellevue to take testimony from members of the public. Fifteen witnesses testified. These included seven customers, two representatives of recycling trade groups, and six witnesses representing five county or local governments.

Each of the customers complained that Eastside's rates were too high. Customers at the once-a-month and minican levels contended they had received an unreasonably high increase, when compared to multi-can service levels. Lula P. Jones of Medina, who is a once-a-month customer, testified it was discriminatory to increase her rate at a percentage so much higher than the increase to four-can customers. Chester Potuzak of Medina recommended greater differentials between once-a-month service and one-can-a-week service. Several witnesses stated that current rates do not give sufficient incentive to recycle.

Several customers compared their rates to those of surrounding communities. These comparisons reflected some confusion regarding Eastside's mandatory recycling charge. The surrounding communities do not necessarily have such a charge.

Charles Davidson of Medina recommended customers be charged a flat cents-per-gallon rate for all can levels, and that yard waste should be charged at a percentage of that figure. John C. Horsfall of Clyde Hill recommended longer billing cycles to save money.

Representatives from the Washington State Recycling Association and the National Recycling Coalition, Inc., recommended that incentives be included in rate structures to encourage recycling. Craig Benton from the Washington State Recycling Association supported the authority to local governments to establish rate guidelines consistent with their solid waste management plans. He argued that Eastside's current rates do not provide sufficient incentives for recycling.

Representatives appeared for the following county and local government entities: Kitsap County Department of Public Works, City of Lake Forest Park, Snohomish County Solid Waste Management Division, Whatcom County Solid Waste Division, and City of Mercer Island. The representatives generally supported local governments being authorized to establish incentive rate structures.

Statements brought by persons who testified were included in the record for illustrative purposes as Exhibit 107. Letters received by the Commission from persons who did not testify are included as illustrative Exhibit 108.

The Commission appreciates the level of public involvement in this case. Partly as the result of public testimony, the Commission will order the company to reformat its bills to separately reflect types of service, including solid waste, recycling and yard waste. In that way, consumers can identify the portion of the total bill which can be affected by a reduction in service level for solid waste.

Based on the entire record and the file in this matter, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including companies providing solid waste collection service.

2. King County is a political subdivision of the state of Washington. King County Department of Public Works, Solid Waste Division, is an administrative agency of King County.

3. Seattle Disposal Company, Rabanco Ltd., d/b/a Eastside Disposal and Container Hauling, furnishes solid waste collection service within unincorporated areas of King County, Washington.

4. On March 23, 1994, King County filed a complaint against certain residential rates of Eastside Disposal. On April 12, 1994, Eastside Disposal filed an answer.

5. The rates complained against became effective February 15, 1994, in Docket No. TG-931585. Those rates include the following:

minican	\$9.65
one can	\$10.90
two cans	\$12.75
three cans	\$15.80
yard waste	\$6.00

Except for the yard waste fee, these rates include a component reflecting mandatory recycling charges, of \$4.44.

6. The rates complained against are based on a cost-of-service study performed by Eastside. Can weights for the study were derived from a 1990 can weight study performed by Eastside. The can weights are within a zone of reasonableness, and correlate with residential tonnages actually collected and disposed of by Eastside.

7. In performing its cost-of-service study, Eastside made changes from the Meeks methodology the Commission had adopted in Docket No. TG-2016. The company created a new time category "Total Route Time." This category was allocated based on customers. It was taken out of "Total Pick-up Time" which is allocated based on pick-up time and "Total Dump Time" which is allocated based on weight. The change was not explained by the company, nor were reasons for the changes supported. This change was not highlighted or justified and is disapproved.

8. The company must rerun its cost-of-service study using the two Meeks time related allocators, "Total Pick-up Time" and "Total Dump Time." The company may use either the "Total Pick-up Time" measured by its own study, or it may use the "Total Pick-up Time" measured by the Meeks study. If the rerun cost-of-service study indicates different rates are appropriate, the Commission expects Eastside to file tariff revisions consistent with the corrected study.

9. Rates based on a study performed with the Meeks methodology will reflect the cost of providing service. They will include variable can rates.

10. Variable can rates encourage waste reduction and recycling by charging higher rates for higher service levels.

11. KCC § 10.18.020 contains language which requires certificated haulers to file tariffs that contain the following differentials between levels of service: a minimum of 60% between minican and one can; a minimum of 40% between one and two cans or equivalent; and a minimum of 25% between two and three cans or equivalent. The percentages are applied to the combined charge to the customer for solid waste service and recyclable materials collection. The code section "strongly encourages" the Commission to approve tariffs meeting these minimum percentages and other policies in the chapter.

12. Eastside's current rates do not incorporate the differentials specified in KCC § 10.18.020.

13. Under the present circumstances, Eastside cannot comply simultaneously with both KCC § 10.18.020 and Commission orders.

14. The Commission has exclusive jurisdiction over solid waste rate design. KCC § 10.18.020 exceeds the County's authority and the rate design elements are not binding on the Commission or on Eastside.

15. Eastside provides the minimum levels of solid waste collection and recycling services required under the King County Solid Waste Management plan and related implementing ordinances.

16. Eastside's billing format should be revised to show each service separately. Separately listing service elements will give accurate price signals to consumers. Eastside must notify the Commission, with the tariff filing required by this order, of a timetable for accomplishing the billing format change, which shall be implemented no later than January 1, 1995.

17. The Company shall complete its recalculation of rates, file two copies of its rate proposal and all pertinent workpapers with the Commission, and serve a copy of the proposal and workpapers on the parties, to be filed and received no later than 20 days after the date of this order, bearing a stated effective date 20 days after filing. The parties shall have ten days to review the filing and state objections to the Commission. The Commission encourages the parties to consult among themselves and to present a joint statement that they agree that the proposed filing meets the terms of this order. The Commission will by order approve or reject the compliance filing before it may take effect. This process does not foreclose or forestall petitions for reconsideration of this order.

From the foregoing findings of fact, the Commission enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties thereto.
2. King County cannot require the Commission to adopt rates that conform to the specific rate structure set forth in King County Code § 10.18.020.
3. King County cannot require Eastside to propose rates with a steeply inclining structure when Eastside has been informed by the Commission that the Commission will not approve such a rate structure.
4. If different rate structures are called for by a Commission order and by the King County Code, Eastside must comply with the Commission-approved structure.
5. Eastside's current rate structure and billing system are consistent with the solid waste management priorities set forth in RCW 70.95.010(8) and conform with the requirements of RCW 81.77.030.
6. Eastside's current rate structure and billing system are consistent with the minimum levels of solid waste collection and recycling services established by the County's Comprehensive Solid Waste Management Plan.
7. Eastside's current rates are not based on the correct methodology.
8. This complaint should be dismissed, after the conditions described in conclusions 9 and 10 are met.
9. Eastside should be ordered to rerun its cost-of-service study, using the Meeks methodology without the changes disapproved of in Finding of Fact no. 7. Eastside should file revised tariffs reflecting the rerun study consistent with Finding of Fact no. 17.
10. Eastside should be ordered to revise its billing format to comply with the provisions of this order. Eastside should advise the Commission with its new tariff submittal of a timetable in which it will complete and implement these changes no later than January 1, 1995.

11. All motions made in the course of these hearings which are consistent with findings and conclusions made herein should be granted, and those inconsistent therewith should be denied.

Based on the foregoing analysis of evidence, findings and conclusions, the Washington Utilities and Transportation Commission enters the following order.

ORDER

THE COMMISSION ORDERS That this complaint shall be dismissed when the following two conditions have been met:

1. Eastside shall rerun its cost-of-service study as described in Finding of Fact No. 8, and shall file tariff revisions consistent with the results of that rerun consistent with Finding of Fact No. 17; and

2. Eastside shall revise its billing format to separately list all service elements, and shall report to the Commission with its new tariff submittal a timetable to complete the revision to its bills no later than January 1, 1995; and

IT FURTHER ORDERS That all motions consistent with this order are granted, and all inconsistent herewith are denied.

DATED at Olympia, Washington, and effective this 14th day of September 1994.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

Appendix A

10.18.020 Solid waste collection and recycling rates. Certificate holders under chapter RCW 81.77 shall 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 the local comprehensive solid waste management plan, as required by RCW 81.77.

A. It is the county's policy that the certificated haulers include the following elements in the tariffs submitted to the WUTC:

1. A mini-can (10-20 gallon container) rate to reward people who reduce their level of solid waste collection service.
2. A recycling-only rate for program participants who decline solid waste collection service, but participate in recycling programs. Certificated haulers may include a fee to administer billing for this service.
3. A yard waste only rate for program participants who decline solid waste collection service, but participate in a yard waste collection program. Haulers may include a fee to administer billing for this service.
4. Billing that includes the cost of solid waste and recycling collection services on the same statement, as provided by chapter 81.77 RCW.
5. A rate structure designed to provide customers with adequate options and incentives to reduce their level of solid waste collection service as a result of their participation in waste reduction and recycling programs.
6. A rate structure that distributes the cost of the single family and multi-family recyclables collection programs among all rate payers in the franchise area where recycling and yard waste services are available.
7. A rate structure for single family yard waste collection services that charges only those customers subscribing to the service. To encourage recycling, the cost of yard waste collection shall be less than a comparable unit of solid waste.
8. The cost to produce and distribute program promotion and educational materials to customers, in accordance with K.C.C. 10.18.040.
9. A monthly administrative fee to compensate the division for the costs of program management and

promotional and educational programs. The monthly administrative fee is specified in K.C.C. 10.18.070.

10. Reduced solid waste and recyclables collection rates for eligible elderly and low-income program participants, as permitted by the WUTC.

B. Certificated haulers shall file tariffs, with an effective date no later than July 31, 1991, with the Washington Utilities and Transportation Commission (WUTC). It is the county's policy that the rates include all elements specified in Subsection A. of this section and be designed to encourage participation in recyclables and yard waste collection programs, in accordance with the plan.

C. Whenever certificated haulers file tariffs with the Washington Utilities and Transportation Commission (WUTC), it is the county's policy that the certificated haulers include all elements specified in Subsection A. of this section in the tariffs and that an incentive solid waste collection rate structure be used rather than a strict cost of service rate structure. An incentive solid waste collection rate structure is one that rewards customers who recycle and includes substantial cost differentials between solid waste collection service levels. The tariffs filed shall include the following percentages of increases between levels of service: a minimum of sixty percent between mini and one can; a minimum of forty percent between one and two cans or equivalent; and a minimum of twenty five percent between two and three cans or equivalent. These percentages should apply to the combined charge to the customer for both solid waste and recyclable materials collection. The WUTC is strongly encouraged to approve tariffs that are consistent with the policies set forth in this chapter, and that meet the minimum percentages specified in this section. (Ord. 10446 § 2, 1992; Ord. 9928 § 3, 1991).

10.18.030 County notification of WUTC tariff filings. Whenever a certificated hauler files a proposed tariff revision for solid waste, recyclables and/or yard waste collection rates with the WUTC, the certificated hauler shall simultaneously provide the division manager with copies of the proposed tariff and all nonproprietary supporting materials submitted to the WUTC.

public service revolving fund, said sums to be fixed and collected as a part of the costs of the action.

If the order of the commission is found contrary to law or erroneous by reason of the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive.

The court may remand any action which is reversed by it to the commission for further action.

Appeals to the supreme court shall lie as in other civil cases. Action to recover damages or overcharges shall be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court shall have jurisdiction save in the manner hereinbefore provided. [1961 c 14 § 81.04.240. Prior: 1955 c 79 § 4; 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

81.04.250 Determination of rates. The commission has the power upon complaint or upon its own motion to prescribe and authorize just and reasonable rates for the transportation of persons or property by carriers other than railroad companies, and shall exercise that power whenever and as often as it deems necessary or proper. The commission shall, before any hearing is had upon the complaint or motion, notify the complainants and the carrier concerned of the time and place of the hearing by giving at least ten days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of prescribing and authorizing the rates. The notice is sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

In exercising this power the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.

In the exercise of this power the commission may give consideration, in addition to other factors, to the following:

(1) To the effect of the rates upon movement of traffic by the carriers;

(2) To the public need for adequate transportation facilities, equipment, and service at the lowest level of charges consistent with the provision, maintenance, and renewal of the facilities, equipment and service; and

(3) To the carrier need for revenue of a level that under honest, efficient, and economical management is sufficient to cover the cost (including all operating expenses, depreciation accruals, rents, and taxes of every kind) of providing adequate transportation service, plus an amount equal to the percentage of that cost as is reasonably necessary for the provision, maintenance, and renewal of the transportation facilities or equipment and a reasonable profit to the carrier. The relation of carrier expenses to carrier revenues may be deemed the proper test of a reasonable profit.

This section does not apply to railroad companies, which shall be regulated in this regard by *chapter 81.34 RCW and rules adopted thereunder. [1984 c 143 § 3; 1961 c 14 § 81.04.250. Prior: 1951 c 75 § 1; 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

*Reviser's note: Chapter 81.34 RCW was repealed by 1991 c 49 § 1.

81.04.260 Summary proceedings. Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this title, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county, or in the superior court of any county in which such company may do business, in the name of the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. Appellate review of the final judgment may be sought in the same manner and with the same effect as review of judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of review, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court or the court of appeals under the provisions of this section. [1988 c 202 § 64; 1971 c 81 § 143; 1961 c 14 § 81.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

Severability—1988 c 202: See note following RCW 2.24.050.

81.04.270 Merchandise accounts to be kept separate. Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company. [1961 c 14 § 81.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

waste collection company in this state, except in accordance with the provisions of this chapter: PROVIDED, That the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste. [1989 c 431 § 18; 1961 c 295 § 3.]

81.77.030 Supervision and regulation by commission. The commission shall supervise and regulate every solid waste collection company in this state,

(1) By fixing and altering its rates, charges, classifications, rules and regulations;

(2) By regulating the accounts, service, and safety of operations;

(3) By requiring the filing of annual and other reports and data;

(4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;

(5) By requiring compliance with local solid waste management plans and related implementation ordinances;

(6) By requiring certificate holders under chapter 81.77 RCW 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. The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after the holding of a hearing of which the holder of any certificate has had notice and an opportunity to be heard, and at which it shall be proven that the holder has wilfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter. [1989 c 431 § 20; 1987 c 239 § 1; 1965 ex.s. c 105 § 1; 1961 c 295 § 4.]

81.77.040 Certificate of convenience and necessity required—Procedure when applicant requests certificate for existing service area. No solid waste collection company shall hereafter operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. A condition of operating a solid waste company in the unincorporated areas of a county shall be complying with the solid waste management plan prepared under chapter 70.95 RCW applicable in the company's franchise area.

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, sworn to before a notary public; a statement of the assets on

hand of the person, firm, association or corporation which will be expended on the purported plant for solid waste collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

Except as provided in *RCW 81.77.150, when an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, but only upon authorization by the commission.

Any solid waste collection company which upon July 1, 1961 is operating under authority of a common carrier or contract carrier permit issued under the provisions of chapter 81.80 RCW shall be granted a certificate of necessity without hearing upon compliance with the provisions of this chapter. Such solid waste collection company which has paid the plate fee and gross weight fees required by chapter 81.80 RCW for the year 1961 shall not be required to pay additional like fees under the provisions of this chapter for the remainder of such year.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter. [1989 c 431 § 21; 1987 c 239 § 2; 1961 c 295 § 5.]

*Reviser's note: RCW 81.77.150 expired June 30, 1991.

81.77.050 Filing fees. Any application for a certificate issued under this chapter or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate issued under this chapter or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1989 c 431 § 22; 1973 c 115 § 9; 1961 c 295 § 6.]

81.77.060 Liability and property damage insurance—Surety bond. The commission, in granting certificates to operate a solid waste collection company, shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each motor propelled vehicle used or to be used in transporting solid

waste for compensation in the amount of not less than twenty-five thousand dollars for any recovery for personal injury by one person, and not less than ten thousand dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury by reason of one act of negligence, and not less than ten thousand dollars for damage to property of any person other than the assured, and to maintain such liability and property damage insurance or surety bond in force on each motor propelled vehicle while so used. Each policy for liability or property damage insurance or surety bond required herein shall be filed with the commission and kept in full force and effect and failure so to do shall be cause for revocation of the delinquent's certificate. [1989 c 431 § 23; 1961 c 295 § 7.]

81.77.070 Public service company law invoked. In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review, to the superior court filed therewith, appeals or mandate filed with the supreme court of this state, considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations, and with the effect specified in this title for public service companies generally. [1961 c 295 § 8.]

81.77.080 Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue. Every solid waste collection company shall, on or before the 1st day of April of each year, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of gross operating revenue: PROVIDED, That the fee shall in no case be less than one dollar.

It is the intent of the legislature that the fees collected under the provisions of this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject thereto, and to that end the utilities and transportation commission is authorized to decrease the schedule of fees provided in this section by general order entered before March 1st of any year in which it determines that the moneys then in the solid waste collection companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers.

All fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be by it transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund. [1989 c 431 § 24; 1971 ex.s. c 143 § 3; 1969 ex.s. c 210 § 11; 1963 c 59 § 12; 1961 c 295 § 9.]

81.77.090 Penalty. Every person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or any

part or provision thereof, is guilty of a gross misdemeanor. [1961 c 295 § 10.]

81.77.100 Scope of chapter with respect to foreign or interstate commerce—Regulation of solid waste collection companies. Neither this chapter nor any provision thereof shall apply, or be construed to apply, to commerce with foreign nations or commerce among the several states except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress.

However, in order to protect public health and safety and to ensure solid waste collection services are provided to all areas of the state, the commission, in accordance with this chapter, shall regulate all solid waste collection companies conducting business in the state. [1989 c 431 § 25; 1985 c 436 § 2; 1961 c 295 § 11.]

81.77.110 Temporary certificates. The commission may with or without a hearing issue temporary certificates to engage in the business of operating a solid waste collection company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the area or territory covered thereby is not contained in the certificate of any other solid waste collection company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter. The commission shall collect a fee of twenty-five dollars for an application for such temporary certificate. [1989 c 431 § 26; 1965 ex.s. c 105 § 2.]

81.77.120 Service to unincorporated areas of counties. A county legislative authority shall periodically comment to the commission in writing concerning the authority's perception of the adequacy of service being provided by regulated franchisees serving the unincorporated areas of the county. The county legislative authority shall also receive and forward to the commission all letters of comment on services provided by regulated franchise holder(s) serving unincorporated areas of the county. Any such written comments or letters shall become part of the record of any rate, compliance, or any other hearing held by the commission on the issuance, revocation, or reissuance of a certificate provided for in RCW 81.77.040. [1987 c 239 § 3.]

81.77.130 Application of chapter to collection or transportation of source separated recyclable materials. The provisions of chapter 81.77 RCW shall not apply to the collection or transportation of source separated recyclable materials from residences under a contract with any county, city, or town, nor to any city or town which itself undertakes the collection and transportation of source separated recyclable materials from residences. [1989 c 431 § 19.]

as a result of said part being held unconstitutional or invalid.
[1967 c 238 § 64.]

70.94.950 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure. The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in RCW 70.94.015, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to the state energy office for the purpose of furthering the establishment of clean fuel refueling infrastructure. [1991 c 199 § 218.]

Finding—1991 c 199: See note following RCW 70.94.011.

Clean fuel: RCW 70.120.210.

Refueling: RCW 80.28.280.

State vehicles: RCW 43.19.637.

70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated. (1) Regulated refrigerant means a class I or class II substance as listed in Title VI of section 602 of the federal clean air act amendments of November 15, 1990.

(2) A person who services or repairs or disposes of a motor vehicle air conditioning system; commercial or industrial air conditioning, heating, or refrigeration system; or consumer appliance shall use refrigerant extraction equipment to recover regulated refrigerant that would otherwise be released into the atmosphere. This subsection does not apply to off-road commercial equipment.

(3) Upon request, the department shall provide information and assistance to persons interested in collecting, transporting, or recycling regulated refrigerants.

(4) The willful release of regulated refrigerant from a source listed in subsection (2) of this section is prohibited. [1991 c 199 § 602.]

Finding—1991 c 199: "The legislature finds that:

(1) The release of chlorofluorocarbons and other ozone-depleting chemicals into the atmosphere contributes to the destruction of stratospheric ozone and threatens plant and animal life with harmful overexposure to ultraviolet radiation;

(2) The technology and equipment to extract and recover chlorofluorocarbons and other ozone-depleting chemicals from air conditioners, refrigerators, and other appliances are available;

(3) A number of nonessential consumer products contain ozone-depleting chemicals; and

(4) Unnecessary releases of chlorofluorocarbons and other ozone-depleting chemicals from these sources should be eliminated." [1991 c 199 § 601.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.980 Refrigerants—Unlawful acts. No person may sell, offer for sale, or purchase any of the following:

[Title 70 RCW—page 172]

(1) A regulated refrigerant in a container designed for consumer recharge of a motor vehicle air conditioning system or consumer appliance during repair or service. This subsection does not apply to a regulated refrigerant purchased for the recharge of the air conditioning system of off-road commercial or agricultural equipment and sold or offered for sale at an establishment which specializes in the sale of off-road commercial or agricultural equipment or parts or service for such equipment;

(2) Nonessential consumer products that contain chlorofluorocarbons or other ozone-depleting chemicals, and for which substitutes are readily available. Products affected under this subsection shall include, but are not limited to, party streamers, tire inflators, air horns, noise makers, and chlorofluorocarbon-containing cleaning sprays designed for noncommercial or nonindustrial cleaning of electronic or photographic equipment. [1991 c 199 § 603.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.990 Refrigerants—Rules—Enforcement provisions, limitations. The department shall adopt rules to implement RCW 70.94.970 and 70.94.980. Rules shall include but not be limited to minimum performance specifications for refrigerant extraction equipment, as well as procedures for enforcing RCW 70.94.970 and 70.94.980.

Enforcement provisions adopted by the department shall not include penalties or fines in areas where equipment to collect or recycle regulated refrigerants is not readily available. [1991 c 199 § 604.]

Finding—1991 c 199: See note following RCW 70.94.011.

Chapter 70.95

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

Sections	
70.95.010	Legislative finding—Priorities—Goal.
70.95.020	Purpose.
70.95.030	Definitions.
70.95.040	Solid waste advisory committee—Members—Meetings—Travel expenses—"Governor's award of excellence."
70.95.050	Solid waste advisory committee—Staff services and facilities.
70.95.060	Standards for solid waste handling—Areas.
70.95.070	Review of standards prior to adoption—Revisions, additions and modifications—Factors.
70.95.075	Implementation of standards—Assessment—Analyses—Proposals.
70.95.080	County comprehensive solid waste management plan—Joint plans—Duties of cities.
70.95.090	County and city comprehensive solid waste management plans—Contents.
70.95.092	County and city comprehensive solid waste management plans—Levels of service, reduction and recycling.
70.95.094	County and city comprehensive solid waste management plans—Review and approval process.
70.95.096	Utilities and transportation commission to review local plan's assessment of cost impacts on rates.
70.95.100	Technical assistance for plan preparation—Guidelines—Informational materials and programs.
70.95.110	Maintenance of plans—Review, revisions—Implementation of source separation programs.
70.95.130	Financial aid to counties and cities.
70.95.140	Matching requirements.
70.95.150	Contracts with counties to assure proper expenditures.

- 70.95.160 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system.
- 70.95.163 Local health departments may contract with the department of ecology.
- 70.95.165 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership.
- 70.95.167 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine.
- 70.95.170 Permit for solid waste disposal site or facilities—Required.
- 70.95.180 Permit for solid waste disposal site or facilities—Applications, fee.
- 70.95.185 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984.
- 70.95.190 Permit for solid waste disposal site or facilities—Renewal—Appeal—Validity of renewal.
- 70.95.200 Permit for solid waste disposal site or facilities—Suspension.
- 70.95.210 Hearing—Appeal.
- 70.95.215 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules.
- 70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations.
- 70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements.
- 70.95.235 Diversion of recyclable material—Penalty.
- 70.95.240 Unlawful to dump or deposit solid waste without permit.
- 70.95.250 Name appearing on waste material—Presumption.
- 70.95.255 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted.
- 70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling.
- 70.95.263 Additional powers and duties of department.
- 70.95.265 Department to cooperate with public and private departments, agencies and associations.
- 70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects.
- 70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects.
- 70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information.
- 70.95.285 Solid waste stream analysis.
- 70.95.290 Solid waste stream evaluation.
- 70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan.
- 70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption.
- 70.95.510 Fee on the retail sale of new replacement vehicle tires.
- 70.95.520 Vehicle tire recycling account—Deposit of funds.
- 70.95.530 Vehicle tire recycling account—Use.
- 70.95.535 Disposition of fee.
- 70.95.540 Cooperation with department to aid tire recycling.
- 70.95.550 Waste tires—Definitions.
- 70.95.555 Waste tires—License for transport or storage business—Requirements.
- 70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty.
- 70.95.565 Waste tires—Contracts with unlicensed persons prohibited.
- 70.95.600 Educational material promoting household waste reduction and recycling.
- 70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined.
- 70.95.620 Identification procedure for persons accepting used vehicle batteries.
- 70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice.
- 70.95.640 Retail core charge.
- 70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure.
- 70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines.
- 70.95.670 Rules.
- 70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements.
- 70.95.710 Incineration of medical waste.
- 70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements.
- 70.95.800 Solid waste management account.
- 70.95.810 Composting food and yard wastes—Grants and study.
- 70.95.900 Authority and responsibility of utilities and transportation commission not changed.
- 70.95.901 Severability—1989 c 431.
- 70.95.902 Section captions not law—1989 c 431.
- 70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.
- 70.95.910 Severability—1969 ex.s. c 134.
- 70.95.911 Severability—1975-'76 2nd ex.s. c 41.
- Airports: RCW 70.93.095.*
- Marinas: RCW 70.93.095.*
- State parks: RCW 43.51.046.*
- Waste reduction, recycling, litter control: Chapter 70.93 RCW.*
- 70.95.010 Legislative finding—Priorities—Goal.**
The legislature finds:
- (1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.
- (2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.
- (3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.
- (4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.
- (5) 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.
- (6)(a) It is the responsibility of every person to minimize his or her production of wastes and to separate recyclable or hazardous materials from mixed waste.
- (b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

(a) Waste reduction;

(b) Recycling, with source separation of recyclable materials as the preferred method;

(c) Energy recovery, incineration, or landfill of separated waste;

(d) Energy recovery, incineration, or landfilling of mixed wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 1995.

(10) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(11) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(12) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(13) Excessive and nonrecyclable packaging of products should be avoided.

(14) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(15) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(16) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(17) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

(18) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to

maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of *this act.

(19) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy. [1989 c 431 § 1; 1985 c 345 § 1; 1984 c 123 § 1; 1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

*Reviser's note: For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

70.95.020 Purpose. The purpose of this chapter is to establish a comprehensive state-wide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;

(4) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(5) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs. [1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

70.95.030 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "City" means every incorporated city and town.

(2) "Commission" means the utilities and transportation commission.

(3) "Committee" means the state solid waste advisory committee.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.

(7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

(8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

(10) "Jurisdictional health department" means city, county, city-county, or district public health department.

(11) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(12) "Local government" means a city, town, or county.

(13) "Multiple family residence" means any structure housing two or more dwelling units.

(14) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(15) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(16) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(17) "Residence" means the regular dwelling place of an individual or individuals.

(18) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

(19) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(20) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(21) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(22) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(23) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials. [1992 c 174 § 16; 1991 c 298 § 2; 1989 c 431 § 2; 1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

Finding—1991 c 298: "The legislature finds that curbside recycling services should be provided in multiple family residences. The county and city comprehensive solid waste management plans should include provisions for such service." [1991 c 298 § 1.]

Solid waste disposal—Powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.

70.95.040 Solid waste advisory committee—Members—Meetings—Travel expenses—"Governor's award of excellence." (1) There is created a solid waste advisory committee to provide consultation to the department of ecology concerning matters covered by this chapter. The committee shall advise on the development of programs and regulations for solid and dangerous waste handling, resource recovery, and recycling, and shall supply recommendations concerning methods by which existing solid and dangerous waste handling, resource recovery, and recycling practices and the laws authorizing them may be supplemented and improved.

(2) The committee shall consist of at least eleven members, including the assistant director for waste management programs within the department. The director shall appoint members with due regard to the interests of the public, local government, tribes, agriculture, industry, public health, recycling industries, solid waste collection industries, and resource recovery industries. The term of appointment shall be determined by the director. The committee shall elect its own chair and meet at least four times a year, in accordance with such rules of procedure as it shall establish. Members shall receive no compensation for their services but shall be reimbursed their travel expenses while engaged in business of the committee in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(3) The committee shall each year recommend to the governor a recipient for a "governor's award of excellence" which the governor shall award for outstanding achievement by an industry, company, or individual in the area of hazardous waste or solid waste management. [1991 c 319 § 401; 1987 c 115 § 1; 1982 c 108 § 1; 1977 c 10 § 1. Prior: 1975-'76 2nd ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 34 § 160; 1969 ex.s. c 134 § 4.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Toxic metals—Report—1991 c 319: See note following RCW 70.95G.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.95.050 Solid waste advisory committee—Staff services and facilities. The department shall furnish necessary staff services and facilities required by the solid waste advisory committee. [1969 ex.s. c 134 § 5.]

70.95.060 Standards for solid waste handling—Areas. The department in accordance with procedures prescribed by the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, may adopt such minimum functional standards for solid waste handling as it deems appropriate. The department in adopting such standards may classify areas of the state with respect to population density, climate, geology, and other relevant

factors bearing on solid waste disposal standards. [1969 ex.s. c 134 § 6.]

70.95.070 Review of standards prior to adoption—Revisions, additions and modifications—Factors. The solid waste advisory committee shall review prior to adoption and shall recommend revisions, additions, and modifications to the minimum functional standards governing solid waste handling relating, but not limited to, the following:

- (1) Vector production and sustenance.
- (2) Air pollution (coordinated with regulations of the department of ecology).
- (3) Pollution of surface and ground waters (coordinated with the regulations of the department of ecology).
- (4) Hazards to service or disposal workers or to the public.
- (5) Prevention of littering.
- (6) Adequacy and adaptability of disposal sites to population served.
- (7) Design and operation of disposal sites.
- (8) Recovery and/or recycling of solid waste. [1975-'76 2nd ex.s. c 41 § 4; 1969 ex.s. c 134 § 7.]

70.95.075 Implementation of standards—Assessment—Analyses—Proposals. In order to implement the minimum functional standards for solid waste handling, evaluate the effectiveness of the minimum functional standards, evaluate the cost of implementation, and develop a mechanism to finance the implementation, the department shall prepare:

- (1) An assessment of local health agencies' information on all existing permitted landfill sites, including (a) measures taken and facilities installed at each landfill to mitigate surface water and ground water contamination, (b) proposed measures taken and facilities to be constructed at each landfill to mitigate surface water and ground water contamination, and (c) the costs of such measures and facilities;
- (2) An analysis of the effectiveness of the minimum functional standards for new landfills in lessening surface water and ground water contamination, and a comparison with the effectiveness of the prior standards;
- (3) An analysis of the costs of conforming with the new functional standards for new landfills compared with the costs of conforming to the prior standards; and
- (4) Proposals for methods of financing the costs of conforming with the new functional standards. [1986 c 81 § 1.]

70.95.080 County comprehensive solid waste management plan—Joint plans—Duties of cities. Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties.

Each city shall:

- (1) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan; or

- (2) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or

- (3) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties.

Local governments shall not be required to include a hazardous waste element in their solid waste management plans. [1985 c 448 § 17; 1969 ex.s. c 134 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.95.090 County and city comprehensive solid waste management plans—Contents. Each county and city comprehensive solid waste management plan shall include the following:

- (1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

- (2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

- (3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

- (a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;

- (b) Take into account the comprehensive land use plan of each jurisdiction;

- (c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

- (d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

- (4) A program for surveillance and control.

- (5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

- (a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

- (b) Any city solid waste operation within the county and the boundaries of such operation;

- (c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies;

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70.95.165. [1991 c 298 § 3; 1989 c 431 § 3; 1984 c 123 § 5; 1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

Finding—1991 c 298: See note following RCW 70.95.030.

Certain provisions not to detract from utilities and transportation commission powers, duties, and functions: RCW 80.01.300.

70.95.092 County and city comprehensive solid waste management plans—Levels of service, reduction and recycling. Levels of service shall be defined in the waste reduction and recycling element of each local comprehensive solid waste management plan and shall include the services set forth in RCW 70.95.090. In determining which service level is provided to residential and nonresidential waste generators in each community, counties and cities shall develop clear criteria for designating areas as urban or rural. In designating urban areas, local governments shall consider the planning guidelines adopted by the department, total population, population density, and any applicable land use or utility service plans. [1989 c 431 § 4.]

70.95.094 County and city comprehensive solid waste management plans—Review and approval process.

(1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision under the procedures of Part IV of chapter 34.05 RCW. An administrative law judge shall preside over the appeal. The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section. [1989 c 431 § 8.]

70.95.096 Utilities and transportation commission to review local plan's assessment of cost impacts on rates. Upon receipt, the department shall immediately provide the utilities and transportation commission with a copy of each preliminary draft local comprehensive solid waste management plan. Within forty-five days after receiving a plan, the commission shall have reviewed the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW and shall advise the county or city submitting the plan and the department of the probable effect of the plan's recommendations on those rates. [1989 c 431 § 12.]

70.95.100 Technical assistance for plan preparation—Guidelines—Informational materials and programs.

(1) The department or the commission, as appropriate, shall provide to counties and cities technical assistance including, but not limited to, planning guidelines, in the preparation, review, and revision of solid waste management plans required by this chapter. Guidelines prepared under this section shall be consistent with the provisions of this chapter. Guidelines for the preparation of the waste reduction and recycling element of the comprehensive solid waste management plan shall be completed by the department by March 15, 1990. These guidelines shall provide recommendations to local government on materials to be considered for designation as recyclable materials. The state solid waste management plan prepared pursuant to RCW 70.95.260 shall be consistent with these guidelines.

(2) The department shall be responsible for development and implementation of a comprehensive state-wide public information program designed to encourage waste reduction, source separation, and recycling by the public. The department shall operate a toll free hotline to provide the public information on waste reduction and recycling.

(3) The department shall provide technical assistance to local governments in the development and dissemination of informational materials and related activities to assure recognition of unique local waste reduction and recycling programs.

(4) Local governments shall make all materials and information developed with the assistance grants provided under RCW 70.95.130 available to the department for potential use in other areas of the state. [1989 c 431 § 6; 1984 c 123 § 6; 1969 ex.s. c 134 § 10.]

70.95.110 Maintenance of plans—Review, revisions—Implementation of source separation programs.

(1) The comprehensive county solid waste management plans and any comprehensive city solid waste management plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70.95.090 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

(a) July 1, 1991, for class one areas: PROVIDED, That portions relating to multiple family residences shall be submitted no later than July 1, 1992;

(b) July 1, 1992, for class two areas; and

(c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in *this act

shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval. [1991 c 298 § 4; 1989 c 431 § 5; 1984 c 123 § 7; 1969 ex.s. c 134 § 11.]

*Reviser's note: For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

Finding—1991 c 298: See note following RCW 70.95.030.

70.95.130 Financial aid to counties and cities. Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [1969 ex.s. c 134 § 13.]

70.95.140 Matching requirements. Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14.]

70.95.150 Contracts with counties to assure proper expenditures. Upon the allocation of planning funds as

provided in RCW 70.95.130, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [1969 ex.s. c 134 § 15.]

70.95.160 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system. Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including but not limited to the issuance of permits and the establishment of minimum levels and types of service for any aspect of solid waste handling. County regulations or ordinances adopted regarding levels and types of service shall not apply within the limits of any city where the city has by local ordinance determined that the county shall not exercise such powers within the corporate limits of the city. Such regulations or ordinances shall assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, are consistent with the priorities established in RCW 70.95.010, and avoid the creation of nuisances. Such regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties. [1989 c 431 § 10; 1988 c 127 § 29; 1969 ex.s. c 134 § 16.]

70.95.163 Local health departments may contract with the department of ecology. Any jurisdictional health department and the department of ecology may enter into an agreement providing for the exercise by the department of ecology of any power that is specified in the contract and that is granted to the jurisdictional health department under this chapter. However, the jurisdictional health department shall have the approval of the legislative authority or authorities it serves before entering into any such agreement with the department of ecology. [1989 c 431 § 16.]

70.95.165 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership. (1) Each county or city siting a solid waste disposal facility shall review each potential site for conformance with the standards as set by the department for:

- (a) Geology;
- (b) Ground water;
- (c) Soil;
- (d) Flooding;
- (e) Surface water;
- (f) Slope;
- (g) Cover material;
- (h) Capacity;

- (i) Climatic factors;
- (j) Land use;
- (k) Toxic air emissions; and
- (l) Other factors as determined by the department.

(2) The standards in subsection (1) of this section shall be designed to use the best available technology to protect the environment and human health, and shall be revised periodically to reflect new technology and information.

(3) Each county shall establish a local solid waste advisory committee to assist in the development of programs and policies concerning solid waste handling and disposal and to review and comment upon proposed rules, policies, or ordinances prior to their adoption. Such committees shall consist of a minimum of nine members and shall represent a balance of interests including, but not limited to, citizens, public interest groups, business, the waste management industry, and local elected public officials. The members shall be appointed by the county legislative authority. A county or city shall not apply for funds from the state and local improvements revolving account, Waste Disposal Facilities, 1980, under chapter 43.99F RCW, for the preparation, update, or major amendment of a comprehensive solid waste management plan unless the plan or revision has been prepared with the active assistance and participation of a local solid waste advisory committee. [1989 c 431 § 11; 1984 c 123 § 4.]

70.95.167 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine. (1) Each local solid waste advisory committee shall conduct one or more meetings for the purpose of determining how local private recycling and solid waste collection businesses may participate in the development and implementation of programs to collect source separated materials from residences, and to process and market materials collected for recycling. The meetings shall include local private recycling businesses, private solid waste collection companies operating within the jurisdiction, and the local solid waste planning agencies. The meetings shall be held during the development of the waste reduction and recycling element or no later than one year prior to the date that a jurisdiction is required [to] submit the element under RCW 70.95.110(2).

(2) The meeting requirement under subsection (1) of this section shall apply whenever a city or county develops or amends the waste reduction and recycling element required under this chapter. Jurisdictions having approved waste reduction and recycling elements or having initiated a process for the selection of a service provider as of May 21, 1991, do not have to comply with the requirements of subsection (1) of this section until the next revisions to the waste reduction and recycling element are made or required.

(3) After the waste reduction and recycling element is approved by the local legislative authority but before it is submitted to the department for approval, the local solid waste advisory committee shall hold at least one additional meeting to review the element.

(4) For the purpose of this section, "private recycling business" means any private for-profit or private not-for-profit business that engages in the processing and marketing of recyclable materials. [1991 c 319 § 402.]

Severability—Part headings not—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.95.170 Permit for solid waste disposal site or facilities—Required. After approval of the comprehensive solid waste plan by the department no solid waste disposal site or disposal site facilities shall be maintained, established, substantially altered, expanded, or improved until the county, city, or other person operating such site has obtained a permit from the jurisdictional health department pursuant to the provisions of RCW 70.95.180. [1969 ex.s. c 134 § 17.]

70.95.180 Permit for solid waste disposal site or facilities—Applications, fee. (1) Applications for permits to operate new or existing solid waste disposal sites shall be on forms prescribed by the department and shall contain a description of the proposed and existing facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local and state regulations.

(2) Upon receipt of an application for a permit to establish, alter, expand, improve, or continue in use a solid waste disposal site, the jurisdictional health department shall refer one copy of the application to the department which shall report its findings to the jurisdictional health department.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether an existing or proposed site and facilities meet all applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1988 c 127 § 30; 1969 ex.s. c 134 § 18.]

70.95.185 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984. Every permit issued by a jurisdictional health department under RCW 70.95.180 shall be reviewed by the department to ensure that the proposed site or facility conforms with:

(1) All applicable laws and regulations including the minimal functional standards for solid waste handling; and

(2) The approved comprehensive solid waste management plan.

The department shall review the permit within thirty days after the issuance of the permit by the jurisdictional health department. The department may appeal the issuance of the permit by the jurisdictional health department to the

pollution control hearings board, as described in chapter 43.21B RCW, for noncompliance with subsection (1) or (2) of this section.

No permit issued pursuant to RCW 70.95.180 after June 7, 1984, shall be considered valid unless it has been reviewed by the department. [1984 c 123 § 8.]

70.95.190 Permit for solid waste disposal site or facilities—Renewal—Appeal—Validity of renewal. Every permit for a solid waste disposal site shall be renewed annually on a date to be established by the jurisdictional health department having jurisdiction of the site. Prior to renewing a permit, the health department shall conduct such inspections as it deems necessary to assure that the solid waste disposal site and facilities located on the site meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

A renewal issued under this section shall not be considered valid unless it has been reviewed by the department. [1984 c 123 § 9; 1969 ex.s. c 134 § 19.]

70.95.200 Permit for solid waste disposal site or facilities—Suspension. Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, or the regulations of the department or local laws and regulations. [1969 ex.s. c 134 § 20.]

70.95.210 Hearing—Appeal. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1987 c 109 § 21; 1969 ex.s. c 134 § 21.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.95.215 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules. (1) By July 1, 1987, each holder or applicant of a permit for a landfill disposal facility issued under this chapter shall establish a reserve account to cover the costs of closing the facility in accordance with state and federal regulations. The

account shall be designed to ensure that there will be adequate revenue available by the projected date of closure. Landfill disposal facilities maintained on private property for the sole use of the entity owning the site shall not be required to establish a reserve account if, to the satisfaction of the department, they provide another form of financial assurance adequate to comply with the requirements of this section.

(2) By July 1, 1986, the department shall adopt rules under chapter 34.05 RCW to implement subsection (1) of this section. The rules shall include but not be limited to:

(a) Methods to estimate closure costs, including postclosure monitoring, pollution prevention measures, and any other procedures required under state and federal regulations;

(b) Methods to ensure that reserve accounts receive adequate funds, including:

(i) Requirements that the reserve account be generated by user fees. However, the department may waive this requirement for existing landfills if user fees would be prohibitively high;

(ii) Requirements that moneys be placed in the reserve account on a regular basis and that the reserve account be kept separate from all other accounts; and

(iii) Procedures for the department to verify that adequate sums are deposited in the reserve account; and

(c) Methods to ensure that other types of financial assurance provided in accordance with subsection (1) of this section are adequate to cover the costs of closing the facility. [1985 c 436 § 1.]

70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations. Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22.]

70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements. The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated by the department in an amount not less than twenty-five percent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23.]

70.95.235 Diversion of recyclable material—Penalty.

(1) No person may divert to personal use any recyclable material placed in a container as part of a recycling program, without the consent of the generator of such recyclable material or the solid waste collection company operating under the authority of a town, city, county, or the utilities and transportation commission, and no person may divert to commercial use any recyclable material placed in a container as part of a recycling program, without the consent of the person owning or operating such container.

(2) A violation of subsection (1) of this section is a class 1 civil infraction under chapter 7.80 RCW. Each violation of this section shall be a separate infraction. [1991 c 319 § 407.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.95.240 Unlawful to dump or deposit solid waste without permit. After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit: PROVIDED, That nothing herein shall prohibit a person from dumping or depositing solid waste resulting from his own activities onto or under the surface of ground owned or leased by him when such action does not violate statutes or ordinances, or create a nuisance. Any person violating this section shall be guilty of a misdemeanor. [1969 ex.s. c 134 § 24.]

70.95.250 Name appearing on waste material—Presumption. Whenever solid wastes dumped in violation of RCW 70.95.240 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of dumping. [1969 ex.s. c 134 § 25.]

70.95.255 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted. After January 1, 1988, the department of ecology may prohibit disposal of sewage sludge or septic tank sludge (septage) in landfills for final disposal, except on a temporary, emergency basis, if the jurisdictional health department determines that a potentially unhealthful circumstance exists. Beneficial uses of sludge in landfill reclamation is acceptable utilization and not considered disposal.

The department of ecology shall adopt rules that provide exemptions from this section on a case-by-case basis. Exemptions shall be based on the economic infeasibility of using or disposing of the sludge material other than in a landfill.

The department of ecology, in conjunction with the department of health and the department of agriculture, shall adopt rules establishing labeling and notification requirements for sludge material sold commercially or given away to the public. The department shall specify mandatory wording for labels and notification to warn the public against

improper use of the material. [1992 c 74 § 15; 1986 c 297 § 1.]

70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the department of community development, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program. The plan shall be developed into a single integrated document and shall be adopted no later than October 1990. The plan shall be revised regularly after its initial completion so that local governments revising local comprehensive solid waste management plans can take advantage of the data and analysis in the state plan.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) Develop state-wide programs to increase public awareness of and participation in tire recycling, and to stimulate and encourage local private tire recycling centers and public participation in tire recycling.

(6) May, under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1989 c 431 § 9. Prior: 1985 c 345 § 8; 1985 c 6 § 23; 1969 ex.s. c 134 § 26.]

Study—1989 c 431: "The institute for urban and local studies at Eastern Washington State University shall conduct a study of enforcement of solid waste management laws and regulations as a component of the 1990 state solid waste management plan. This study shall include, but shall not be limited to:

(1) A review of current state and local solid waste rules, requirements, policies, and resources devoted to state and local solid waste enforcement, and of the effectiveness of these programs in promoting environmental health and public safety;

(2) An examination of federal regulations and the latest proposed amendments to the Resource Conservation and Recovery Act, in subtitle D of the code of federal regulations;

(3) A review of regulatory approaches used by other states;

(4) A review and evaluation of educational and technical assistance programs related to enforcement;

(5) An inventory of regulatory compliance for all processing and disposal facilities handling mixed solid waste;

(6) A review of the role and effectiveness of other enforcement jurisdictions;

(7) An evaluation of the need for redefining institutional roles and responsibilities for enforcement of solid waste management laws and regulations in order to establish public confidence in solid waste management systems and ensure public protection; and

(8) An evaluation of possible benefits in separating the solid waste planning and technical assistance responsibilities from the enforcement responsibilities within the department." [1989 c 431 § 96.]

70.95.263 Additional powers and duties of department. The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) a management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) an evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) a data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects.

(7) Make periodic recommendations to the governor and the legislature on actions and policies which would further implement the objectives of *this 1976 amendatory act. [1975-'76 2nd ex.s. c 41 § 5.]

*Reviser's note: "this 1976 amendatory act" [1975-'76 2nd ex.s. c 41] consists of amendments to RCW 70.93.020, 70.93.190, 70.95.010, 70.95.020, 70.95.030, 70.95.040, 70.95.070, and to RCW 70.95.263, 70.95.265, and 70.95.267.

70.95.265 Department to cooperate with public and private departments, agencies and associations. The department shall work closely with the department of trade and economic development, the department of general administration, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of *this 1976

amendatory act. [1985 c 466 § 69; 1975-'76 2nd ex.s. c 41 § 6.]

*Reviser's note: For "this 1976 amendatory act," see note following RCW 70.95.263.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects. The department is authorized to use referendum 26 (chapter 43.83A RCW) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [1975-'76 2nd ex.s. c 41 § 10.]

70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects. The department is authorized to use funds under chapter 43.99F RCW to disburse to local governments in developing solid waste recovery or recycling projects. Priority shall be given to those projects that use incineration of solid waste to produce energy and to recycling projects. [1984 c 123 § 10.]

70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information. The department of ecology shall determine the best management practices for categories of solid waste in accordance with the priority solid waste management methods established in RCW 70.95.010. In order to make this determination, the department shall conduct a comprehensive solid waste stream analysis and evaluation. Following establishment of baseline data resulting from an initial in-depth analysis of the waste stream, the department shall develop a less intensive method of monitoring the disposed waste stream including, but not limited to, changes in the amount of waste generated and waste type. The department shall monitor curbside collection programs and other waste segregation and disposal technologies to determine, to the extent possible, the effectiveness of these programs in terms of cost and participation, their applicability to other locations, and their implications regarding rules adopted under this chapter. Persons who collect solid waste shall annually report to the department the types and quantities of solid waste that are collected and where it is delivered. The department shall adopt guidelines for reporting and for keeping proprietary information confidential. [1989 c 431 § 13; 1988 c 184 § 1.]

Recovered materials transportation, utilities and transportation commission to adopt rules for reporting under RCW 70.95.280: RCW 81.80.450.

70.95.285 Solid waste stream analysis. The comprehensive, state-wide solid waste stream analysis under RCW 70.95.280 shall be based on representative solid waste generation areas and solid waste generation sources within the state. The following information and evaluations shall be included:

(1) Solid waste generation rates for each category;

(2) The rate of recycling being achieved within the state for each category of solid waste;

(3) The current and potential rates of solid waste reduction within the state;

(4) A technological assessment of current solid waste reduction and recycling methods and systems, including cost/benefit analyses;

(5) An assessment of the feasibility of segregating solid waste at: (a) The original source, (b) transfer stations, and (c) the point of final disposal;

(6) A review of methods that will increase the rate of solid waste reduction; and

(7) An assessment of new and existing technologies that are available for solid waste management including an analysis of the associated environmental risks and costs.

The data required by the analysis under this section shall be kept current and shall be available to local governments and the waste management industry. [1988 c 184 § 2.]

70.95.290 Solid waste stream evaluation. (1) The evaluation of the solid waste stream required in RCW 70.95.280 shall include the following elements:

(a) The department shall determine which management method for each category of solid waste will have the least environmental impact; and

(b) The department shall evaluate the costs of various management options for each category of solid waste, including a review of market availability, and shall take into consideration the economic impact on affected parties;

(c) Based on the results of (a) and (b) of this subsection, the department shall determine the best management for each category of solid waste. Different management methods for the same categories of waste may be developed for different parts of the state.

(2) The department shall give priority to evaluating categories of solid waste that, in relation to other categories of solid waste, comprise a large volume of the solid waste stream or present a high potential of harm to human health. At a minimum the following categories of waste shall be evaluated:

(a) By January 1, 1989, yard waste and other biodegradable materials, paper products, disposable diapers, and batteries; and

(b) By January 1, 1990, metals, glass, plastics, styrofoam or rigid lightweight cellular polystyrene, and tires. [1988 c 184 § 3.]

70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan. The department shall incorporate the information from the analysis and evaluation conducted under RCW 70.95.280 through 70.95.290 to the state solid waste management plan under RCW 70.95.260. The plan shall be revised periodically as the evaluation and analysis is updated. [1988 c 184 § 4.]

70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption. (1) No person may drop, deposit, discard, or otherwise dispose of vehicle tires on any public property or private property in this state or in the waters of this state whether from a vehicle or

otherwise, including, but not limited to, any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley unless:

(a) The property is designated by the state, or by any of its agencies or political subdivisions, for the disposal of discarded vehicle tires; and

(b) The person is authorized to use the property for such purpose.

(2) A violation of this section is punishable by a civil penalty, which shall not be less than two hundred dollars nor more than two thousand dollars for each offense.

(3) This section does not apply to the storage or deposit of vehicle tires in quantities deemed exempt under rules adopted by the department of ecology under its functional standards for solid waste. [1985 c 345 § 4.]

70.95.510 Fee on the retail sale of new replacement vehicle tires. There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires for a period of five years, beginning October 1, 1989. The fee imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70.95.535 shall be paid to the department of revenue in accordance with RCW 82.32.045. All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [1989 c 431 § 92; 1985 c 345 § 5.]

70.95.520 Vehicle tire recycling account—Deposit of funds. There is created an account within the state treasury to be known as the vehicle tire recycling account. All assessments and other funds collected or received under this chapter shall be deposited in the vehicle tire recycling account and used by the department of ecology for administration and implementation of this chapter. After October 1, 1989, the department of revenue shall deduct two percent from funds collected pursuant to RCW 70.95.510 for the purpose of administering and collecting the fee from new replacement vehicle tire retailers. [1989 c 431 § 94; 1985 c 345 § 6.]

70.95.530 Vehicle tire recycling account—Use. Moneys in the account may be appropriated to the department of ecology:

(1) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites;

(2) To accomplish the other purposes of RCW 70.95.020(5); and

(3) To fund the study authorized in section 2, chapter 250, Laws of 1988.

In spending funds in the account under this section, the department of ecology shall identify communities with the most severe problems with waste tires and provide funds

first to those communities to remove accumulations of waste tires. [1988 c 250 § 1; 1985 c 345 § 7.]

70.95.535 Disposition of fee. (1) Every person engaged in making retail sales of new replacement vehicle tires in this state shall retain ten percent of the collected one dollar fee. The moneys retained may be used for costs associated with the proper management of the waste vehicle tires by the retailer.

(2) The department of ecology will administer the funds for the purposes specified in RCW 70.95.020(5) including, but not limited to:

(a) Making grants to local governments for pilot demonstration projects for on-site shredding and recycling of tires from unauthorized dump sites;

(b) Grants to local government for enforcement programs;

(c) Implementation of a public information and education program to include posters, signs, and informational materials to be distributed to retail tire sales and tire service outlets;

(d) Product marketing studies for recycled tires and alternatives to land disposal. [1989 c 431 § 93.]

70.95.540 Cooperation with department to aid tire recycling. To aid in the state-wide tire recycling campaign, the legislature strongly encourages various industry organizations which are active in resource recycling efforts to provide active cooperation with the department of ecology so that additional technology can be developed for the tire recycling campaign. [1985 c 345 § 9.]

70.95.550 Waste tires—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95.555 through 70.95.565.

(1) "Storage" or "storing" means the placing of more than eight hundred waste tires in a manner that does not constitute final disposal of the waste tires.

(2) "Transportation" or "transporting" means picking up or transporting waste tires for the purpose of storage or final disposal.

(3) "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect. [1988 c 250 § 3.]

70.95.555 Waste tires—License for transport or storage business—Requirements. Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation; and

(2) Post a bond in the sum of ten thousand dollars in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department. [1988 c 250 § 4.]

70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty. Any person who transports or stores waste tires without a license in violation of RCW 70.95.555

shall be guilty of a gross misdemeanor and upon conviction shall be punished under RCW 9A.20.021(2). [1989 c 431 § 95; 1988 c 250 § 5.]

70.95.565 Waste tires—Contracts with unlicensed persons prohibited. No business may enter into a contract for:

- (1) Transportation of waste tires with an unlicensed waste tire transporter; or
- (2) Waste tire storage with an unlicensed owner or operator of a waste tire storage site. [1988 c 250 § 6.]

70.95.600 Educational material promoting household waste reduction and recycling. The department of ecology, at the request of a local government jurisdiction, may periodically provide educational material promoting household waste reduction and recycling to public and private refuse haulers. The educational material shall be distributed to households receiving refuse collection service by local governments or the refuse hauler providing service. The refuse hauler may distribute the educational material by any means that assures timely delivery.

Reasonable expenses incurred in the distribution of this material shall be considered, for rate-making purposes, as legitimate operating expenses of garbage and refuse haulers regulated under chapter 81.77 RCW. [1988 c 175 § 3.]

Effective date—1988 c 175: See note following RCW 43.19.538.

70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined. (1) No person may knowingly dispose of a vehicle battery except by delivery to: A person or entity selling lead acid batteries, a person or entity authorized by the department to accept the battery, or to a secondary lead smelter.

(2) No owner or operator of a solid waste disposal site shall knowingly accept for disposal used vehicle batteries except when authorized to do so by the department or by the federal government.

(3) Any person who violates this section shall be subject to a fine of up to one thousand dollars. Each battery will constitute a separate violation. Nothing in this section and RCW 70.95.620 through 70.95.660 shall supersede the provisions under chapter 70.105 RCW.

(4) For purposes of this section and RCW 70.95.620 through 70.95.660, "vehicle battery" means batteries capable for use in any vehicle, having a core consisting of elemental lead, and a capacity of six or more volts. [1989 c 431 § 37.]

70.95.620 Identification procedure for persons accepting used vehicle batteries. The department shall establish a procedure to identify, on an annual basis, those persons accepting used vehicle batteries from retail establishments. [1989 c 431 § 38.]

70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice. A person selling vehicle batteries at retail in the state shall:

- (1) Accept, at the time of purchase of a replacement battery, in the place where the new batteries are physically transferred to the purchasers, and in a quantity at least equal

to the number of new batteries purchased, used vehicle batteries from the purchasers, if offered by the purchasers. When a purchaser fails to provide an equivalent used battery or batteries, the purchaser may reclaim the core charge paid under RCW 70.95.640 by returning, to the point of purchase within thirty days, a used battery or batteries and a receipt showing proof of purchase from the establishment where the replacement battery or batteries were purchased; and

(2) Post written notice which must be at least eight and one-half inches by eleven inches in size and must contain the universal recycling symbol and the following language:

(a) "It is illegal to put a motor vehicle battery or other vehicle battery in your garbage."

(b) "State law requires us to accept used motor vehicle batteries or other vehicle batteries for recycling, in exchange for new batteries purchased."

(c) "When you buy a battery, state law also requires us to include a core charge of five dollars or more if you do not return your old battery for exchange." [1989 c 431 § 39.]

70.95.640 Retail core charge. Each retail sale of a vehicle battery shall include, in the price of the battery for sale, a core charge of not less than five dollars. When a purchaser offers the seller a used battery of equivalent size, the seller shall omit the core charge from the price of the battery. [1989 c 431 § 40.]

70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure. (1) A person selling vehicle batteries at wholesale to a retail establishment in this state shall accept, at the time and place of transfer, used vehicle batteries in a quantity at least equal to the number of new batteries purchased, if offered by the purchaser.

(2) When a battery wholesaler, or agent of the wholesaler, fails to accept used vehicle batteries as provided in this section, a retailer may file a complaint with the department and the department shall investigate any such complaint.

(3)(a) The department shall issue an order suspending any of the provisions of RCW 70.95.630 through 70.95.660 whenever it finds that the market price of lead has fallen to the extent that new battery wholesalers' estimated state-wide average cost of transporting used batteries to a smelter or other person or entity in the business of purchasing used batteries is clearly greater than the market price paid for used lead batteries by such smelter or person or entity.

(b) The order of suspension shall only apply to batteries that are sold at retail during the period in which the suspension order is effective.

(c) The department shall limit its suspension order to a definite period not exceeding six months, but shall revoke the order prior to its expiration date should it find that the reasons for its issuance are no longer valid. [1989 c 431 § 41.]

70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines. The department shall produce, print, and distribute the notices required by RCW 70.95.630 to all places where vehicle batteries are offered for sale at retail and in performing its duties under this section the department may inspect any place, building,

or premise governed by RCW 70.95.640. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirements of RCW 70.95.610 through 70.95.670. Failure to conform to the notice requirements of RCW 70.95.630 shall subject the violator to a fine imposed by the department not to exceed one thousand dollars. However, no such fine shall be imposed unless the department has issued a warning of infraction for the first offense. Each day that a violator does not comply with the requirements of *this act following the issuance of an initial warning of infraction shall constitute a separate offense. [1989 c 431 § 42.]

*Reviser's note: For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

70.95.670 Rules. The department shall adopt rules providing for the implementation and enforcement of RCW 70.95.610 through 70.95.660. [1989 c 431 § 43.]

70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements. No solid waste incineration or energy recovery facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030(2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW. This section does not apply to a facility operated prior to January 1, 1989, as a solid waste incineration facility or energy recovery facility burning solid waste. [1989 c 431 § 55.]

70.95.710 Incineration of medical waste. Incineration of medical waste shall be conducted under sufficient burning conditions to reduce all combustible material to a form such that no portion of the combustible material is visible in its uncombusted state. [1989 c 431 § 77.]

70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements. The department shall require energy recovery and incineration facilities to retain records of monitoring and operation data for a minimum of ten years after permanent closure of the facility. [1990 c 114 § 4.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95.800 Solid waste management account. The solid waste management account is created in the state treasury. Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used to carry out the purposes of *this act. [1991 sp.s. c 13 § 73; 1989 c 431 § 90.]

*Reviser's note: For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.95.810 Composting food and yard wastes—Grants and study. (1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the department of trade and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets.

(3) The department shall periodically report to the appropriate standing committees of the legislature on the need for, and feasibility of, composting systems for food and yard wastes. [1989 c 431 § 97.]

70.95.900 Authority and responsibility of utilities and transportation commission not changed. Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27.]

70.95.901 Severability—1989 c 431. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 431 § 107.]

70.95.902 Section captions not law—1989 c 431. Captions and headings used in this act do not constitute any part of the law. [1989 c 431 § 108.]

70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 32.]

70.95.910 Severability—1969 ex.s. c 134. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 134 § 28.]

70.95.911 Severability—1975-'76 2nd ex.s. c 41. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 41 § 11.]