



POLLY L. MCNEILL
DID: (206) 676-7040
EMAIL: pollym@summitlaw.com

November 23, 2015

Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: TG-151838 – Revenue Sharing Rulemaking

Secretary King:

On behalf of Waste Management of Washington, Inc. (“WM” or “Company”), we herein submit comments regarding the proposed codification of the Commission’s Interpretive and Policy Statement on Revenue Sharing to the Washington Utilities and Transportation Commission (“the Commission”). While the Company understands that converting long-standing policies into rules may be warranted by principles of administrative law, the Company cannot support codification of the existing Interpretive and Policy Statement on Revenue Sharing (“Interpretive Statement”) that was developed in Docket TG-151838 for many of the same reasons articulated in the Company’s comments filed in that matter. Most significantly, the Company disagrees with the Commission’s definition of what qualifies as legally significant measures for determining whether an approved plan results in an increase to recycling.

In the big picture, as the percent of solid waste that is diverted to recycling continues to increase, the Company is chasing smaller and smaller margins to “increase recycling” consistent with the parameters adopted in the Commission’s Interpretive Statement. Eventually, undertaking a Plan that is measured only by whether it increases the number or participation of customers who recycle, or that decreases the tonnage of solid waste disposed of will be an exercise in futility. At some point, customer participation will be at maximum levels, and the ability to separate more material for recycling will no longer be possible. Counties are now turning to organics as a potential means for increasing diversion as the only material for which growth is possible. Ironically, for commodity recycling the economics of collecting

certain types of potentially recyclable materials is undergoing strict scrutiny, and causing some jurisdictions to drop glass and limit plastics. For traditional recyclables, there is more focus on the quality of the materials than there is on volumes.

Further, by using unnecessarily narrow parameters to define “increase recycling,” the Interpretive Statement’s definition excludes important opportunities for collection companies to improve recycling outcomes, such as improving the quality and value of recyclable materials, which can ultimately contribute to increased quantities of diverted waste.

One reason that the statutory directive to “increase recycling” should not be so narrowly constrained is that “recycling,” as defined by the Solid Waste Management Act simply means, “transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.” RCW 70.95.030(18). In the implementing regulations, the term is further embellished, and, “Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.” WAC 173-350-100. Putting the revenue sharing legislation in the context of these definitions shows that collecting material from generators is just the first step in a process that culminates with a new product or application. To exclude other portions of the recycling process from the definition of “increase recycling” is simply not realistic. Rather, to “increase recycling” should be interpreted as ultimately increasing the amount of waste material that is transformed or remanufactured into usable or marketable materials for use other than landfill disposal or incineration. To read the legislation any other way eviscerates the goal of actually increasing recycling because even if the amount of materials placed in recycling bins were doubled, it does not mean that “recycling” has increased until those materials have been transformed or remanufactured into usable or marketable materials for use other than landfill disposal or incineration.

While the type of quantifiable measures included in the Interpretive Statement’s definition of “increase recycling” may be indications of a successful program, they are not actually capable of demonstrating an increase in the amount of materials being transformed into products. For these reasons, revenue sharing programs should be reviewed in the context of the overall goal of increasing the amount of material that is diverted from disposal and potentially turned into useful product, not simply whether they will result in an increase in the number or participation of customers who recycle, or an increase in the tonnage of recyclable materials collected.

For the reasons discussed above, it is the opinion of the Company that the Commission should decline to codify the Interpretive Statement's definition of what qualifies as increasing recycling because it ultimately fails to acknowledge the actual goal of the legislation, which is to increase the amount of material that is transformed or remanufactured into usable or marketable materials for use other than landfill disposal or incineration, not simply to increase the amount of material that is collected as "recyclable," regardless of its condition or ultimate usability.

In addition to revising the definition of "increase recycling" prior to codifying the Commission's policy on revenue sharing, the Company also believes that the Commission should revisit the incentives for participating companies. Currently, regulated companies participating in revenue sharing plans are permitted to retain up to 5% of retained revenues. While the Company appreciates that this provides some financial incentive to participating companies, in reality this results in de minimis revenues, and provides little incentive for companies to invest significant efforts to increase recycling. If Plan participants were provided with more meaningful financial incentives, they would be more willing to invest additional resources and take greater risks.

Alternatively, the Commission could achieve a similar objective by adopting a policy that rewards participating companies for diligently implementing revenue sharing programs, regardless of whether tangible metrics are achieved. If participating companies were rewarded for producing objective evidence of implementing and completing plan activities, it could result in the willing and enthusiastic participation of a greater number of regulated companies and greater investment by current participating companies.

In conclusions, we commend the Commission for its continued investment in the revenue sharing program. However, unless the above concerns are addressed, the Company does not support codifying the Commission's Interpretive Statement unless significant changes were considered in the context of rulemaking. While the Company has continued to participate in the program and abide by the Commission's Interpretive Statement, it strongly opposes codification of the current definition of "increase recycling" for the reasons articulated above. We look forward to reviewing the comments of other stakeholders, and to further dialogue. Thank you for your consideration of our remarks. We are available and interested in answering questions and further the discussion.

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Sincerely,

SUMMIT LAW GROUP PLLC

A handwritten signature in blue ink that reads "Sara Kelly". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Polly L. McNeill
Sara A. Kelly