



WASHINGTON REFUSE & RECYCLING ASSOCIATION

February 23, 2012

Mr. Dave Danner
Executive Director and Secretary
Washington Utilities and
Transportation Commission
1300 S Evergreen Park Dr. SW
P. O. Box 47250
Olympia, WA 98504-7250

Via e-mail to records@utc.wa.gov

**Re: *Recycling Revenue Sharing, Docket TG-112162
Comments of Washington Refuse and Recycling Association (WRRA)***

Dear Mr. Danner:

Please consider the following as comments on behalf of WRRA as requested in the NOTICE OF OPPORTUNITY TO COMMENT issued January 13, 2012.

Prior to commenting on this specific proposal, I would like to add a general comment. The WRRA and its members understand the environment of accountability in which we operate. We are accountable and have obligations to keep to all whom we provide service; specifically our customers. We also have obligations to be accountable to our regulators, both the WUTC and the counties.

With respect to our specific comments and for the sake of convenience I will divide our comments into two major categories as set forth in the NOTICE - I. Recycling Revenue Plans; and II. Process Issues.

I. Recycling Revenue Plans: We believe the meaning of “increase recycling” covers perhaps more territory than one would think at first blush. However, it is clear that the ultimate result of increasing recycling would be a decrease in material being landfilled or incinerated. However, that cannot and should not be the only measure. For example, “reuse” of material is not

technically “recycling,” but an increase in reuse will logically result in a reduction in waste disposal.

You ask how a “solid waste company could increase recycling.” First, we must recognize that “solid waste companies” are also recycling companies and provide virtually all of residential recycling and the majority of commercial recycling in the state. So it is not one entity working with an entirely different entity to reach a goal; rather, it is one entity working with local and state government to reach a common goal.

Obviously, over a reasonable period of time, the amount of recycling (and reuse) can be measured to a reasonable, if not exact, degree. The key here is that it cannot be done on a short-term basis; the primary factor being that recycling (both residential and commercial) is market driven.

The legislative goal of recycling can be met when the new materials are introduced into the recyclable container or the organics container. It can also be met through greater participation or set-out rates. Lastly, and maybe less obvious may be the increase in the quality of recyclable materials that are collected, processed and marketed.

It is a simple fact that without markets there is no recycling. The Commission knows this, Counties know this, and we trust the Legislature does as well. Thus, the creation of new markets and vigilant maintenance of existing markets is a major goal of this program and perhaps will be the ultimate measure of success or failure.

There are, of course, innumerable other ways to “increase recycling,” some obvious, others best left to the technical and financial people, who certainly will play valuable roles in this process. The obvious programs would be such things as increased customer awareness (flyers, mailings, radio, TV internet); educational programs in schools starting at the primary level and continuing right through high school; involvement of community colleges and vocational schools in training for careers in the industry; partnerships with all levels of local government and much, much more.

But again, the effectiveness of any such program cannot be evaluated in the short term. There must be an understanding that there will be “ups and downs,” but that the ultimate goal can and should be reached.

RCW 81.77.185 is one method of reaching that goal. You ask what “permissible expenditures” are under a county plan. The answer is: any expenditure which the county finds or is reasonably likely to meet that goal, within a reasonable time period; or at least has a significant chance of doing so. That time period, and the nature of the expenditures, will obviously vary from county to county, and the Commission needs to keep that in mind in

exercising its statutory role here. The Commission must be very careful in its review of these plans, as this truly is a situation where that much overused saying “one size doesn’t fit all” applies.

That being said, we also are fully aware that the Commission has a primary role in this process. The intent of this statute certainly appears to be that the counties set “policy”, while the Commission has the ultimate authority to approve the plan. We do however urge the Commission to give the companies and the counties due deference in the policy arena; while simultaneously reminding the counties and our members that the Commission has taken the position that it must ultimately approve the entire plan, including retained revenue.

WRRRA has been consistent in its belief that this statute was designed and enacted as an incentive for private industry to “get together” with counties to do what it takes to increase recycling. The benefit to a county is obvious; the benefit to private industry is increased revenue (maybe), along with the opportunity to maintain a mutually beneficial relationship with local government. Needless to say, there also is a major benefit here for the consumer and the environment in general.

The counties certainly appear to understand and accept this concept. In particular, the larger counties involved (King, Snohomish and Pierce) have clearly reviewed, modified and revamped company plans over significant periods of time, and have no problem with the returns the companies involved were to receive. These counties are on the “front lines” of this campaign and their conclusions should be given significant consideration by the Commission. That, we believe, is part and parcel of the intent of this statute.

II. Process Issues: Clearly the Legislature intended this process to involve three parties, the company, the county, and the Commission. Each has its own role, but it would appear that the major burden falls upon the company and the county. They must get together and come up with a plan which meets the goals and expectations of the statute. This is neither a simple nor a particularly pleasant process. However, once the “plan” reaches the Commission, you can be assured that it has been vetted, revetted, and then vetted again by the participants. The counties have no interest in implementing a plan which may fail (with the expected retaliation at the ballot box), and the companies are equally certain they do not want to face owners and/or shareholders with a “great idea” that lost money.

So, in answer to the question posed, the counties’ and the companies’ roles are the same; i.e. to put together a plan which is in compliance with the statute and is beneficial to the ultimate goal of “increasing recycling.”

The Commission's goal is, perhaps, less well defined but has become equally important. WRRRA has previously argued in briefing in other dockets that the inclusion of the word "shall" in the statute means that if a particular county and company present a plan which is in compliance with the statute, the Commission "shall" approve it, and by doing so approve the financial component of the plan. That continues to be our position. However, for the purpose of this Docket, and the common sense realization that these issues can be resolved, we are more than willing to cooperate in this attempt to solve the problem without further expensive and time consuming litigation, either before the commission or, ultimately, the courts.

Your specific inquiries regarding at what point the Commission should become involved are pertinent and, frankly, have not been subject of much discussion thus far. We would suggest that the Commission not become directly involved in the county/company discussions/negotiations until there is, at least, a preliminary draft of a proposal available. At that point, it would seem to make a great deal of sense for the Commission staff to participate in a review (and explanation) of the plan before it is formally presented to the Commission for approval. This is not unlike the familiar ratemaking process where the regulated entity and staff frequently come to an agreement, which generally is approved by the Commission.

WRRRA believes that while accountability is a primary factor in this issue, we also believe that additional processes that add time, and complicates our existing relationships may well bring an end to this legislatively provided incentive program.

We also are cognizant of the budget and staffing limitations placed upon all state agencies, and realize this legislation has placed an additional burden upon an already close to overwhelmed staff. The time to take a full role in the initial county/company negotiations simply is not there. However, the time invested in reviewing a proposed plan before its formal presentation would be time well spent, and very likely would result in an overall savings of staff time and energy.

Conclusions: WRRRA supports the established WUTC rate making process for solid waste companies that bases rates on adopted county solid waste plans and provides for fair, just and reasonable rates for both the consumer and the companies. We acknowledge that revenue sharing is not a normal part of rate making.

We have encouraged members to respond to this Notice with their own thoughts and recommendations, which, we believe, will be valuable to this process. We also expect that counties currently involved in these plans, and perhaps some which are considering involvement, will also comment.

This is an extremely important issue, based upon a very short, and perhaps somewhat unclear, statute. The Commission has a major role here, and whether that role will be exercised through a policy statement, rulemaking, or legislative action remains to be seen. WRRRA will participate in the upcoming workshop and will continue to work in whatever forum is appropriate to resolve the situation, and help to reach the goals of this statute.

Very truly yours,

WASHINGTON REFUSE AND RECYCLING ASSOCIATION

A handwritten signature in cursive script that reads "Brad Lovas".

BRAD LOVAAS
Executive Director