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March 8, 2012

David W. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, SW
P.O. Box 47250
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Re: TG-112162 – Recycling Revenue Sharing

Secretary Danner:

On behalf of Waste Management of Washington, Inc. (“WM” or “Company”), we commend the other stakeholders for submitting thoughtful, professional and provocative comments. We look forward to discussing these ideas further at the workshop on March 28. The submittals reflect agreement on many issues presented by the Commission’s policy guidance notice, but there are some obvious variations in views and approaches that need to be reconciled by the Commission. WM submits these limited observations about the submittals.

A. The legislature was using the common vernacular meaning of “recycling” under RCW 81.77.185, and good faith intent to affect the ultimate outcome can be demonstrated in a variety of ways.

Based on the variety of views expressed in the comments, the term “recycling” under RCW 81.77.185 should not be interpreted in the context of revenue sharing programs in the meaning assigned by other statutes. In our comments, we noted this dilemma, and agree with the general approach suggested by commentators that allows the term to be broadly used to include all steps along the journey from the customer’s kitchen to the customer’s shopping cart. The broader view is consistent with the State’s solid waste management hierarch, as noted by Snohomish and King Counties.

Many varied examples of how to increase recycling were identified by commentators, and not with any intention to limit the term. According to stakeholders, increased recycling can take place at the ratepayer's premises by increasing volumes, reducing contamination and decreasing garbage volumes. At the curbside, increases to recycling can be seen by rising numbers or percentages of participation or changing set-out behaviors. Increased recycling takes place at the processing facility by augmenting efficiency, expanding volumes and materials that can be processed, and enhancing marketability. It can occur at markets by maximizing prices, identifying new buyers and uses, and increasing revenues. Increased recycling is ultimately what takes place when the material reaches the point of the strict statutory definition of transforming and remanufacturing. And even beyond that point, when the consumer buys that good or uses that product and "closes the loop," recycling is increased. Indeed, even reduction and reuse can be perceived in some ways as within the goal of the revenue sharing legislation.

The ways identified by other commentators for a solid waste collection company to "increase recycling" within the meaning of the statute are many. Thus, with regard to what needs to be in a revenue sharing plan, the Commission should adopt a policy guidance that allows for imagination and creativity.

B. There are many legitimate program activities incapable of objective outcomes, but there are nonetheless a number of quantifiable measures for determining whether a recycling revenue sharing program demonstrates that a plan will increase recycling.

On this point, the Commission should not require an objective and measurable result from each program activity in isolation. Comments expressed an opinion that many program activities are not capable of having a direct correlation to those quantifiable standards. Any policy excluding expenditures unless they come with a direct causal relationship to an objective measurement would undercut the ability to implement data recovery, public outreach, and marketing strategies that are intended to motivate behaviors at one or more of the points that recyclable materials are handled.

If it takes a broader view of the revenue-sharing objectives, however, commentators identified for the Commission a variety of benchmarks that could be used to indicate whether recycling might be increasing. So long as it recognizes that these standards can only be surrogates for increased recycling in its strict sense, the Commission should allow the plan participants to identify the appropriate benchmarks that might be applicable to their programs. Most lack a direct causal link, and as others have

observed, some of the proposed measurements are more influenced by outside factors than by revenue sharing activities. They are nonetheless valuable indicators over time of whether a revenue sharing program is having an effect or not.

C. Program expenditures designed for a revenue sharing plan should be generally allowed, including company rewards, in the manner approved by the local jurisdiction.

With regard to general types of expenditures, articulating the Commission's view and standards about annually recurring expenses, equipment costs, cash payments to affiliates or third parties to be used for recycling related activities, personnel, advertising, would be welcome. Waste Management believes that any and all of these expenditures could be appropriately paid for by retained revenue.

Annually recurring expenses such as consumer education and marketing are legitimate revenue sharing expenditures, and the Counties should be allowed to determine when and what of those activities justify being included in the rate base. Collecting data, reporting and evaluation are tailored to the revenue sharing activities, and even though they may be recurring activities, they may not be the literally the same from year to year, and program costs for these "soft" activities can vary. Rather than requiring these components to be stated in the jurisdictional solid waste management plan or codified in ordinances, the Commission could adopt a policy that allows those costs to be absorbed in a general rate request when the plan participants are certain that they are settled activities. Instead of requiring support in the five-year plan or local codes, the Commissions could allow such expenses in the general rate request if the company submits a letter of support from the County, and a statement that these program costs will no longer be paid for with retained revenue. A process allowing for the transition of costs would accommodate all parties' concerns.

Equipment costs should be allowed. WM has offered its view that depreciation of capital expenditures for processing facility equipment should be adjusted as between the revenue sharing commodity calculation and the general recycling collection rate, so that the consumer does not pay twice. The Company has regularly included financial information about its processing costs at facilities operated by WM, and the Commission has opportunity to review processing fees that are assessed on WUTC customers. However, it should also be recognized that in some cases those equipment investments will lead to greater efficiencies, and if those result in lower processing fees then that benefit to the customer should be a credit on the Company's account.

The Company believes all reasonable costs for implementing revenue sharing should be presumed to be legitimate, because the Commission has the ability to review those costs and ensure they are being accounted for properly whenever the next rate filing occurs. Restating adjustments for revenue sharing programs offer a mechanism for assuring the Company charges its customers the appropriate rates. It does not believe the Commission should unilaterally determine that any of these expenditures are not proper. In the final analysis, however, WM is most interested in having an opportunity to plan for expenditures with the certainty that could be provided by the Commission's guidance. Even if the Company does not agree with the Commission's determinations of allowable expenditures, WM would be satisfied with having the ability to manage revenues and expenditures in a manner that would minimize challenges to its revenue sharing plans.

WM is obviously most interested in learning from the Commission what types of performance incentives are acceptable, under what circumstances, and in what amounts. All of the parties expressed views on the question of company incentives. In addition, the Commission's resolution of whether a general return – on plan expenditures or on revenues, by percentage or by dollar – is an appropriate topic for policy guidance.

Again, the Commission knows WM's view on this issue, and given the varying views expressed by the Counties who submitted comment, the Company reiterates its view that the Commission should permit the plan designers to take the lead. If the Snohomish and King Counties prefer an established return as a means of controlling quality and managing expenditures, then that is one appropriate means of using those revenues to compensate the Company for its efforts to "increase recycling" as it must be broadly defined. If Pierce County elects to control the plan through the use of percentage allocations, the Commission could allow for that, too.

The Commission obviously has before it two different approaches to revenue sharing plans. It need not decide which is preferable, and could easily accept both as potentially demonstrating how retained revenue will be used to increase recycling. However, policy guidance on what are permissible expenditures under either form of plan would be appreciated. In particular, the Company urges the Commission to be as specific as possible about what approaches it would approve, but also requests an articulation of acceptable general parameters of a program allowing for financial rewards and incentives.

D. Efficient use of resources as well as coordinated timing on the sequence of filings required to implement revenue sharing programs are factors to consider in defining appropriate procedures.

Counties should be in charge of designing the plan, and all parties seem unanimous on that point. Staff should not be required to participate in negotiations, but an informal review and consultation with Staff has been helpful to all parties and most commentors supported that approach. Because the plans are only in effect for one year, there is not enough time for all the parties to participate in the negotiations.

WM continues to struggle with the mechanisms for implementing revenue sharing plans. The comments submitted recommended a variety of approaches, and reflect the uncertainty about how to intertwine the review of retrospective plan performance, the preparation of prospective revenue sharing programs, and the calculation of the recycling commodity credit. The Company looks forward to guidance from the Commission about how to accomplish these sequences in a meaningful fashion.

WM agrees with the Counties and Staff that implementing a revenue sharing plan is the responsibility of the program participants. The Company does not believe resources would be efficiently or effectively used by requiring the Commission's review or approval if the actual revenues or expenditures vary from the expectations at the time that a prospective plan is presented. The deferred accounting mechanism allows for a correction to ensure that actual dollars will be returned to the customer, even if the projections and budgets vary significantly. The Commission has broad rate-setting authority that would allow it to make retroactive corrections to comport the estimates and good faith projections of a prospective plan used as a basis for calculating commodity credits, to the actual conditions that exist when it is presented with a completed plan period and the commodity price adjustment true-up.

Further, administration of revenue sharing plans consumes resources. Certainly Commission Staff is being unduly burdened, and the same is true for the private party resources. The Commission has indicated that a company's costs of administering a revenue sharing programs are to some extent recoverable. Guidance on that question is an appropriate point for clarification in a policy guidance, so that participating haulers can know how to allocate otherwise unrecoverable costs.

However, although it would be receptive to input about how to account for those costs, in the final analysis WM would actually prefer to minimize the administrative

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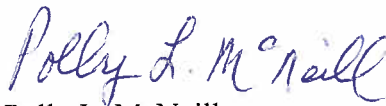
costs. Recurring filings to involve the Commission with modifications and variations during the plan period will result in higher costs to the ratepayers. If necessary at all, it should be required only for the most dramatic of variations from expectations. Otherwise, Commission approval of plan modifications should not be necessary, whether the commodity prices and program expenditures are significantly lower *or higher* than projected. The plan participants should be able to make revisions as needed.

For the same reason, WM does not support requiring customer notices. It would involve further consumption of resources and expenses. The Counties undertake a public process through local solid waste advisory committees, which function as a surrogate for public input and should provide the Commission and plan participants assurances of having customer input in the process and expenditures. The Counties are acting on behalf of their constituents, and are capable of carefully considering whether ratepayer revenues are being used wisely.

In conclusion, WM again commends the Commission for embarking on this process. For such a short statute using so few words, the revenue sharing statute has triggered many pages of analysis. The answers are not simple, but certainty with moving forward under the guidance of a Commission policy will be an important improvement. Thank you for your consideration.

Sincerely,

SUMMIT LAW GROUP PLLC


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(By Khan)

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