

**WHATCOM COUNTY
Health Department**

*Leading the community in promoting health
and preventing disease.*



Erika Lautenbach
Director

Greg Stern, M.D.
Health Officer

MEMORANDUM

TO: Public Works & Health Committee

FROM: Jeff Hegedus, Environmental Health Supervisor

DATE: November 3, 2020

SUBJECT: **Update: Point Roberts Solid Waste Management**

Due to COVID-19 outbreak response activities, a planned March 24, 2020 staff update to the Public Works & Health Committee on solid waste management in Point Roberts was cancelled (AB2020-142, attached), and subsequently rescheduled, pending completion of a Washington Utilities and Transportation Commission (WUTC) program review.

On October 29, 2020 the WUTC held an open meeting, and approved a rate reduction of \$0.44, from \$16.96 per month to \$16.52 per month, for the single family residence minimum level of service of twice per month pickup, as per WCC 8.10.040, of a 32 gallon can, with three bin source separated recycling, with variable option, paid for as a fee for service on the annual property tax bill.

Staff will provide a summary of the program, which is now completing its second year of implementation, provide an update on current program status, and answer committee questions as requested.



MEMORANDUM

TO: Public Works and Health Committee
FROM: Jeff Hegedus, Environmental Health Supervisor
DATE: March 11, 2020
SUBJECT: **Update and Review: Point Roberts Solid Waste Management**

Whatcom County Solid Waste Management Overview

As per WAC 173-350, *Solid Waste Handling Facilities* the Whatcom County Health Department regulates 25 permitted and 30 permit-exempt solid waste handling facilities, such as transfer stations, drop box facilities, landfills, anaerobic digesters, composters, recyclers, material recovery facilities, biosolids land application facilities and the Disposal of Toxics program.

Additionally, as regulated by the Washington Utilities and Transportation Commission (WUTC) as per RCW 81.77, *Solid Waste Collection Companies*, there are 3 franchised and certificated solid waste collection companies (SSC, Nooksack Valley Disposal, and Cando Recycling and Disposal) operating in the county.

Point Roberts Solid Waste Management

Since 2010, when the previous service provider went out of business, Cando Recycling and Disposal (Cando) has provided solid waste collection services, through exclusive WUTC tariff. Cando also operates the local transfer station, which is leased to Cando by the county. Low economy of scale, 75% seasonal occupancy rates and increased operational expenses (garbage is hauled to Cowlitz County as the lowest cost option) result in challenges to providing quality levels of service at acceptable costs, which in turn increases illegal dumping and illegal cross border transport (further reducing economy of scale), which together threaten the stability and viability of service provision.

History

Following the loss of solid waste collection service provision in Point Roberts in 2009, for reasons well documented in the 2010 WUTC Docket TG-081576 Final Order 05 and Docket TG-091687 Final Order 02 (excerpts attached), and the subsequent granting of service provision to Cando, WUTC recommended that the county conduct a review of solid waste service provision (see <https://www.utc.wa.gov/docs/Pages/DocketLookup.aspx?FilingID=TG-081576>). For this reason, recommendation 6.3.1.B of the approved 2016 Whatcom County Comprehensive Solid and Hazardous Waste Management Plan states *'Conduct a community involvement and engagement process in Point Roberts to identify potential adjustments to collection system infrastructure and regulatory requirements to improve levels of service and cost structure, and implement adjustments as appropriate.'*



In May, 2016 County staff attended the monthly Point Roberts Community Advisory Committee (PRCAC) meeting, and inquired as to how they could best work with the community to conduct a review to ensure that waste management needs were being met.

Subsequently, for over two years, County staff worked with PRCAC and the community to conduct the review and provide such advice and recommendation. At the direction of PRCAC, staff designed and implemented an on-line community survey to solicit input regarding solid waste service provision, and the 314 responses were used to inform community discussions. Solid waste services became an on-going PRCAC agenda item, with full and engaged discussion ensuing regarding service viability, mandatory collection, the County exemption process, seasonal resident needs, service levels, costs of service, alternative models, operational requirements, and other considerations.

On October 10, 2017 PRCAC members unanimously approved a formal motion recommending mandatory curbside collection, at a minimum level of service of every other week collection of a 32 gallon can plus three bin source separated recycling, with accommodation for seasonal residents (variable option), at the rate approved by WUTC, and collected as a fee for service on the property tax bill. On December 5, 2017 staff provided an update to Council at the Public Works and Health Committee.

On February 12, 2018 staff presented to PRCAC draft amendments to ordinance to implement the committee's recommendation. On March 3, 2018 staff provided an update to Council at the Public Works and Health Committee. PRCAC requested that an informational mailer (attached FAQ) be sent to all property owners, and that staff respond to public questions regarding the recommendations at a weekend informational Town Hall meeting subsequently conducted on April 14, 2018. Throughout, information was provided in local media, PRCAC meeting minutes and on-line, and discussed by both the Solid Waste Advisory Committee and the Solid Waste Executive Committee.

On May 22, 2018 the proposed amendments to ordinance were introduced for public hearing. On June 5, 2018 a public hearing was conducted and the Whatcom County Council approved adoption of the proposed amendments (attached). Following the amendment to ordinance, to necessarily update the tariff, Cando filed a rate case with the WUTC for a tariff revision. On November 7, 2018 staff provided another update to Council at the Public Works and Health Committee. WUTC staff updated Cando's tariff rates and services, to include the new minimum level of service, and WUTC Commissioners approved the update on November 30, 2018.

The new program was implemented on January 1, 2019.

2019 Program Implementation

Effective January 1, 2019 all single family residences in Point Roberts became subject to mandatory every other week curbside collection of a 32 gallon can, with three bin source separated recycling, with variable option (where a total of 26 cans can be put out, on the weekly schedule, at any time during the year), for a fee of \$16.96 per month, as collected on the annual property tax bill. With the customer base increasing from 300 to 1,900 (compared to SSC at 42,000 and Nooksack Valley Disposal at 6,500), a modicum of economy of scale and sustainable viability of service provision has been achieved.

Whereas in 2009 a broken truck resulted in terminated service due to lack of economic viability, under the new program, Cando in 2019 was able to *necessarily* invest in new (used) garbage trucks, recycling truck, dumpsters, compactor, baler and recycling bins. A new customer web site (www.candord.com), truck routing software, and tablet computers were purchased, and the

tablets were placed in trucks to implement the variable option to track pickups. Customers are provided bimonthly statements, and those requesting additional services, such as larger cans, more frequent pickup schedules, carry out services, etc. are invoiced separately. The existing transfer station mobile office, built in 1961, assessed as no longer safe and leased to Cando by the county, is being replaced.

In November, 2019 WUTC staff also completed a compliance review of the new program, that included a financial review of revenues and expenses along with analysis of existing tariff rates, and advised Commissioners that rates were accurate and no changes were recommended. In further support of the program a compliance review, including rate analysis, will also be conducted by WUTC in 2020.

Implementation has exceeded expectations, and the community at large has embraced the new program. Recycling tonnage is up, illegal disposal in parks and commercial dumpsters is down, and the local Adopt-A-Road program reports less garbage in the ditches. Cando is one of only a dozen nationwide pilot programs to include plastic film as a new curbside collection recyclable material, and is also working to implement a waste organics collection program.

Public Process

During the engaged public process, questions addressed included:

Minimum Level of Service

A significant accomplishment of the PRCAC public process was consensus regarding the requirement of mandatory curbside collection, which had been a point of community discussion since 2001. Given this, the PRCAC discussion turned to exactly *what* level of service should be mandatory, and can size and frequency of pickup and were evaluated.

Key to this discussion was the concept that, by far, the fixed costs of labor and capital investment in equipment such as garbage trucks, recycling trucks, dumpsters, scales, compactors, balers and bins greatly exceed per pound disposal costs; this is similar to water service provision, where system fixed costs have to be covered regardless of use, and the resulting per gallon incremental cost is small. PRCAC concluded that a 20 gallon mini can would not meaningfully achieve stated goals (in 2017, only 1% of the 7,300 can pickups were 20 gallon mini cans, and 99% were 32 gallon cans), and that a 32 gallon can was appropriate. Staff concurred.

Regarding frequency of pickup, the difference between once per month and twice per month pickup, for a 20 gallon mini can, was only, at that time, \$1.99 per month; for a 32 gallon can (only half the size of the common wheeled 60 gallon green Toter), the difference was, at that time, \$4.43 per month. Further, the variable option would not be feasible for service less than twice per month pickup. PRCAC concluded that every other week pickup provided an acceptable minimum level of service, at *good value (\$16.96 per month with recycling)*, that minimized vector attraction, nuisance odors, illegal use of parks dumpsters, and illegal cross border transport. Combined with the variable option, this was their recommendation, with which staff concurred and Council approved.

Given the necessary 2019 capital investments that were implemented, which are included in the current WUTC rate structure, it is noteworthy that any change to a 20 gallon can, or

monthly instead of twice per month pickup, would result in a significant reduction of service level, at almost no savings.

Seasonal Resident Accommodation

Based on public request during PRCAC meetings, a *variable option* was included in the minimum level of service. Customers may have 26 pickups on the every other week schedule, OR a total of 26 pickups collected on any of the scheduled days. For example, a summer resident that did not use the service in the off season could set out two 32 gallon cans (or bags) every other week for 13 weeks; the truck driver tracks pickups on a tablet computer. Permanent residents out-of-town would similarly use the option.

Waste Reduction and Recycling

It is not the assessment of staff that less frequent pickup of smaller cans promotes recycling and waste reduction. Rather, community education and outreach that changes behavior is what supports successful recycling and reduction goals. Whatcom County funds the local Towards Zero Waste, Sustainable Schools and Master Composter/ Master Recycler programs, and these services are fully available to the Point Roberts community.

Excise Tax

From 1996 through 2019, in order to fund solid waste programs, Whatcom County required that solid waste collection companies collect and remit a solid waste excise tax of \$8.50 per ton. However, since each can cannot be weighed at the curb, a percent of invoice conversion was used by each hauler, as a 'reasonable estimate,' to approximate the per ton tax. The percent conversion, as established by the county (attached ordinance, Exhibit A), was different for each hauler, as a function of customer base and rate structure. For example, SSC added a local tax of 3.7% in the unincorporated areas, and 5.0% in Bellingham; Nooksack Valley Disposal used 4.45%; Cando Recycling and Disposal used 2.91%. WUTC approved tariffs include these percent conversions as a tariff requirement; Cando used 2.91% because it was the established rate for the previous service provider and was a tariff requirement.

Although the county audited the \$8.50 per ton excise tax remitted, on a quarterly basis, taxes collected, using the conversion rate, are confidential tax information. To ensure that taxes collected exactly equal taxes remitted, rather than being a 'reasonable estimate,' the excise tax ordinance was amended in 2019. On September 24, 2019 Council approved an amendment to WCC 8.13, *Solid Waste Disposal District* to implement a revenue neutral conversion of the \$8.50 per ton solid waste excise privilege tax, for *all* solid waste collection companies, to 3.3% of customer invoice, to ensure that the amount of tax collected (3.3%) *exactly* equals the amount of tax remitted (3.3%).

Roles and Responsibilities

As established in WCC 2.98, *Point Roberts Community Advisory Committee*, comprised of local Chamber of Commerce, Taxpayer Association, Registered Voters Association and citizen representatives, PRCAC is the legally enabled local body entrusted to '*provide advice and recommendation to the executive and to the council regarding needs and issues specific to the Point Roberts community.*' Throughout the two year public process, PRCAC was consistent and

diligent with their consideration and *unanimous* approval of their community-based recommendations presented to staff and Council regarding the minimum level of service provisions.

As per state law, services provided by solid waste collection companies are fully regulated by WUTC. Based on financial review of expenses and revenues, WUTC establishes the rates and services by which the companies must operate and, as such, has authority and responsibility for regulatory oversight.

The County, by ordinance, establishes solid waste handling requirements that become incorporated into the WUTC approved tariff rates and services. The County has no authority to review or establish rates for services, exercise regulatory oversight of the service provider, or seek competitive bids for collection services.

Transfer Station Operations

The county leases the closed landfill site to Cando to operate the transfer station, with a leasehold agreement that they must also provide curbside collection services. Regulated under permit as a drop box facility, all rates must be approved, by the county, as established on the Unified Fee Schedule.

Disposal District

During the community public process, PRCAC considered a request to recommend that a secondary disposal district, similar to Lopez Island, be established. As per RCW 36.58, as its own disposal district, Lopez Island operates its drop box facility largely with volunteers, levies both a 16% solid waste excise tax and a \$0.10/1,000 value property tax, and has 'benefactors' that pay overages; fee's collected may only be used for the drop box operation and not for curbside collection services. The PRCAC Chair visited Lopez Island, and PRCAC did not recommend forming a disposal district in Point Roberts. Staff concurred.

Conclusion

The original program goals of increased sustainability of service provision, at cost effective rates, while increasing recycling and decreasing illegal disposal, are being achieved in Point Roberts.

Attachments

- WUTC 2010 Final Order Excerpts
- PRCAC FAQ Mailer
- Level of Service Ordinance
- Customer Notification
- Excise Tax Ordinance

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of) DOCKET TG-081576
)
FREEDOM 2000, LLC d/b/a CANDO)
RECYCLING AND DISPOSAL,) ORDER 05
)
 For a Certificate of Public)
 Convenience and Necessity to Operate) **FINAL ORDER GRANTING**
 Motor Vehicles in Furnishing Solid) **APPLICATION, ON CONDITION**
 Waste Collection Service)
)

In the Matter of the Application of)
) DOCKET TG-091687
 POINTS RECYCLING AND)
 REFUSE, L.L.C. d/b/a POINT)
 RECYCLING AND REFUSE) ORDER 02
 COMPANY)
)
 For a Certificate of Public) FINAL ORDER DENYING
 Convenience and Necessity to Operate) APPLICATION
 Motor Vehicles in Furnishing Solid)
 Waste Collection Service)
)

1 **SYNOPSIS.** *In this Order, the Commission grants the application of Freedom 2000 to provide solid waste collection service in Point Roberts, Washington, on condition that the company initiate service within 45 days, and denies the application of Point Recycling to provide on-call drop box and special clean up service in the same territory.*

2 **PROCEEDINGS.** This consolidated proceeding involves two overlapping applications for solid waste collection service in Point Roberts, Washington. Freedom 2000, LLC d/b/a Cando Recycling and Disposal (Freedom 2000) filed an application with the Washington Utilities and Transportation Commission (Commission) in Docket TG-081576 to provide solid waste collection and source-segregated recycling service to residences and businesses in Point Roberts. Points

- 18 Beginning in 2006, the Commission began a series of enforcement actions against Point Recycling for its failure to file annual reports and pay regulatory fees for calendar years 2006 and 2007, including two penalty assessments and a complaint to revoke Point Recycling's certificate.³⁴ The Commission dismissed the complaint after Point Recycling complied with the requirements for filing annual reports and paying fees.³⁵ Again, in September 2008, the Commission issued a penalty assessment against Point Recycling for failing to file its 2008 annual report.³⁶ Point Recycling filed the report with the Commission on December 1, 2009.³⁷
- 19 In February 2008, Point Recycling ceased providing curbside recycling service after its recycling truck broke down.³⁸ In April 2008, the County notified the Commission that the company had ceased providing curbside recycling service required by ordinance, and requested the Commission revoke Point Recycling's certificate for failure to comply with the Waste Management Plan and Code.³⁹ The County indicated in its letter that it had given the company 60 days notice to cure its non compliance. The Commission interpreted the County's letter as a formal complaint. In May 2008, after pursuing efforts with the County to modify the Plan and Code, Point Recycling again filed tariff changes with the Commission seeking to eliminate curbside recycling service.⁴⁰ On June 27, 2008, the Commission suspended the

³⁴ See Exh. Nos. 51-55; see also Eckhardt, TR. 182:4 – 186:1.

³⁵ See Exh. No. 56.

³⁶ Exh. No. 57.

³⁷ Exh. No. 50.

³⁸ Exh. No. 49, May 23, 2008, letter from Arthur Wilkowski, Owner/Operator of Point Recycling to Commission Secretary, filed in Docket TG-080913.

³⁹ April 18, 2008, letter from Frank Abart, Director, Whatcom County Public Works Department, to Penny Ingram, Washington Utilities and Transportation Commission, filed in Docket TG-081089.

⁴⁰ Exh. No. 49. Point Recycling also filed tariff revisions in Docket TG-080914 relating to the definition of Alternative Daily Landfill Cover, but later withdrew this filing.

summer residents – with its variable waste stream – make it difficult for a carrier to maintain regular operations. The County’s universal service ordinance is significantly diluted by ordinances providing exceptions for seasonal residents and an option for residents to obtain exemptions from universal service. These ordinances, together with significant non compliance and a lack of enforcement, create a barrier for any certificated solid waste collection company to develop a sustainable customer base. The geographic location of Point Roberts, requiring transportation through two border crossings for a one-way trip to the U.S. mainland increases the costs of disposal operations for any carrier operating in the area. All of these circumstances combine to create a unique and problematic service territory.

70 The failure of the County to recognize and address the detrimental impact of its County-wide ordinances and policies on solid waste collection in the small community of Point Roberts has created a very difficult situation. We are further frustrated by the County’s conspicuous absence from this application proceeding.¹⁵¹ However, our ability to address the issue of solid waste collection in Point Roberts is limited to determining if there is a qualified carrier to provide service: We have no jurisdiction to address the underlying policies and requirements for solid waste collection in Point Roberts in a comprehensive manner, something the residents in Point Roberts have requested from the County. We can only hope that the recent events in Point Roberts will result in some further attention by the County.

71 In addition to these issues, it is clear that the debate about solid waste and recyclable collection in Point Roberts, initiated by Mr. Wilkowski with the County, has escalated and polarized members of the small customer base. The comments filed in response to both applications, including the extensive comments and documents filed by Mr. Wilkowski, reveal the acrimony between Mr. Gellatly and Mr. Wilkowski, Mr. Wilkowski and the County, and the strong alliances of customers or residents either in support of or against Mr. Wilkowski.¹⁵² Some customers simply want renewed service and do not care which carrier provides service. There is a danger that this

¹⁵¹ Eckhardt, TR. 206:7-19.

¹⁵² See Exh. Nos. 32-34, 44-46, 91.

DISSENT

Applications of Freedom 2000 & Point Recycling:
Dockets TG-081576 & TG-091687
Dissenting Opinion, Commissioner Philip B. Jones

PHILIP B. JONES, Commissioner (dissenting):

- 133 I respectfully dissent from the majority opinion for the following reasons. Both applicants have failed to demonstrate in this record that either can operate as a solid waste and recycling hauler on a sustainable, long-term basis in the Point Roberts area under Whatcom County's present ordinances and policies. Since the Commission approved in June the relinquishment of certificate G-155, held by Points Recycling and Refuse, LLC, d/b/a Point Recycling and Refuse, LLC (Point Recycling), I believe the primary burden now lies with the County to re-assess its policies and ordinances regarding the Point Roberts area and to attempt to develop a framework for a more sustainable recycling and solid waste policy for its residents.
- 134 All parties recognize that the Point Roberts area is unique in many respects. The area is located on the southernmost tip of the Tsawwassen Peninsula just south of Delta, British Columbia in Canada and is therefore geographically contiguous with Canada. Many of the homeowners in Point Roberts are Canadian citizens who maintain second homes in the area and only have a need for seasonal service. In general, the area is small, isolated, and has a small population to service.
- 135 Although it is part of Whatcom County in the state of Washington, a solid waste hauler in Point Roberts requires four border crossings on a round-trip journey between Point Roberts and Bellingham to transport waste for disposal. Such a round-trip journey requires several hours: Unexpected road congestion or long border crossings can reduce operational efficiencies.

- 136 The County has granted 590 exemptions from mandatory collection in Point Roberts under Section 8.11.030 of the County Code.²¹⁴ Point Recycling has stated that, at most, it was able to sign up a fraction of the 350 solid waste customers for recycling service before the company discontinued that service in early 2009. It is extremely challenging to develop a viable business plan when the County has granted so many exemptions from mandatory service.
- 137 Under these unique and difficult circumstances, it is hard to make a good business case for a company to provide high-quality, sustainable solid waste and recycling collection service. Although solid waste collection companies are highly regulated by the Commission and must serve the needs of the residents of the community which they serve, these companies need to operate within the framework of a long-term plan and ordinances that provide consistent and predictable regulation. The current policies of Whatcom County do not allow that. The County could address several areas in current ordinance, policies, or enforcement.
- 138 Further, the County owns and operates the Johnson Road transfer station in Point Roberts. The County has leased its operations to Point Recycling since 1999, and recently renewed the lease. Self-hauling of solid waste and recyclable materials to the transfer station is allowed by County Code and has always had its supporters in Point Roberts. Since the termination of solid waste collection service in June, 2009, some residents are likely to continue to self haul, even if the Commission grants collection authority to another company. The transfer station also accepts waste from drop box and special clean up services. In fact, Point Recycling admitted on the record that it has been providing some of these services in violation of state law since it clearly no longer has a certificate to collect and transport solid waste.²¹⁵ If we were to grant the application of Freedom 2000, LLC d/b/a Cando Recycling and Disposal (Freedom 2000), the resulting situation, in which two competing haulers are operating in the Point Roberts area – one with a G-certificate for curbside garbage and recycling

²¹⁴ See Majority Opinion, n. 11, taking official notice of the fact from Whatcom County's Website: <http://www.co.whatcom.wa.us/publicworks/solidwaste/ptrobertsanswers.jsp#different>.

²¹⁵ Wilkowski, TR. 132:20 – 133:20.

service, and one with a lease from the County to operate the transfer station, is not a viable framework. Therefore, I believe the County needs to address the issue of the operation and lease of the transfer station and a carrier providing curbside solid waste and recycling service in a more integrated fashion.

139 The public interest is not best served by providing a “temporary fix” through granting Freedom 2000’s application, on condition, because I am not persuaded that this company could sustain its business operations more than a year based on this record. Moreover, I am not persuaded that the current policies of the County would allow for a sustainable business case to be developed. Although I recognize that Freedom 2000 would be a “start-up” organization in both financial and operational terms, I am not convinced the County’s regulatory framework will allow it to succeed, even it executes perfectly on its business plan. I recognize that the Commission, in prior decisions, has found that it cannot determine financial fitness by looking at whether an applicant’s proposed service is likely to be profitable, only whether the applicant can finance its operations for a reasonable period.²¹⁶ However, there is a difference between considering the fitness of a carrier and its ultimate ability to provide service, where the Commission must determine whether a carrier is fit, willing and able to provide service before granting a certificate. Under the circumstances presented in the record in this proceeding, I would find it difficult to determine whether any applicant is able to provide service in Point Roberts.

140 I am especially concerned about the substantial time and effort it will take to “win back” the previous subscribers of curbside service who have grown accustomed to self-hauling to the transfer station, and may likely continue to do so in the future. The applicant will have to devote substantial resources in communication and marketing with these previous customers, which could distract the management of Freedom

²¹⁶ *Application of Sureway Medical Services, Inc.*, Application No. GA-75968, Order M.V.G. No. 1663, Commission Decision and Order Granting Review; Modifying Initial Order; Granting Amended Application, in Part, on Condition, at 7-8 (Nov. 1993); *see also Application of Ryder Distribution Resources, Inc.*, Application GA-75154, and *Application of Stericycle of Washington, Inc.*, Application GA-77539, Order M.V.G. No. 1761, Final Order Modifying Initial Order; Granting Application, As Amended, at 9 (Aug. 1995).

2000 from the myriad challenges of a start-up organization. I would be more comfortable in considering the application of an existing carrier in Whatcom County, such as Sanitary Services, to provide service in the Point Roberts area, since they could “piggyback” this service on its existing vehicle fleet and service territory and make a better business and operational case. Yet the Commission received no formal application for Point Roberts from one of the well-established, existing carriers who serve resident in other areas of Whatcom County.

141 In summary, I believe the Commission should direct our Executive Director and Secretary to send a letter to the County pursuant to RCW 36.58A.030 that we believe that neither applicant is qualified and able to offer high-quality, sustainable service under the present regulatory framework in the County. This would follow on to Mr. Danner’s previous letter to the County, dated June 18, 2009, in which he stated that the Commission would solicit applications from companies interested in providing service in Point Roberts but concluded by stating: “If no qualified company is found, the Whatcom County Council may pursue its other options regarding recycling and refuse collection in Point Roberts.”²¹⁷ This statute allows “county legislative authority [to] provide county garbage and refuse collection services in the area and charge and collect reasonable fees therefore.”²¹⁸ I believe we find ourselves at the point in time now. It is time for the County to address the unique issues posed by the Point Roberts area seriously and in an integrated, comprehensive way.

PHILIP B. JONES, Commissioner

²¹⁷ June 18, 2009, letter from David W Danner, Executive Director and Secretary, Washington Utilities and Transportation Commission, to Council Members, Whatcom County, filed in Commission Docket TG-081089 on June 19, 2009.

²¹⁸ RCW 36.58A.030.



POINT ROBERTS COMMUNITY ADVISORY COMMITTEE
Point Roberts, WA

TO: Point Roberts Property Owners
DATE: March 13, 2018
SUBJECT: POINT ROBERTS SOLID WASTE MANAGEMENT SERVICES

Dear Property Owner:

Since May 10, 2016 the Point Roberts Community Advisory Committee (PRCAC) has been working with community members and county staff to review our garbage collection services.

As we all know, the very things that make Point Roberts a wonderful place to live, work and visit, such as our natural beauty, diverse culture, and low density, can also present challenges to developing the public infrastructure and community services that we need. One of these important services, which can significantly affect our way of life, is garbage collection.

Due to these inherent challenges, in 2010 our previous service provider, Point Recycling and Refuse, ceased to be economically viable and went out of business; these same challenges exist today, resulting in the current service provider, Cando Recycling and Disposal, currently operating at a net financial loss. *As has been demonstrated, unless these challenges are addressed, the provision of sustainable, quality services, at low costs, cannot be achieved.*

In the 2010 Washington Utilities and Transportation Commission Final Order, when we changed service providers, strong recommendations were made to address these challenges. We have worked on this project for almost two years, using community input from our 2016 on-line survey, and are now recommending changes to service provision.

In addition to existing media coverage and meeting minutes, please find attached a 'Frequently Asked Questions' project information sheet, which also identifies further sources of information, including a Town Hall meeting, that we have placed on the county web site. It is our strong belief that these recommendations will result in sustainable improvements in service levels, at low costs, as we continue to grow.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Christopher".

Jeffrey Christopher
PRCAC Chair



FREQUENTLY ASKED QUESTIONS about the **POINT ROBERTS SOLID WASTE MANAGEMENT PROJECT**

WHAT IS THE GOAL OF THE PROJECT?

Point Roberts is a unique locale, abundantly rich in natural beauty with a friendly, independent and diverse culture. It is also remote and not populous, with a high degree of seasonal residency, which presents challenges to the solid waste management system. The project goal is to provide sustainable, quality levels of service, at low costs, and reduce illegal dumping.

WHAT ARE THE CHALLENGES?

In Point Roberts, low economy of scale, high operating costs, high seasonal occupancy rates and contradictory regulatory mechanisms result in challenges to providing quality levels of service at low costs. These challenges then result in increased illegal dumping and illegal cross border disposal, and threaten the actual stability and continuity of service provision.

HOW REAL ARE THESE CHALLENGES?

In 2010, as a direct consequence of these challenges, the service provider Point Recycling and Refuse, LLC ceased to be a viable business operation, and went out of business. As noted by the Washington Utilities and Transportation Commission (WUTC) in their final order:

"... the primary burden now rests with the County to reassess its policies and ordinances regarding the Point Roberts area and to attempt to develop a framework for a more sustainable recycling and solid waste policy for its residents." –WUTC 2010 Final Order

These challenges are as real today as they were in 2010. As a result of these challenges, our current service provider Cando Recycling and Disposal, while operating frugally, still incurred a net financial loss in 2017. *As has been demonstrated, unless these challenges are addressed, the provision of sustainable, quality services, at low costs, cannot be achieved.*

WHAT IS THE CURRENT PROJECT?

The approved 2016 *Whatcom County Comprehensive Solid and Hazardous Waste Management Plan* recommends that the county 'Conduct a community involvement and engagement process to identify potential adjustments to infrastructure and regulatory requirements to improve levels of service.'

On May 10, 2016 county staff attended the Point Roberts Community Advisory Committee (PRCAC) meeting, and inquired as to how they could best work with the community to conduct a review to ensure that waste management needs were being met.

At the direction of PRCAC, staff designed and implemented an on-line community survey to measure satisfaction and solicit comments regarding transfer station operations, curbside collection services and commercial services, with emphasis on levels of service, costs of service, illegal dumping, recycling services and service provider stability. Robust community input was received from 314 on-line survey responses, with significant candid commentary. The survey results were presented to PRCAC, and used to inform subsequent community discussions regarding solid waste services.



At the June 13, 2017 PRCAC meeting, staff were requested by formal motion to develop a model to implement a property tax fee-based, property specific, mandatory curbside collection system. At the **October 10, 2017 PRCAC meeting, recommendations were made to 1) eliminate the exemption** from mandatory residential curbside solid waste collection services for developed residential parcels with an on-site sewage system, **2) require a minimum residential curbside collection service level** of every other week, with 32 gallon can, bundled with recycling, for these parcels, **3) collect payment for the minimum service level as a fee on annual property tax bills,** and **4) have the service provider invoice directly for any additional requested services above the minimum service level,** such as for larger can size, more frequent collection, or carry out/ drive in services.

On December 5, 2017 staff provided a project update to county council members at the Public Works, Health and Safety Committee. At the February 12, 2018 PRCAC meeting, staff presented draft amendments to ordinance to implement the committee recommendations. The committee requested that an informational mailer be sent to residents describing the recommendations.

WHAT IS THE PROJECT RECOMMENDATION?

"In other areas of the county, service areas are large so the exemption program isn't killing those collectors," he said. "The Point is a unique situation and may need to be treated differently."- Council Member Dan McShane, 2001 All Point Bulletin.

PRCAC and staff recommendations are to amend WCC 8.10 and WCC 8.11 by adding:

WCC 8.11.030(C) Effective January 1, 2019 requests for exemptions for single-family and multi-family residential dwellings located in Point Roberts will not be approved, and existing exemptions will terminate.

WCC 8.10.040(D) Effective January 1, 2019 single-family residences located in Point Roberts, with on-site sewage systems, shall no longer be exempt from mandatory curbside collection services. As a minimum level of service, the minimum required curbside collection service shall be every other week garbage collection of a 32 gallon can and three bin source separated recyclables. The cost of the minimum level of service, as per the approved UTC tariff, shall be billed as an annual fee on the property tax bill, at the rate of one minimum level of service per real property. Service levels above the minimum level of service, as may be requested of the service provider, for larger cans, increased frequency of pickup, carry out or other services, will be invoiced directly by the service provider as per the approved WUTC tariff.

HOW WILL IT WORK?

This type of system is called a *flat fee/user-pay discrete hybrid system*, where each household pays a monthly fee for a basic level of service, and then pays a unit fee for any service requested above the basic level. Every other week collection with recycling, at the above minimum level of service, will cost an estimated \$17 per month (estimated \$200 per year) as established by the WUTC, and be incurred as a property tax fee. Seasonal residents, typically not home during weekly pick-ups, may elect to pay a carry-out fee for the service provider to retrieve and return their cans and recycling bins (now set at \$1 per 25' round trip).

The curbside collection customer base will increase from 300 to 2,300 which will provide increased economy of scale. Increased economy of scale will provide for higher levels of more sustainable service, at reduced costs, with reduced illegal dumping and cross border disposal, and the ability to implement improvements at the transfer station.

WHAT ARE THE NEXT STEPS?

If approved, the recommended services will be implemented on January 1, 2019. For this to happen, the following steps will take place:

- A Town Hall meeting will be held at 10:00 a.m. on April 14, 2018 at the Community Center to answer questions that anyone may have
- A public hearing will be scheduled for the Whatcom County Council to consider approval of the above amendments to ordinance, which may be found at <http://www.whatcomcounty.us/1569/Linked-Agenda-for-Current-Regular-Meetin>
- Cando Recycling and Disposal will apply to renew their WUTC tariff
- Cando Recycling and Disposal will invest in necessary equipment upgrades, personnel, routing software, web site design, and complete other implementation details
- Staff will provide the County Treasurer with a list of single family residential dwelling tax parcel numbers that will be receiving the new curbside collections services
- Services will begin January 1, 2019

WHAT OTHER INFORMATION IS AVAILABLE?

For more information, please go to <http://www.whatcomcounty.us/674/Solid-Waste-Management>, where you can find:

- Point Roberts Solid Waste Survey Results
- Frequently Asked Questions
- 2010 WUTC Final Order
- 2017 Council Update
- Proposed Amendments to Ordinance
- Cando WUTC Tariff
- Cando 2017 Annual Report Excerpt
- PRCAC Agendas and Minutes
- All Point Bulletin Coverage

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PROPOSED BY: Health
INTRODUCTION DATE: 5/22/2018

ORDINANCE NO. 2018-031

AMENDMENTS TO WCC 8.11, SOLID WASTE RECYCLING AND COLLECTION DISTRICT AND WCC 8.10, SOLID WASTE AND RESIDENTIAL RECYCLING COLLECTION REGARDING SOLID WASTE COLLECTION IN POINT ROBERTS, WA

WHEREAS, as per RCW 81.77, *Solid Waste Collection Companies* and WAC 480-70, *Solid Waste and/or Refuse Collection Companies*, the Washington Utilities and Transportation Commission (WUTC) is the jurisdictional regulatory authority for all solid waste collection companies in Washington State; and,

WHEREAS, WUTC by law regulates solid waste collection companies as 'investor-owned utilities' subject to rigorous tariff-based services and rate structure oversight, with annual financial reporting and targeted fixed rates of return; and,

WHEREAS, in 2009 the solid waste collection company operating in Point Roberts ceased to be economically viable and discontinued collection services; and,

WHEREAS, in the 2010 WUTC Final Order, Docket TG-081576, WUTC specifically identified the County provision for exemption from mandatory collection services as a primary contributing factor to the discontinuation of services in Point Roberts, and strongly recommended a review of local regulatory requirements; and,

WHEREAS, provision of solid waste collection in Point Roberts continues to be marginally economically viable, with **repeat discontinuation of services being a probable outcome**; and,

WHEREAS, as a result of the 2010 WUTC Final Order, the approved *2016 Whatcom County Comprehensive Solid and Hazardous Waste Management Plan* states that a review of solid waste collection in Point Roberts will be conducted; and,

WHEREAS, in May 2016 staff engaged with the Point Roberts Community Advisory Committee (PRCAC) to conduct the review, which was subsequently comprised of an initial on-line community solid waste survey, fourteen PRCAC meeting discussions, nine PRCAC staff presentations, an informational mailer to 2,300 property owners, and a Town Hall meeting; and,

WHEREAS, as a result of this review and public process, **PRCAC recommends 1) removal of the existing provision for exemption from collection services, 2) requiring participation in collection services at a minimum service level of twice monthly pickup of a**

1 32 gallon can and source separated recyclables, and 3) including the WUTC approved
2 monthly service charge as a fee on the annual property tax statement; and,
3

4 **WHEREAS**, staff concurs that these recommendations are protective of human
5 health and the environment by increasing levels of service, reducing costs, reducing illegal
6 dumping, increasing recycling rates, and ensuring stability and continuity of service
7 provision in a challenging area of low density, high seasonal occupancy and high operational
8 costs; and,
9


10 **WHEREAS**, as per WCC 8.11, *Solid Waste Recycling and Collection District*, the
11 Whatcom County Council is the governing body of the recycling and collection district; and,
12

13 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that
14 WCC 8.11, *Solid Waste Recycling and Collection District* is amended as shown in Exhibit A
15 attached hereto and that WCC 8.10, *Solid Waste and Residential Recycling Collection* is
16 amended as shown in Exhibit B attached hereto.
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19 **ADOPTED** this 5th day of June, 2018.
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23 ATTEST
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25 WHATCOM COUNTY COUNCIL
26 WHATCOM COUNTY, WASHINGTON
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30 Dana Brown-Davis, Clerk of the Council
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34 Rud Browne, Chair
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WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:


Civil Deputy Prosecutor


Jack Louws, County Executive

() Approved () Denied

Date Signed: June 8, 2018

an environmentally sound way.

This affidavit is subject to periodic verification by the solid waste manager or his/her designee. Effective January 1, 2019 requests for exemptions for single-family residences and multi-family dwellings located in Point Roberts will not be approved, and existing exemptions in Point Roberts will terminate.

C. Within 30 days after implementation of mandatory collection, the solid waste manager shall provide a report to the county executive containing findings on the number of exemptions that have been requested, the grounds stated for such exemptions, and the actions taken on the requests. Within 60 days after implementation of mandatory collection, the county executive shall report the findings to the county council, together with any recommendations for further legislative action on exemptions which the county executive believes are appropriate. (Ord. 90-96 § 3).

8.11.040 Enforcement – Civil penalty.

A. If any residence, business, or institution, not otherwise exempt from mandatory collection, refuses to pay for such mandatory collection, the county may, upon the request of a certificated hauler, through the prosecuting attorney's office commence appropriate action to enforce the provisions of this chapter. The prevailing party shall be entitled to an award of reasonable attorney's fees and costs in any such action.

B. Any person who knowingly fails to subscribe to or pay for solid waste and recycling collection service without having obtained an exemption shall be liable in addition to actual damages, for a penalty to the county in an amount equal to any past due bill for solid waste and recycling collection service not to exceed \$500.00, plus an additional penalty of not less than \$100.00 nor more than \$200.00 which shall not be suspended or deferred. (Ord. 90-96 § 4).

8.11.050 Governing body designated – Election.

The Whatcom County council shall be the governing body of the recycling and collection district. The electors of said district shall be all registered voters residing within the district. (Ord. 90-96 § 5).

8.11.060 Severability.

The invalidity or unenforceability of any portion of this chapter shall not affect the other provisions thereof, and this chapter shall be construed in all respects as if such invalid or unenforceable provision were omitted. (Ord. 90-96 § 6).

containers. A specific size within the 15- to 20-gallon "mini-can" range shall be approved by each company and shall be consistent within its certified service area. Ninety-gallon can service shall be available only on a weekly or every-other-week basis. The design of all containers within each service area shall be subject to approval by the solid waste collection company certified for that area.

C. Collection rate structures shall be designed to encourage waste reduction and recycling and to comply with the plan. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

D. Effective January 1, 2019 single-family residences located in Point Roberts, with on-site sewage systems, shall no longer be exempt from mandatory curbside collection services. As a minimum level of service, the minimum required curbside collection service shall be 26 annual pickups, to occur at the discretion of the customer on any day of the approved every other week garbage collection schedule, of a 32 gallon can and three-bin source separated recyclables. The cost of the minimum level of service, as per the approved UTC tariff, shall be billed as an annual fee on the property tax bill, at the rate of one minimum level of service per single family residence. Service levels above the minimum level of service, as may be requested of the service provider, for larger cans, increased frequency of pickup, carry out or other services, will be invoiced directly by the service provider as per the approved UTC tariff.

8.10.050 Residential recycling collection.

A. Solid waste collection companies shall collect source-separated recyclables from all residences in unincorporated portions of Whatcom County that receive regularly scheduled garbage collection. All single-family residences shall be provided with recycling collection at least every other week and on the same day of the week as garbage collection. Service to multifamily residences shall be provided at least every other week. The solid waste collection company shall provide residents who have completed the garbage exemption process the opportunity to subscribe to recycling-only collection service without subscribing to garbage collection. Recycling-only customers will be charged the full cost of recycling collection service plus an appropriate administrative/billing fee. ~~In Point Roberts only, single-family residences are defined as permanently year-round occupied buildings and every other week recycling collection does not have to be on the same day as garbage pickup. All single-family residences located in Point Roberts meeting the definition of seasonal vacation or weekend homes, as defined under WCC 8.10.030(H), are exempt from curbside recycling collection.~~



NOTICE OF NEW POINT ROBERTS SOLID WASTE COLLECTION SERVICES

Please be advised that on November 30, 2018 the Washington Utilities and Transportation Commission (UTC) approved the revised tariff for solid waste collection services in Point Roberts, which includes mandatory curbside collection as per Whatcom County Code WCC 8.10.040(D):

D. Effective January 1, 2019 single-family residential real properties located in Point Roberts, with on-site sewage systems, shall no longer be exempt from mandatory curbside collection services. As a minimum level of service, the minimum required curbside collection service shall be 26 annual pickups, to occur at the discretion of the customer on any day of the approved every other week collection schedule, of a 32 gallon can and three bin source separated recyclables. The cost of the minimum level of service, as per the approved UTC tariff, shall be billed as an annual fee on the property tax bill, at the rate of one minimum level of service per real property. Service levels above the minimum level of service, as may be requested of the service provider, for larger cans, increased frequency of pickup, carry out or other services will be invoiced directly by the service provider as per the approved UTC tariff.

Effective January 1, 2019 your service provider, Cando Recycling and Disposal, will be providing this new minimum level of service to your residence. Information about this new service, such as pickup schedule, obtaining company provided recycling bins, and the 'variable' pickup option, or to request additional services such as prepaid tags, carry out, drive in, or more frequent pickup may be found at www.candord.com or by phone at (360)945-2636.

As per the approved UTC tariff, the rate for the above minimum level of service is \$16.96 plus \$0.76 state and local tax per month. As per WCC 8.10.040(D) above, the fee for annual service will be included on your annual property tax bill. Any services that you may request beyond the minimum level of service, such as carry out or increased frequency of pickup, will be invoiced to you directly by the service provider.

All properties in Point Roberts with a single family residential dwelling, subject to mandatory curbside collection requirements, have been verified. If you do not have a single family residential dwelling on your property in Point Roberts, and have received this Notice in error, please feel free to provide this information to EnvironmentalHealth@co.whatcom.wa.us.

Thank you.



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PROPOSED BY: Health
INTRODUCTION DATE: 9/10/2019

ORDINANCE NO. 2019-066

AMENDMENT TO WHATCOM COUNTY CODE (WCC) 8.13, SOLID WASTE DISPOSAL DISTRICT REGARDING THE SOLID WASTE EXCISE PRIVILEGE TAX

WHEREAS, solid waste management statutory obligations and programmatic requirements such as closed landfill monitoring and maintenance, Disposal of Toxics facility operations, waste reduction and recycling education, illegal dumping and litter control, compliance enforcement and comprehensive planning require adequate funding mechanisms; and,

WHEREAS, in 1997, to fund solid waste management statutory obligations and programmatic requirements, Ordinance 97-41 amended WCC 8.13.030, *Excise privilege tax levied*, and implemented a solid waste excise tax, currently established at \$8.50 per ton, excluding recyclable materials, to be levied against solid waste collection companies; and,

WHEREAS, because solid waste cannot be weighed curbside during pickup each time for each customer, the solid waste collection companies worked with the County to establish a percent of invoice fee, as a 'reasonable estimate (Exhibit A),' to charge each customer; and,

WHEREAS, because of differences in rate structures and customer base, each collection company charges a different percent, and it is not apparent that taxes collected exactly equal taxes remitted; and,

WHEREAS, since the solid waste excise tax is included on each collection companies approved Washington Utilities and Transportation Commission (WUTC) tariff, as a housekeeping issue, WUTC has requested that the excise tax be reviewed to address this issue; and,


WHEREAS, as unanimously approved by both the *Whatcom County Solid Waste Advisory Committee* and the *Whatcom County Solid Waste Executive Committee*, a percent of invoice rather than per ton tax ensures that taxes collected equal taxes remitted; and,

1
2
3 **WHEREAS**, a revenue neutral conversion of the \$8.50 per ton solid waste excise tax
4 to 3.3% of invoice allows program funding at the current rate.
5

6 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that WCC
7 8.13, *Solid Waste Disposal District* is hereby amended as shown in Exhibit B attached
8 hereto.
9

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11 **ADOPTED** this 24th day of September, 2019.
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15 ATTEST
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17 WHATCOM COUNTY COUNCIL
18 WHATCOM COUNTY, WASHINGTON
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22 Dana Brown-Davis, Clerk of the Council
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Rud Browne, Chair

WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:


Civil Deputy Prosecutor


Jack Louws, County Executive

Approved () Denied

Date Signed: 9.26.19

PUBLIC WORKS DEPARTMENT
WHATCOM COUNTY COURTHOUSE
311 Grand Avenue
Bellingham, WA 98225-4038
JEFFREY M. MONSEN, P.E.
Director



EXHIBIT A

October 23, 1998

Mr. Ed Nikula
Sanitary Service Co
1001 Roeder Avenue
Bellingham, WA 98225

Dear Mr. Nikula,

We have reviewed your County Excise Tax Rate changes proposed for 1999, as per attached "1999 Projected Revenues and 1998 Catch-up" worksheet:

County Residential and Commercial	4.8 %
City of Bellingham Commercial	5.2 %
City of Bellingham Residential	3.7 %
City of Ferndale Residential/Commercial	4.4 %

The adjusted rates look like a reasonable estimate for meeting the goals of the County Ordinance, to bill your customers \$8.50 per ton of solid waste collected.

This has been a good time to review the past twelve months' activities, and to establish an annual review and adjustment process. We will continue to do such an annual review, in October of each year. This will help ensure that rates are as current as possible for the next year. It is okay, however, to adjust these rates more frequently than once a year, if you think it is needed.

Sincerely,

Cheryl Wolf, Accountant
Whatcom County Public Works

cc: Nasser Mansour
Pam Lempres

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F. Repealed by Ord. 97-041.

G. The "plan" is the county's comprehensive solid waste management plan, as approved by the Department of Ecology in 1990 and as may be amended thereafter.

H. A "residential dwelling" shall include each single-family house, apartment, houseboat, or other dwelling unit which is separately billed for waste collection service by a franchised or certificated hauler. Forest areas, farms or ranches that elect to use collection service shall be considered as residential dwellings for purposes of this chapter. Residents of apartments, hotels, dormitories, boarding houses, maritime vessels, or other housing units shall not be separately taxed if the landlord or some other party arranges for solid waste collection and pays for solid waste collection and the tax on behalf of tenants or residents.

I. A "solid waste disposal facility" is a landfill, transfer station, incinerator, convenience center, drop box or other solid waste disposal facility which is available for use by persons other than the owner of the facility.

J. The "WUTC" is the Washington Utilities and Transportation Commission or any agency which succeeds to its powers. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 2).

8.13.030 Excise privilege tax levied.

An excise privilege tax shall be levied upon the charges paid for solid waste collection by each residential dwelling and by each business or institution in the district. This excise privilege tax shall be levied on a percent-of-invoice basis for certificated or franchised haulers of solid waste, and on a per-ton basis for solid waste disposal facilities, excluding moderate risk wastes and recyclable materials, and be billed by certificated or franchised haulers of solid waste, and solid waste disposal facilities, all as authorized by RCW 36.58.140.

Effective January 1, 2020, this tax shall be equal throughout the district, and shall be 3.3% of collection charges paid to certificated and franchised haulers of solid waste, not exceed and \$8.50 per ton for solid waste otherwise received at solid waste disposal facilities. ~~without the approval of all cities and towns in the district.~~ The county council shall set the level of the tax from time to time by ordinance. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 3).

8.13.040 Tax collection.

To simplify collection of the tax, each certified or franchised hauler shall include the tax in its regular billing cycle for all customers within the district and remit the proceeds collected to the county treasurer by the due date as established by the treasurer. Each solid waste disposal facility shall include the tax in its regular billing cycle for all customers, excepting certificated and franchised haulers collecting and remitting the tax, within the district and remit the proceeds collected to the county treasurer by the due date as established by the treasurer. The excise tax provided for pursuant to this chapter shall, for administrative purposes, be billed and collected as nearly as possible in a manner compatible with the state solid waste tax, Chapter 82.18 RCW, and the surcharge, Section 15, Chapter 431, Laws of 1989. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 4).

8.13.050 Administration by county treasurer.

The administration and collection of the tax imposed by this chapter, as collected by the certificated and franchised haulers, and solid waste disposal facilities, shall be by the county treasurer pursuant to the terms of this chapter and such rules, regulations and further