

The Association of Washington Cities (AWC) represents the cities and towns of Washington state. On behalf of Washington's cities and towns we write to express opposition to the Battery Network's proposed Washington Battery Stewardship Plan and recommend the agency's rejection per RCW 70A.555.100.

Key concerns:

1. The GreenVantage Agreement does not compensate participating cities for demonstrable costs, as required by law.
2. The proposed Program Plan appears to require local governments to use the template service agreement, contrary to law.
3. The proposed Program Plan does not sufficiently explain how feedback from local governments was incorporated into the GreenVantage template.

1. The GreenVantage Agreement does not compensate participating cities for demonstrable costs, as required by law.

Throughout the proposed plan, the Battery Network cites to Washington Administrative Code (Chapter 173-905 WAC) rather than to the Revised Code of Washington (Chapter 70A.555 RCW). While it's true that the Battery Network must follow the promulgated rules of the agency, it does not alleviate the Network for responsibility for complying with statute.

The legislative mandate is clear – RCW 70A.555.060:

(3)(a) Except for costs incurred by a local government or local government facility exercising the authority specified in RCW [70A.555.070](#)(4)(c), *each battery stewardship organization is responsible for all costs of participating covered battery collection, transportation, processing, education, administration, agency reimbursement, recycling, and end-of-life management in accordance with the battery management hierarchy and environmentally sound management practices.*

...

(4)(a) Except for costs incurred by a local government or local government facility exercising the authority granted by RCW 70A.555.070(4)(c), *a battery stewardship organization must reimburse local governments for demonstrable costs, as defined by rules adopted by the department, incurred as a result of a local government facility or solid waste handling facility serving as a collection site for a program*

including, but not limited to, associated labor costs and other costs associated with accessibility and collection site standards such as storage.

The language “each battery stewardship organization is responsible for all costs” is unambiguous. Further, the agency provided additional detail concerning “demonstrable costs of local governments” in WAC 173-905-030, but did not alter the fundamental meaning of “demonstrable costs incurred” by a local government’s participation:

"Demonstrable costs" means costs that a local government participating in a battery stewardship program incurs as a result of covered battery collection activities, at permanent collection sites or through collection events, including labor and nonlabor costs associated with:

- (a) Sorting collected batteries;
- (b) Packaging collected batteries for transport;
- (c) Transportation and consolidation of batteries from satellite sites;
- (d) Storage containers unless those containers are provided by the battery stewardship organization;
- (e) Transportation to the battery stewardship organization's vendor, if cost effective or more efficient;
- (f) Recycling batteries collected at collection events; and
- (g) Additional agreed-to costs.

According to the plain meaning of the statute, “demonstrable” means “capable of being demonstrated,” according to the Merriam-Webster Dictionary. Therefore, the Battery Network’s proposed service agreement should include language that provides how a local government can verify its costs for reimbursement. Instead, the Battery Network chose a fixed reimbursement rate to “offset” all costs incurred by local government. That is contrary to law. The Battery Network may, as an option, provide a set price per pound for local governments choosing that in lieu of demonstrating their actual costs. The Battery Network may not require it as a condition of participation.

2. The proposed Program Plan appears to require local governments to use the template service agreement, contrary to law.

Under the Local Government Reimbursement section of the proposed Plan, it states:

The Battery Network will use its GreenVantage reimbursement program to reimburse relevant local government collection sites for demonstrable labor and related operational costs associated with the collection, preparation and shipment of covered batteries (pg. 21). Further down, it’s clear that the Battery Network is proposing the template agreement

not as optional, as required in statute, but mandatory: *To activate the GreenVantage program, a local government will sign the template for local government agreement, (Appendix C) which outlines the requirements for both parties.*

The law is clear that local governments are not required to use the template agreement—RCW 70A.555.060:

(3)(c) A battery stewardship organization must include in its battery stewardship plan a template of the service agreement and any other forms, contracts, or other documents for use in distribution of reimbursements. The service agreement template must be developed with local government input. *The entities seeking or receiving reimbursement from the battery stewardship organization are not required to use the template agreement included in the program plan and are not limited to the terms of the template agreement included in the program plan.*

3. The proposed Program Plan does not sufficiently explain how feedback from local governments was incorporated into the GreenVantage template

The law states that the “service agreement template *must be developed with* local government input.” RCW 70A.555.060(3)(c). In March of this year, AWC provided the Battery Network with a comprehensive list of city leaders of cities not included on the Department of Ecology’s solid waste contacts list – 234 cities and towns were missing. The Battery Network confirmed that they would “begin outreach.” Based on further communication, they did not reach out to these cities to develop the template.

The plan dedicates half a page to describing what was felt by many as a performative stakeholder process. Other than a conclusory statement: *The Battery Network* received valuable feedback from local governments throughout the engagement process and *incorporated that feedback into revisions and enhancements to the final template agreement*, there is no evidence that the Battery Network changed course based on feedback from local governments. In fact, the statement immediately following the above telegraphs how the Battery Network accomplished its task: *The Battery Network has conducted extensive research and evaluation to establish the rate of reimbursement that reasonably reflects the demonstrable labor associated with battery collection activities.* That research was not supported by law, as the rate of reimbursement is not how the Legislature structured reimbursement payments. Instead, the Battery Network is required to develop the services agreement *with* local governments.

Respectfully,

A handwritten signature in dark ink, appearing to be the initials 'CK' followed by a stylized flourish.

Carl Schroeder
Deputy Director of Government Relations
Association of Washington Cities