Washington State Association of Counties (Travis Dutton)

Please find the attached letter outlining comments from WSAC. Thank you very much!

WSAC WASHINGTON STATE ASSOCIATION of COUNTIES
206 Tenth Ave SE Olympia, WA 98501
(360) 753-1886 www.wsac.org

RE: Washington State Association of Counties Comments — The Battery Network Draft Battery Stewardship Plan and GreenVantage Service Agreement Template

The Washington State Association of Counties submits these comments on the draft battery stewardship plan and the GreenVantage service agreement template. We appreciate the opportunity to comment and The Battery Network's engagement with local government to date. Counties want this program to work: battery collection is a real public safety problem, and a working stewardship program is good for counties and residents alike.

Unfortunately, the crux of our concerns remains. As drafted, the plan and the agreement do not reimburse the demonstrable costs as required, leave counties carrying risk the program creates, and set goals too low to build the network counties are being asked to staff. The comments below address the points where we think the reasoning matters most. A summary table at the end of this letter lists all fourteen of our comments. The numbered references below (item 3, item 7, and so on) point to that table.

Key issues:

1. The agreement leaves counties carrying costs and risks they did not cause
2. Reimbursement does not meet the demonstrable cost standard the rule sets
3. Plan conditions would exclude county sites the rule requires the program to use
4. The collection target is too low to build the network the statute requires
5. Required commitments are stated with no method to carry them out or measure them

These issues compound one another. A low collection target justifies a small network. A small network narrows which county sites the program accepts. And reimbursement below what the rule requires makes participation costly for the counties that do get in. The comments below address the points where we think the reasoning matters most. A summary table at the end of this letter lists all fourteen of our comments. The numbered references below — item 3, item 7, and so on — point to that table.

Risk allocation in the agreement (items 1–5)
Section 7(a) covers a county only if The Battery Network broke the contract, acted on purpose, or was extremely careless. Ordinary carelessness causes most incidents, and it is left out. So is environmental cleanup, where federal law and Washington's Model Toxics Control Act can hold a county responsible even when no one was at fault. Those are the claims counties are most likely to face. Section 7(c) then caps everything The Battery Network could ever owe at what it paid that county for the year — about $8,000 for a county collecting 40,000 pounds. A lithium battery fire or a spill in transit routinely costs six or seven figures, and everything above the cap stays with the county. Meanwhile Section 9(b) requires counties to carry $2,000,000 in coverage while Section 9(a) sets no figure for The Battery Network at all.

Our ask: that indemnification turn on where the harm came from rather than who was at fault, run in both directions, and reach county officials and staff. Where both parties share fault, coverage should be reduced by each party's share rather than cancelled — this point matters more to us than any other in the agreement. We also ask that the liability cap be removed, as it is in the PaintCare agreement, and that Section 9(a) carry a figure at least equal to what counties must provide.

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The table also asks that the insurance section accommodate counties that self-insure or belong to a risk pool, which cannot produce a commercial certificate at all (item 3); that hauler contracts carry the same protections counties get, with a backstop making The Battery Network responsible if it fails to include them (item 4); and that the setoff right move out of the payment terms and into the liability provisions, limited to amounts a county agrees it owes (item 5).

Cost recovery (items 6–8)
Counties are pursuing cost recovery. That is the standard the rule sets: WAC 173-905-030 defines demonstrable costs, and the program is required to reimburse them. Nothing in the rule contemplates paying part of a category it lists. Counties are not looking to profit from collection, and we know there are benefits to participating that the per-pound rate does not capture. But the measure is what a county actually spent.

The $0.20 per pound rate does not meet that measure for many of our counties. From what counties can see, it treats labor as an offset rather than a cost and undercounts the staff time that sorting and packaging actually take. It leaves out three things entirely: hauling material in from satellite locations, collection containers placed in public areas, and the training the program itself requires. It also appears to assume every county collects using a OneDrum kit, which many do not. There is a structural problem as well. A flat per-pound rate assumes cost rises with weight, but training, opening a site, and the trip in from a satellite location can cost about the same whether a county collects 4,000 pounds or 40,000.

Our ask: that the rate be set to reimburse demonstrable costs as the rule defines them, that required training be named as reimbursable, and that the calculation behind the rate be published in enough detail for counties and Ecology to see what workflow and collection method were assumed and what was left out. If a single flat rate cannot work at both high and low volumes, a tiered structure should be considered.

The table also asks that the rate carry an annual adjustment for wage growth and inflation, since a fixed rate loses value over the term regardless of where it starts (item 6b); that payment not depend on sorting being completed at another company's facility months after a county ships (item 7); and that reimbursement minimums not operate as a ceiling for counties whose actual costs run higher (item 8).

Site eligibility and the collection target (items 9–12)
WAC 173-905-500(5) is not discretionary: if a site meets the criteria in the approved plan and asks to participate, the program must use it. That is a different standard from WAC 173-905-500(4), which asks the program to use existing services where doing so is cost-effective and practicable. It lists accessibility and cost to serve as extra factors in adding sites. That would let The Battery Network turn down a county facility that meets every stated criterion, on the grounds that it is too remote or too costly to serve. Those are often the only collection option their residents have.

The collection target compounds this. The plan proposes 3.52 percent for 2027, or 400,000 pounds, measured against 336,157 pounds collected in 2025. That baseline is only what The Battery Network itself collected — it excludes other recyclers operating here and all alkaline batteries, which The Battery Network does not take. The 2024 moderate risk waste reports filed with Ecology show county facilities

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alone were already near 400,000 pounds. The plan therefore proposes as a 2027 goal what local government was reaching in 2024 without the program's help, before adding retail collection or three years of growth. Vermont is at 38 percent for 2026 and Illinois begins at 10 percent. This matters beyond the number itself. The target decides how large a network the program needs. A program that only has to capture a small share of the available material does not need many sites to do it.

Our ask: that qualifying county sites requesting participation be accepted, with distance and cost to serve guiding only where the program recruits; and that the 2027 target be rebuilt from what Washington actually collects and benchmarked against comparable programs.

Two further access issues appear in the table. The plan holds satellite locations to full collection-site conditions without ever defining the term, and requires each facility to file its own portal request — unworkable for transfer stations, drop boxes, and campus collection points that have no dedicated staff and are served centrally by moderate risk waste crews (item 9). And the requirement that every site return a full container each year, on pain of automatic deactivation, has no basis in RCW 70A.555 or WAC 173-905 and falls hardest on rural and island sites that may be the only collection available for many miles (item 10).

Accountability and transparency (items 13–14)
Two required commitments are stated without a method. The plan does not describe the procedures a local government seeking reimbursement follows to coordinate on education and outreach, which WAC 173-905-120(10)(d) requires — counties cannot follow a process no one has written down, and we do not want an unwritten requirement used later to deny a reimbursement request (item 13). And while WAC 173-905-120(4)(c) requires a public awareness subgoal for vulnerable populations and overburdened communities, the 2025 survey measured overall awareness only and the plan does not say how those communities would be measured separately, so the subgoal cannot be reported against (item 14).

Our ask: that both commitments be written with a stated method and, for the awareness subgoal, a number that can be measured and reported.

Closing
Counties are the backbone of the network this program depends on. Many of our facilities already take batteries, already staff the sorting and packing, and already carry the risk of storing them. We ask that the plan and the agreement pay what that costs, cover the risk it creates, let county sites that want to participate do so, and set goals worth reaching.

We appreciate your consideration and would welcome the chance to discuss any of this directly.

Sincerely,

Travis Dutton, Policy Coordinator
Washington State Association of Counties

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Attachment — Summary of County Comments

This table lists every comment referenced in the letter above. For each item it shows what the plan or the agreement currently does, what that means for counties, and the change we are asking for. The “Applies to” column shows whether the item concerns the GreenVantage service agreement, the stewardship plan, or both.

Item	Applies to	The problem	What it means for counties	What we are asking for
Risk and Liability				
1	*Agreement*	Section 7(a) covers a county only if The Battery Network broke the contract, acted on purpose, or was extremely careless.	Ordinary carelessness causes most incidents and is not covered. Neither is environmental cleanup, where the law can hold a county responsible even when no one was at fault. Damage to the county’s own building is not covered.	Cover claims based on where the harm came from, not who was at fault. Make it run both ways, extend it to county officials and staff, and include county property. If a county is partly at fault, reduce coverage by that share instead of cancelling it.
2	*Agreement*	Section 7(c) caps what The Battery Network can ever owe at what it paid that county for the year — about $8,000. Section 9(a) sets no insurance figure for them.	A fire or spill costs six or seven figures. Everything above $8,000 stays with the county, which is insuring at roughly 250 times the vendor’s ceiling.	Remove the cap; PaintCare has none. If one stays, it should not apply to cleanup, fines, or serious misconduct. Set a Section 9(a) figure at least equal to what counties must carry.
3	*Agreement*	Section 9(b) assumes every county buys a commercial policy and can produce a certificate.	Many counties self-insure or belong to a risk pool and cannot produce one. This clause cannot be met at all, not just disliked.	Accept self-insurance and risk pool participation, using a county’s standard language. State limits as $1 million per claim and $2 million aggregate.
4	*Agreement*	The Battery Network can hire haulers. They never signed the agreement, and Section 22 bars counties from claiming under it.	After a truck accident, the company that was driving owes the county nothing, and the one that does owe has capped it at a few thousand dollars.	Require hauler contracts to give counties the same coverage and to name counties on hauler insurance. If those terms are left out, The Battery Network pays the claim itself.
5	*Agreement*	The Battery Network can subtract money it says a county owes from the county’s payment. This sits in the payment terms, not the liability terms.	Because the cap is figured from reimbursement, withholding money also lowers the most The Battery Network can be made to pay. It can decide a disputed claim on its own.	Move this to the liability section. Allow it only for amounts the county agrees to or the dispute process decides. Confirm withheld money does not shrink the cap.
Cost Recovery				
6a	*Both*	The $0.20 per pound rate does not cover what state rule requires, and the calculation behind it has not been shared.	It leaves out hauling from satellite sites, public containers, and required training, and undercounts sorting and packaging. It assumes all collection uses a OneDrum kit. A flat rate also assumes cost rises with weight, but training, opening the site, and the satellite trip cost about the same at 4,000 pounds as at 40,000.	Set the rate to cover demonstrable costs. Publish the calculation. State that required training is reimbursable. Show the structure works at low volume as well as high — and if one flat rate cannot, consider a tiered rate.

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Item	Applies to	The problem	What it means for counties	What we are asking for
6b	*Agreement*	The rate never changes over the term.	Wages rise under union contracts, and inflation raises supplies, fuel, and equipment. Even a correct rate stops covering costs within a few years.	Add a yearly adjustment tied to wage growth and inflation.
7	*Agreement*	Counties are not paid until sorting is finished, which can be months after they ship.	The county has already paid its staff, then waits on a step at another company's facility with no deadline. Counties finance the program in between.	Set a maximum sorting time, pay on a quarterly schedule, and start the clock at receipt when sorting runs longer.
8	*Plan*	The Battery Network can set minimum reimbursement amounts and eligibility conditions.	A minimum is a number the program picks. Demonstrable costs are what a county spent. There is no path to be paid above the minimum, so it works as a ceiling.	Remove the minimums, or add a written path to actual demonstrable costs when those are higher.
Site Eligibility and Access				
9	*Plan*	Satellite sites must meet full collection-site conditions, but the plan never defines "satellite site." Each facility must file its own portal request.	Transfer stations, drop boxes, and campus collection points are core to county systems and often have no trained staff. MRW staff collect from them and process centrally — a workflow the plan does not account for.	Define satellite sites to include transfer stations, drop boxes, and campus collection points. Give them the same monitoring standard retailers get. Allow central collection requests and hauling in county vehicles.
10	*Plan*	Every site must return one full container a year or be shut off. The plan does not say which container.	No state law requires a minimum. Rural and island sites may take years to fill one while being the only collection for many miles. Shutting them off also wastes what the county spent on training.	Remove the minimum and the automatic shutoff. Any activity check should name the container and exempt rural, island, and isolated sites.
11	*Plan*	The plan treats accessibility and cost to serve as extra factors when adding collection sites.	State rule requires the program to use a site that meets the criteria and asks to join. These factors would let The Battery Network refuse a qualifying county facility for being too remote or too costly.	Accept sites that meet the criteria and ask to participate. Use distance and cost only to decide where the program recruits.
12	*Plan*	The 2027 target is 3.52 percent, or 400,000 pounds, set against 336,157 pounds collected in 2025.	That baseline is only what The Battery Network collected — it excludes other recyclers and all alkaline. County facilities alone were near 400,000 pounds in 2024. Vermont is at 38 percent for 2026 and Illinois starts at 10 percent. A low target justifies a small network.	Rebuild the target from what Washington actually collects, and benchmark annual growth against Vermont, British Columbia, and Illinois.
Accountability and Transparency				
13	*Plan*	State rule requires the plan to describe how a county seeking reimbursement coordinates on education and outreach. The plan does not.	Counties cannot follow a process no one wrote down, and an unwritten requirement could later be used to deny a reimbursement request.	Write the procedures into the plan and say plainly what they do and do not apply to.

Item	Applies to	The problem	What it means for counties	What we are asking for
14	*Plan*	The 2025 survey measured overall awareness only. The goal is a 1 percent rise per year.	State rule requires a separate goal for vulnerable populations and overburdened communities. With no method to measure them, it cannot be reported against. One percent a year is close to what happens anyway.	Say how those communities will be measured separately, set a number for them, and set a goal that reflects real investment.