

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

STERICYCLE OF WASHINGTON, INC.,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC.,

Respondent.

DOCKET TG-110553

COMMISSION STAFF RESPONSE
TO STERICYCLE'S MOTION FOR
LEAVE TO FILE REPLY

1 Stericycle of Washington, Inc. ("Stericycle") has moved for leave to file a reply in support of the Motion for Summary Determination that Stericycle filed on May 6, 2011. Leave should be granted so that Stericycle will have an adequate opportunity to be heard and the record will be complete.

2 In its response to Stericycle's motion for summary determination, Waste Management of Washington, Inc. ("Waste Management") has suggested that the Commission should enter a summary determination for Waste Management, the nonmoving party.¹ Courts and commentators indeed recognize that summary judgment may be entered for the nonmoving party, but only where the moving party has an opportunity to be heard. "Summary judgment should be entered for the nonmoving party only if the original moving party has had an adequate opportunity [to] present materials and argument in rebuttal."² The

¹ Docket TG-110553, Waste Management of Washington, Inc.'s Response to Stericycle Motion for Summary Determination, ¶¶ 1, 46 (May 26, 2011).

² Karl B. Tegland, 4 Washington Practice Series, Rules Practice 384-85 (5th ed. 2006); see *Celotex Corp v.*

Commission should allow Stericycle to file its reply so that the record will reflect that Stericycle had that opportunity.

3 In considering a motion for summary determination, “the commission will consider the standards applicable to a motion made under CR 56 of the Washington superior court’s civil rules.”³ As Stericycle points out, CR 56(c) of the Washington superior court’s civil rules permits replies in support of motions for summary judgment. It is appropriate that the Commission allow Stericycle to file a reply in this case.

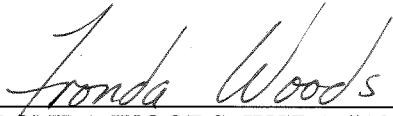
4 Alternatively, the Commission may treat Waste Management’s response as a cross-motion for summary determination, and treat Stericycle’s reply as a timely response under WAC 480-07-380(2)(c).

5 Stericycle’s Motion for Leave to File Reply should be granted.

DATED this 3rd day of June, 2011.

Respectfully submitted,

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Catrett, 477 U.S. 317, 326 (1986) (trial courts “are widely acknowledged to possess the power to enter summary judgments sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence”); *Kassbaum v. Steppenwolf Prods., Inc.*, 236 F.3d 487, 494-95 (9th Cir. 2000) (declining to direct summary judgment for nonmoving party, and inviting trial court to consider doing so after parties have opportunity to be heard).

³ WAC 480-07-380(2)(a).