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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STERICYCLE OF WASHINGTON, INC.,  
Complainant,

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC., d/b/a WM  
HEALTHCARE SOLUTIONS OF  
WASHINGTON,

Respondent.

Docket No. TG-121597

COMPLAINANT STERICYCLE OF  
WASHINGTON, INC.'S PROPOSED  
DISCOVERY PLAN

1           1.       Stericycle of Washington, Inc. (“Stericycle”) hereby submits its proposed  
2 discovery plan in the above captioned complaint proceeding, in accordance with the direction  
3 the Commission at the February 8, 2013 pre-hearing status conference.

4           **I.       General Parameters of Discovery.**

5           2.       Discovery is appropriate in this complaint proceeding and authorized pursuant to  
6 WAC 480-07-400. Stericycle’s claim that 1) Management of Washington, Inc. (“Waste  
7 Management”) is paying unlawful rebates to certain customers in the form of discounted  
8 recycling services in exchange for the customer’s agreement to accept Waste Management’s  
9 medical waste collection services and 2) Stericycle’s claim that Waste Management is  
10 providing its ecoFinity sharps service at off-tariff rates are complaints of “anti-competitive  
11 conduct” by Waste Management for which discovery is available under WAC 480-07-400. In  
12 addition, the Commission and Commission Staff have expressed continued interest in the  
13 general issue of classifying solid waste and commercial recycling and, therefore, a decision on  
14 Stericycle’s claim concerning Waste Management’s characterization of its ecoFinity sharps  
15 service as commercial recycling may be “precedential” under WAC 480-07-400.

16           3.       Discovery in this matter will be governed by WAC 480-07-400 through -425,  
17 limited by the scope of discovery set forth in WAC 480-07-400, and subject to valid objection  
18 by Waste Management.

19           4.       Stericycle proposes to conduct discovery in two phases, with a brief period of  
20 overlap to allow for an expedited transition between the two phases.

21           5.       In the first phase, Stericycle will conduct written discovery of Waste  
22 Management through data requests for information and documents. The time for responding to  
23 written data requests for information and documents will be 30 days by agreement of the  
24 parties. In the first phase, Stericycle is also authorized to take the deposition of Waste  
25  
26

1 Management witness upon notice, such depositions to be scheduled at a time and place  
2 reasonably agreed by the parties.

3 6. The first phase of discovery shall commence upon the adoption of this discovery  
4 plan. The discovery cutoff for the first phase of discovery shall be June 28, 2013. This cutoff  
5 date is subject to extension by agreement of the parties or by order of the Commission.

6 7. In the second phase of discovery, Stericycle will conduct discovery from third  
7 parties. It is understood that the nature of Stericycle's complaints address, in part, the actions  
8 and knowledge of third parties and, therefore, that discovery from such third parties is  
9 appropriate within the parameters of discovery set forth in WAC 480-07-400 through -425.  
10 Stericycle shall make requests to take the depositions of third party witnesses by motion to the  
11 Commission, such depositions to be scheduled at a time and place reasonably convenient to the  
12 witnesses. Stericycle may also request subpoenas to compel such depositions or the production  
13 of records by third party witnesses. Copies of records produced by third party witnesses in  
14 response to subpoenas will be provided to Waste Management.

15 8. The second phase of discovery shall commence on June 1, 2013, or earlier by  
16 agreement of the parties or by order of the Commission. The overlap with the end of the first  
17 phase of discovery will allow for efficient motions and other preparation to conduct any third-  
18 party discovery. The discovery cut-off for the second phase of discovery shall be August 9,  
19 2013. This cutoff date is subject to extension by agreement of the parties or by order of the  
20 Commission.

21 9. At this time, it is not anticipated that Waste Management will conduct discovery  
22 in either phase. If this expectation changes, Waste Management will provide a proposed  
23 discovery plan to Stericycle which will be adopted by agreement or, absent agreement, will be  
24 submitted to the Commission for approval prior to conducting discovery. Waste Management  
25 may participate in any third party depositions scheduled by Stericycle.  
26

1           **II.     Discovery Concerning Claim of Unlawful Rebating.**

2           10.     At this time, Stericycle anticipates conducting discovery on the following  
3 subjects relevant to its claim of unlawful rebating:

- 4           •     Medical waste generators to whom Waste Management has solicited, offered or  
5           provided commercial recycling services
- 6           •     The terms of any such solicitations, offers or agreements to provide commercial  
7           recycling services
- 8           •     Waste Management's invoicing of commercial recycling and medical waste services  
9           to medical waste generators where both services are provided and/or of bundled  
10          services including both commercial recycling and medical waste services
- 11          •     Communications between Waste Management and any medical waste generator  
12          concerning any solicitation by, offer by or agreement with Waste Management to  
13          provide commercial recycling services
- 14          •     Internal Waste Management communications concerning its pricing and marketing  
15          of commercial recycling services to medical waste generators and solicitations to,  
16          offers to or agreements with medical waste generators to provide commercial  
17          recycling services
- 18          •     Internal medical waste generator communications concerning any solicitation by,  
19          offer by or agreement with Waste Management relating to the provision of  
20          commercial recycling services
- 21          •     Waste Management's offered and actual rates for commercial recycling services  
22          and/or bundled services including commercial recycling services to medical waste  
23          generators.

24          11.     By identifying these anticipated subjects of discovery, Stericycle does not agree  
25 to limit its discovery exclusively to these areas and reserves the right to conduct discovery in  
26 this proceeding consistent with the scope of discovery allowed under WAC 480-07-400.

1           **III. Discovery Concerning Claim of Unlawful Classification of Medical Waste**  
2           **Collection Service as Commercial Recycling.**

3           12. At this time, Stericycle anticipates conducting discovery on the following  
4 subjects relevant to its claim of that Waste Management's ecoFinity sharps recycling service is  
5 being unlawfully offered and provided as a commercial recycling service. In these general  
6 descriptions "Waste Management" refers to any Waste Management entity or affiliate involved  
7 in the ecoFinity Program:

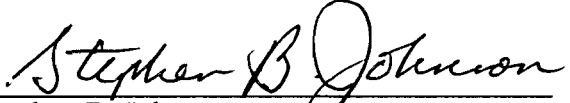
- 8           • The terms and conditions, formalized and in practice, of the relationships,  
9           agreements, or contracts between Waste Management, Becton Dickinson, and Talco  
10           Plastics, or their affiliates, related to the ecoFinity program
- 11           • Payments, monetary, in-kind, or otherwise, between Waste Management, Becton  
12           Dickinson, and Talco Plastics, or their affiliates, related to the ecoFinity program
- 13           • Any other payments, monetary, in-kind, or otherwise, related to the ecoFinity  
14           program or any waste or recyclable materials processed or produced by the  
15           ecoFinity program
- 16           • The amount, quality, and characteristics of reclaimed plastics and other recyclable  
17           materials transferred from Talco Plastics to Becton Dickinson and Becton  
18           Dickinson's use or other disposition of such reclaimed plastics and other recyclable  
19           materials
- 20           • The volume or weight of ecoFinity sharps waste containers and of the waste  
21           contained within those containers
- 22           • Medical waste generators in Washington to whom ecoFinity services have been  
23           offered or are being provided, beyond the known participant in the program, St.  
24           Joseph Medical Center

- The intentions and practice of St. Joseph Medical Center (or any other identified generator) concerning its sharps waste, separation of its sharps waste, handling of its sharps waste, recycling of its sharps waste, and/or use of the ecoFinity program
- EcoFinity program requirements for separation or handling of sharps waste
- The terms of the Whatcom County Comprehensive Solid and Hazardous Waste Management Plan related to medical waste, infectious waste, recycling, and recyclable materials

13. By identifying these anticipated subjects of discovery, Stericycle does not agree to limit its discovery exclusively to these areas and reserves the right to conduct discovery in this proceeding consistent with the scope of discovery allowed under WAC 480-07-400.

DATED this 1st day of March, 2013.

Respectfully submitted,  
GARVEY SCHUBERT BARER

By   
Stephen B. Johnson, WSBA #6196  
Jared Van Kirk, WSBA #57029  
Attorneys for Protestant Stericycle of  
Washington, Inc.

CERTIFICATE OF SERVICE

I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of Washington that, on March 1, 2013, I caused to be served on the person(s) listed below in the manner shown a copy of COMPLAINANT STERICYCLE OF WASHINGTON, INC.'S

PROPOSED DISCOVERY PLAN:

Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
PO Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160  
records@utc.wa.gov

- Via Legal Messenger
- Via Facsimile
- Via FedEx
- Via Email

Administrative Law Judge  
Adam E. Torem  
atorem@utc.wa.gov

- Via Email

Jessica Goldman  
Polly L. McNeill  
Summit Law Group  
315 5<sup>th</sup> Avenue South, Suite 1000  
Seattle, WA 98104  
jessicag@summitlaw.com  
polym@summitlaw.com  
kathym@summitlaw.com  
deannas@summitlaw.com

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class, Postage Prepaid
- Via Email

Steven W. Smith  
Office of the Attorney General  
Utilities and Transportation Division  
1400 S. Evergreen Park Drive SW  
PO Box 40128  
Olympia, WA 98504-0128  
(360) 664-1225  
(360) 586-5522 Fax  
ssmith@utc.wa.gov

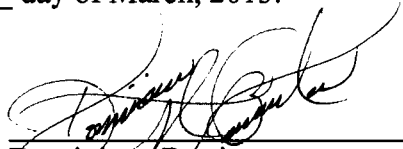
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*Attorney for Washington Refuse and  
Recycling Association*

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,  
Postage Prepaid
- Via Email

Dated at Seattle, Washington this 1<sup>st</sup> day of March, 2013.



\_\_\_\_\_  
Dominique Barrientes  
[dbarrientes@gsblaw.com](mailto:dbarrientes@gsblaw.com)