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May 12, 2005

Mr. Greg Haffner
Curran Mendoza
555 W. Smith Street
Kent, WA 98035

Re: In re Application GA-079331 of Sure-Way Systems, Inc./Docket No. TG-042089

Dear Greg:

I am writing to inform you of our view that the responses of Sure-Way Systems, Inc. to Stericycle's First Data Requests in the above referenced matter are entirely inadequate and fail to satisfy your obligations or the obligations of your client under the Commission's discovery rules. Sure-Way's responses to Stericycle's data requests are so completely superficial and unresponsive as to indicate a level of disregard for the Commission's rules that approaches bad faith.

All of the information requested by Stericycle is either directly relevant to Sure-Way's ability to provide competent medical waste collection services in Washington, Sure-Way's financial and regulatory fitness and the public interest or is reasonably calculated to lead to the discovery of relevant and admissible evidence on these issues.

Your client's failure to respond fully and completely to Stericycle's data requests has jeopardized Stericycle's ability to prepare its case and, if not immediately corrected, will jeopardize the schedule established for this proceeding.

If Sure-Way does not make immediate arrangements satisfactory to Stericycle to fully and completely respond to Stericycle's First Data Requests, Stericycle will file a motion with Commission under WAC 480-07-425 for an order compelling production of the requested information and for an extension of the discovery period.

The inadequacies of Sure-Way's responses to each of Stericycle's Data Requests are identified in detail and with specificity below.

DR No. 1: Data Request No. 1 asks Sure-Way to "describe in detail" its business activities in each state where Sure-Way does business. Sure-Way did not object to this request, yet the only information provided is an apparently incomplete list of states in which Sure-Way



conducts business, with no description of the business activities conducted in those states. In its application, Sure-Way claims to conduct business in "over 10 states," yet only 8 states are listed in response to Data Request No. 1 (Montana, Idaho, Utah, North and South Dakota, Alabama, Florida and Georgia). Further, one of the documents produced in response to Data Request No. 50 indicates that Sure-Way provides services in a different list of 8 states (Montana, Wyoming, North Dakota, Florida, Hawaii, Alabama, Georgia and Utah). In its response to Data Request No. 6, Sure-Way claims that Sure-Way is used" by Stericycle in New York and by Engineered Recovery Services in Missouri and Oklahoma, yet Sure-Way has not identified any business activities in New York, Missouri or Oklahoma in response to Data Request No. 1. Sure-Way has provided no information whatsoever with respect to the business activities it conducts in the states where it does business. Sure-Way must respond fully and completely to this data request.

DR No. 2: Stericycle requested information concerning any business activities previously conducted by Sure-Way but now discontinued. Sure-Way objected to Stericycle's request for information concerning business activities discontinued more than three years ago and has limited its response to activities discontinued within the past three years. This is an inadequate response. Sure-Way asserts in its application that it "has been in the business of transportation and disposal of Biomedical waste and confidential documents since 1990." Thus, Sure-Way is claiming credibility based on its operations since 1990. This puts Sure-Way's entire history at issue in this proceeding. In any event, Sure-Way's business and regulatory compliance history since its organization in 1990 is relevant to its regulatory fitness. Only if Sure-Way provides the requested information with respect to all discontinued operations can Stericycle fully investigate Sure-Way's regulatory compliance history with relevant state and federal agencies.

DR No. 3: In Data Request No. 3, Stericycle requested information concerning "each facility or place of business operated, occupied or used" by Sure-Way since 1990. Sure-Way objected to Stericycle's request for information concerning business facilities and locations not used by Sure-Way within the past three years. This is an inadequate response for the reasons noted above in connection with Sure-Way's response to Data Request No. 2. Stericycle needs to know whether Sure-Way has discontinued any of its operations so that Stericycle can fully investigate Sure-Way's compliance history. This request is not overly burdensome.

Notwithstanding its objection, Sure-Way identified four medical waste and/or container processing facilities that it owns and operates. However, in its description of Dudley Chilcott's experience in response to Data Request No. 52, Sure-Way indicates that there are five Sure-Way plants. Sure-Way must fully and completely respond to this data request.

DR No. 4: Data Request No. 4 seeks information with respect to Sure-Way's transportation equipment and facilities. Sure-Way objected to this request on the grounds that obtaining the requested information would be unduly burdensome and that the requested information was not reasonably calculated to lead to the discovery of admissible evidence. However, Sure-Way's transportation equipment and facilities are directly relevant to Sure-Way's financial fitness and ability to provide the proposed medical waste collection services. To assess



Sure-Way's ability and fitness to provide medical waste collection and transportation services in Washington, it is necessary to know what equipment and facilities are available to Sure-Way for carrying out these operations. Sure-Way's application claims credibility for its proposed services in Washington on the basis of its operations in "over 10 states across the country." Accordingly, Sure-Way itself has made the nature and extent of its operations and facilities in other states "across the country" an issue in this proceeding.

DR No. 5: Data Request No. 5 asked Sure-Way to identify, for each state in which Sure-Way currently offers biomedical waste collection services using re-usable sharps containers, each facility at which such re-usable sharps containers are emptied, washed, disinfected or otherwise processed or prepared for re-use. Sure-Way did not object to this data request. However, Sure-Way did not provide the information requested. Sure-Way did not identify which facilities serve generators in which states. This information is necessary to understand how Sure-Way conducts its business, the generator base it can serve from each processing facility and whether it is feasible and practical to serve Washington generators from a processing facility located in Butte, Montana, as Sure-Way proposes.

DR No. 6: To evaluate Sure-Way's fitness and ability to provide the proposed services, Stericycle needs to understand how Sure-Way conducts its business. Data Request No. 6 seeks information with respect to any third parties that may offer biomedical waste collection services using Sure-Way's re-usable sharps containers, including the name, address and telephone number of each such person and the identity of each facility at which the re-usable sharps containers used by such person are emptied, processed and prepared for re-use. Sure-Way objected to this data request on the grounds that obtaining the requested information would be unduly burdensome, that the information requested was not reasonably calculated to lead to the discovery of admissible evidence and that the information was available "from public sources identified in the request." Nonetheless, Sure-Way stated that "Sure-Way is used by" Stericycle in New York and by Engineered Recovery Services in Missouri and Oklahoma. It is unclear from this response how "Stericycle" or "Engineered Recovery Services" "uses" Sure-Way; i.e., whether Engineered Recovery Systems provides biomedical waste collection services using Sure-Way sharps containers, uses Sure-Way facilities to empty, process and prepare its own sharps containers for re-use or "uses" Sure-Way in some other way. Sure-Way failed to identify the facility or facilities at which the re-usable sharps containers used by Engineered Recovery Services or Stericycle are emptied, processed and prepared for re-use, as required by Data Request No. 6. Sure-Way failed to provide the address and telephone number of "Engineered Recovery Services" or the Stericycle entity referenced in its response. Sure-Way failed to provide any information concerning licenses or permits authorizing any third-party services using Sure-Way sharps containers. For all of these reasons, Sure-Way's response is incomplete and inadequate.

DR No. 7: Data Request No. 7 asked Sure-Way to identify the name, address and telephone number of the manufacturer(s) and supplier(s) of the re-usable sharps containers used



by Sure-Way. Sure-Way objected to this request on the grounds that, to the extent it asked for information not associated with the services proposed in the application, the request was unduly burdensome and not reasonably calculated to lead to the discover of admissible information. Sure-Way nonetheless provided the names of two manufacturers. However, Sure-Way failed to provide the complete names of these manufacturers and failed to provide their addresses or telephone numbers, as requested. Thus, Sure-Way's response is incomplete.

DR Nos. 8, 9, and 10: Data Requests Nos. 8-10 seek information relevant to Sure-Way's compliance with the requirements of the U.S. Food, Drug and Cosmetics Act and the regulations of the federal Food & Drug Administration ("FDA") with respect to Sure-Way's re-usable sharps containers. Sure-Way objected to these requests on the nominal grounds that the requests were unduly burdensome, that the information requested was not reasonably calculated to lead to the discovery of admissible evidence and that the information requested was available from "a source identified in the request." Sure-Way's objections are specious. The information requested is relevant to Sure-Way's regulatory fitness. There is no alternative source for this information and no source for the information that is more convenient, less burdensome or less expensive than Sure-Way. See WAC 480-07-400(4). The information requested must be produced.

DR Nos. 11 and 12: Data Requests Nos. 11 and 12 seek information with respect to governmental licenses, permits, approvals, authorizations, etc. issued for (a) any facility used by Sure-Way for the transportation, storage, treatment or disposal of biomedical waste or for the washing, disinfecting, or processing of re-usable sharps containers (No. 11); and (b) the containers used by Sure-Way for the handling, transportation or storage of biomedical waste, including re-usable sharps containers (No. 12). Sure-Way has objected on the nominal grounds that the information requested is unduly burdensome, that it is not reasonably calculated to lead to the discovery of admissible evidence and the it is "available from a source identified in the request." This objection is, again, entirely baseless. The information is relevant to Sure-Way's regulatory compliance in its existing business and, therefore, to Sure-Way's regulatory fitness. The information requested is not available to Stericycle from any other single source, much less from a source that is more convenient, less burdensome or less expensive than Sure-Way. Sure-Way must provide the requested information. Section 1.1 of the first form agreement produced by Sure-Way in response to Data Request No. 23 promises the generator that Sure-Way will use "FDA and DOT approved reusable sharps containers." See also the reference in Sure-Way's response to Data Request No. 70 ("Sure-Way uses DOT approved Sharps containers"). Sure-Way must provide evidence of such "approvals," as well as all other licenses, permits, approvals, authorizations, etc., issued by any governmental agency for Sure-Way's existing operations.

DR Nos. 13 and 14: Data Requests Nos. 13 and 14 seek information with respect to any inspection, examination or review of Sure-Way's facilities, vehicles or operations conducted by any governmental agency since 1990 and any notice of violation, citation, complaint, order, petition or other notice, filing, statement, report or directive issued by any governmental agency with respect to Sure-Way's compliance with applicable law. Sure-Way objected to these requests



on the nominal grounds that the information requested is unduly burdensome, that it is not reasonably calculated to lead to the discovery of admissible evidence and the it is "available from a source identified in the request." This objection is specious. The information is relevant to Sure-Way's history of regulatory compliance in its existing business and, therefore, to Sure-Way's regulatory fitness. The information requested is not available to Stericycle from any other single source, much less from a source that is more convenient, less burdensome or less expensive than Sure-Way. Sure-Way must provide the requested information.

DR Nos. 15 and 16: Data Requests Nos. 15 and 16 seek information with respect to any promotional materials used by Sure-Way since January 1, 2002 to advertise, promote or inform customers or potential customers of its services or its re-usable sharps containers, including promotional materials, mailings, correspondence or other communications used by Sure-Way to solicit support for its application. In response, Sure-Way provided a single flyer touting its medical waste disposal services. This response is clearly incomplete, because Sure-Way failed to identify or provide copies of the contents of its web site, which is plainly for promotional purposes. Although the web site information is available to Stericycle, it is likely that Sure-Way has used additional advertising and promotional materials since January 1, 2002. All such materials must be produced. Sure-Way's failure to disclose the promotional material on its web site, its yellow pages advertising, etc., evidences the careless and superficial approach Sure-Way has taken to preparing its responses to Stericycle's data requests.

DR No. 17: Data Request No. 17 asks Sure-Way to produce examples of re-usable sharps containers offered by Sure-Way for use in connection with its biomedical waste collection services since January 1, 2002. Sure-Way did not object to this request and must make its sharps containers available for inspection by Stericycle. Please consult with your client and arrange for the containers to be made available to us for inspection at a convenient location in Washington.

DR No. 19: Data Request No. 19 seeks information with respect to services provided by Sure-Way related to the collection, transportation, storage or disposal of hazardous waste. Sure-Way objected to this data request on the nominal grounds that the information sought is "already available to the public," not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome. These objections are, again, baseless. Sure-Way's practices, procedures and compliance history with respect to hazardous waste collection and transportation are obviously relevant to Sure-Way's regulatory fitness. Further, Sure-Way's application indicates that Sure-Way intends to handle dental amalgam, a hazardous waste containing mercury. Sure-Way's experience in handling such wastes is obviously relevant to its fitness to handle such wastes in Washington. The requested information is not available from public sources and is not provided by Sure-Way in its responses to other data requests. Sure-Way must provide the requested information.

DR No. 20: Data Request No. 20 seeks information about prior services provided by Sure-Way related to the collection, transportation, reclamation, recycling or disposal of, specifically, mercury or amalgam wastes or other hazardous wastes generated by dentists and



dental practitioners. Sure-Way objected to this request on the nominal grounds that the request was unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. In its application to the WUTC, Sure-Way touts its ability to provide "Amalgam separation" services to Washington generators. Thus, Sure-Way's experience and history of regulatory compliance in the handling of dental amalgam and similar wastes is directly relevant to its fitness to provide the proposed services in Washington. This information is not provided in Sure-Way's other responses and is not available from public sources. Sure-Way must provide a complete response to this request.

DR No. 23: Data Request No. 23 requests copies of all agreements, purchase orders or other documents specifying the terms and conditions on which Sure-Way has provided any solid waste collection services to its customers in the last 12 months. Sure-Way produced two form agreements in response to this request. However, both of these form agreements are incomplete on their faces. Section 5.2(a) of the first form refers to "the Sure-Way Systems Infectious Waste Profile Sheet attached hereto as Exhibit A" but the Infectious Waste Profile Sheet was not produced. Section 1 of the second form agreement refers to "General descriptions of [infectious waste materials] attached as they may be amended from time to time." Section 2.1 of the same agreement refers to a fee schedule contained in "Exhibit A." Section 6.1 of that form refers to "the description of Infectious Waste Material attached hereto as Exhibit B." None of these attachments were produced. The form agreements are incomplete without the referenced exhibits and attachments. Sure-Way must provide copies of these additional materials.

DR No. 26: Sure-Way has attempted to claim credibility by asserting in its application that it "currently operates in over 10 states across the country." Thus, Sure-Way has placed the size and scope of its present operations at issue before the Commission. Accordingly, Stericycle has properly asked that Sure-Way identify all of the Sure-Way employees currently involved in the collection, transportation, treatment or disposal of medical waste and the facilities where these employees are presently based. It is ludicrous for Sure-Way to claim that all of the services it proposes to provide to Washington generators will be provided by the three individuals named by Sure-Way in response to Data Request No. 26. Sure-Way must identify all of the employees who will be involved in any facet of the proposed services to Washington generators, including transportation, storage, treatment, disposal, customer service, billing and other administrative services. This information is relevant to Sure-Way's costs, fitness and ability to provide the proposed services.

DR No. 27: Data Request No. 27 seeks information on the medical waste tracking systems, methods and procedures employed by Sure-Way and requests that Sure-Way produce copies of all labels, receipts, manifests, records or other documents related thereto. Sure-Way objected to providing the requested information with respect to its operations in parts of the country other than Montana/Idaho on the grounds that providing such information would be unduly burdensome and the information sought was not reasonably calculated to lead to the discovery of admissible evidence. Sure-Way's response was limited to systems and procedures



for the tracking of "Montana/Idaho medical waste." However, Sure-Way also indicates that "[a]dditional tracking service may be required based on customer needs." Thus, Sure-Way's experience with other medical waste tracking systems in other parts of the country could be immediately relevant if a customer requests "additional tracking service." Stericycle is entitled to know whether Sure-Way has used or currently uses any medical waste tracking systems in its operations, other than as described for "Montana/Idaho medical waste."

DR No. 28: Data Request No. 28 seeks information for each facility used by Sure-Way for the treatment or disposal of biomedical waste since January 1, 2000, including disposal after treatment, and requests production of copies of all contracts or other documents describing applicable charges and all other terms and conditions applicable to the treatment or disposal of biomedical waste at such facility, including waste segregation requirements. Sure-Way did not object to this data request but provided almost none of the information requested. Sure-Way merely referred to its response to Data Request No. 3. Sure-Way failed to provide the name, address and telephone number of the owner and operator of each such facility, including the landfill facilities Sure-Way uses for disposal of medical waste after treatment. Sure-Way entirely failed to produce copies of contracts or other documents describing all terms and conditions applicable to the treatment or disposal of biomedical waste at such facility, including applicable charges and waste segregation requirements. All of this information is necessary to permit Stericycle and the Commission to determine whether Sure-Way can treat and dispose of biomedical waste produced by Washington generators and whether it can do so at a cost and on terms and conditions which would permit Sure-Way to conduct viable operations.

DR No. 29: Data Request No. 29 asks whether Sure-Way's business operations include providing services, equipment or technology to third parties involved in providing biomedical waste collection services and, if so, asks Sure-Way to identify such third parties and to describe in detail the arrangements between Sure-Way and such third parties. Sure-Way objected to this data request solely on the ground that the information sought is "confidential." This is not a valid basis for an objection under the Commission's discovery rules. Sure-Way does not assert that the information requested is irrelevant or unduly burdensome to produce. Stericycle and the Commission are entitled to know the nature and sources of Sure-Way's revenues. If Sure-Way is earning revenues by providing services, equipment or technology to third parties who are in the biomedical waste collection business, this information must be disclosed. To the extent that responsive information can be provided in a manner that will not disclose "confidential" information, Sure-Way clearly must provide it but has made no attempt to do so. With respect to the disclosure of any information that Sure-Way considers "confidential," Sure-Way must either provide the requested information to Stericycle or seek a protective order from the Commission. WAC 480-07-400(4) provides that a party to a Commission proceeding may object to a data request when

the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the



parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at state in the adjudicative proceeding.

WUTC v. Verizon Northwest, Inc., 2004 Wash. UTC LEXIS 738, *3-*4 (2004). While the Commission's rules provide for the issuance of protective orders to regulate the disclosure of confidential information in Commission proceedings, the party seeking protection must file a motion for such a protective order and establish affirmatively that a real basis for protection exists. Further, even if a protective order is warranted, the Commission's rules do not allow a responding party to simply withhold relevant information from the Commission and the other parties on the grounds of confidentiality. See WAC 480-07-423. Here, Sure-Way had an affirmative duty to seek a protective order or to provide the requested information. If there is a legitimate basis for Sure-Way's concern about the disclosure of confidential information, Stericycle would be willing to agree to an appropriate protective order, if proposed by Sure-Way. Except as limited by a protective order agreeable to both parties or issued by the Commission on motion, Sure-Way must provide the requested information.

DR No. 34: Data Request No. 34 seeks copies of operating plans, safety training manuals or materials, other training manuals or materials, policies and procedures used by Sure-Way in its existing biomedical waste collection, transportation, treatment or disposal services. This information is needed to determine whether Sure-Way is operating in conformance with applicable legal requirements and in a manner that is protective of the public health and safety and the health and safety of Sure-Way employees. Sure-Way objected to this request on the sole ground that the information requested is a "trade secret." Sure-Way does not contend that the information requested is irrelevant or that obtaining the requested information would be unduly burdensome. Sure-Way did not attempt to describe the "trade secrets" it claims should be protected from disclosure. Sure-Way's assertion that relevant documents and information requested by Stericycle are "trade secrets" is not an appropriate basis for an objection under the Commission's rules. While the Commission's rules provide for the issuance of protective orders to regulate the disclosure of confidential information in Commission proceedings, the party seeking protection must file a motion for such a protective order and establish affirmatively that a real basis for protection exists. Further, even if a protective order is warranted, the Commission's rules do not allow a responding party to simply withhold relevant information from the Commission and the other parties on the grounds of confidentiality. See WAC 480-07-423. Here, Sure-Way had an affirmative duty to seek a protective order or to provide the requested information. As previously noted, if there is a legitimate basis for Sure-Way's concern about the disclosure of confidential information, Stericycle would be willing to agree to an appropriate protective order, if proposed by Sure-Way. Except as limited by a protective order agreeable to both parties or issued by the Commission on motion, Sure-Way must provide the requested information.



DR No. 35: Data Request No. 35 seeks copies of Sure-Way's operating plans, procedures and protocols for the operation of each facility used by Sure-Way to empty, wash, disinfect or process for re-use the re-usable sharps containers used by Sure-Way. This information is needed to determine whether Sure-Way is operating its facilities in conformance with FDA and other applicable legal requirements and in a manner that is protective of the public health and safety and the health and safety of Sure-Way employees. Sure-Way objected to this request on the sole ground that the information requested comprises a "trade secret." Sure-Way does not contend that the information requested is irrelevant or that obtaining the requested information would be unduly burdensome. Sure-Way's assertion that relevant documents and information requested by Stericycle are "trade secrets" is not an appropriate basis for an objection under the Commission's rules for the reasons set out above with respect to Data Requests Nos. 33 and 34.

DR No. 38: Data Request No. 38 asks Sure-Way to identify any lawsuit or administrative proceeding in which Sure-Way, its shareholders, officers or directors have been involved as a named party. Sure-Way objected to this request as unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Sure-Way then responded that no such lawsuits or administrative proceedings are known by Sure-Way's CEO, Gary Chilcott. Sure-Way's objections to this data request are specious. The limitation of its answer to what is known to Gary Chilcott is not responsive. Sure-Way's response to Data Request No. 46 confirms that it has a total of only 12 shareholders, officers and directors. Sure-Way has a duty to make inquiry of these 12 individuals to determine whether any of them have been named as a party to any lawsuit or administrative proceeding. This information is clearly relevant to the regulatory compliance history of Sure-Way's principals and therefore to Sure-Way's regulatory fitness.

DR Nos. 39 and 40: Data Requests Nos. 39 and 40 seek financial information concerning Sure-Way's assets and liabilities, revenues and expenses for its most recent complete fiscal year in the format and the detail of the Annual Report that the Commission requires from Class A Solid Waste Collection Companies under WAC 480-70-071. Sure-Way objected to the format requested but referred to its response to Data Request No. 45 in responses to both Data Requests No. 39 and 40. However, the only financial statements produced in response to Data Request No. 45 are for the year ending December 31, 2002. Sure-Way must provide financial statements for the year ending December 31, 2004, its most recent complete fiscal year. If financial statements for 2004 are not yet available, Sure-Way must explain when its financial statements for 2004 will be available. Sure-Way must provide current financial statements to Stericycle and the Commission. The Commission's rules contemplate that a data request may require that a party prepare "an analysis, compilation or summary of documents into a requested format" WAC 480-07-400(c)(iii). Here, Stericycle has requested financial statements for Sure-Way's most recent complete fiscal year (2004) in a particular format, a format recognized and used by the Commission. Sure-Way has not asserted that preparing its financial statements in the requested format would be unreasonably burdensome and has not provided the requested information in an alternative format. This information is obviously relevant to Sure-Way's financial fitness and must be produced.



DR No. 41: Data Request No. 41 seeks an itemization of Sure-Way's investment in capital assets, including real estate, plant, facilities and equipment that Sure-Way proposes to use in providing biomedical waste collection services to Washington generators. Data Request No. 41 requests this information in the manner, format and detail of the Annual Report that the Commission requires from Class A Solid Waste Collection companies under WAC 480-70-071. Stericycle also asked that Sure-Way allocate its investment in such assets between Sure-Way's biomedical waste collection business and any other business conducted by Sure-Way. Sure-Way objected solely on the ground that it "has not previously been required to use the format requested." Sure-Way did not contend that providing the information requested would be unduly burdensome. As noted above with respect to Data Requests Nos. 39 and 40, the Commission's discovery rules contemplate that a party may be asked to provide data in a specified format. Sure-Way did not provide the information requested in an alternative format or otherwise make a good faith attempt to provide the information requested. Although Sure-Way's response to this data request refers to Sure-Way's application and its responses to other data requests, neither Sure-Way's application nor its other responses provide the requested information. Sure-Way's investment in capital assets to be used in the proposed service is clearly relevant to its financial fitness to provide the proposed service. The information requested must be provided.

DR No. 44: Data Request No. 44 asks Sure-Way to "itemize in detail" all revenues and expenses projected by Sure-Way for its proposed operations in Washington in the first 12 months of operations in the format and detail required for a Class A Solid Waste Collection Company's Annual Report to the Commission. Sure-Way objected to the requested format on the sole ground that it "has not previously been required to use the format requested" but did not otherwise object to producing the requested data. Sure-Way then responded with very general projections in the following broad categories: Revenues, Total Cost of Revenues, Gross Profit, Total SG&A Expenses, Operating Income and Net Income. Sure-Way did not "itemize in detail," as requested, the revenues and expenses it projects for the first 12 months of its operations. This detail is necessary to allow Stericycle and the Commission to evaluate the reasonableness of Sure-Way's general projections and the financial feasibility of Sure-Way's operations. In response to Data Request No. 69, Sure-Way states that "A pro-forma income statement will be produced when generated." This is an inadequate response to Stericycle's data requests. Sure-Way was required to produce the requested pro-forma income statement within the time provided for responding to Stericycle's data requests or to advise Stericycle why a proper response within that time frame was not possible and when a proper response would be forthcoming. Sure-Way simply disregarded Stericycle's data requests and the Commission's discovery rules. Sure-Way must "itemize in detail" its projected revenues and expenses.

DR No. 45: Data Request No. 45 requests production of Sure-Way's federal income tax returns for the most recent three years. Sure-Way did not object to this request but did not produce the requested tax returns. Sure-Way indicated that its tax returns for 2003 and 2004 are "unavailable at this time" but Sure-Way failed to indicate why these tax returns were "unavailable" and when they would be available. Sure-Way provided no explanation for its



failure to produce its income tax return for 2002. Sure-Way's tax returns are relevant to its regulatory and financial fitness. Sure-Way did not object to this data request. Accordingly, Sure-Way must produce the requested tax returns. If some of its tax returns are "unavailable," Sure-Way must explain the reason for their unavailability and state when they will be available.

DR No. 47: Data Request No. 47 asks whether any of Sure-Way's officers, shareholders, directors or employees has ever been convicted of a crime and, if so, asks Sure-Way to identify the crime, the court in which the conviction occurred and the date of the conviction. Sure-Way objected to this request as unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Sure-Way then responded that "none are known by Sure-Way's CEO, Gary Chilcott, other than minor traffic violations for the managers, officer and shareholders." Sure-Way's objections to this data request are not well taken. The limitation of its answer to what is known to Gary Chilcott is not responsive. Sure-Way's response to Data Request No. 46 confirms that it has a total of only 12 shareholders, officers and directors. Sure-Way has a duty to make inquiry of these 12 individuals and those employees who will be involved in providing the proposed biomedical waste collection services in Washington to determine whether any of them has been convicted of a crime and, if so, to obtain and provide the additional data requested. This information is relevant to Sure-Way's regulatory fitness.

DR No. 48: Data Request No. 48 asks Sure-Way to produce for Stericycle's inspection all containers that Sure-Way intends to use in connection with its proposed services in Washington. Sure-Way did not object to this data request. Sure-Way merely referred to its response to Data Request No. 17, which is a poor quality picture of several containers. Sure-Way must provide an example of each of its containers for Stericycle's physical inspection. Please consult with your client and arrange for the containers to be made available to us for inspection at a convenient location in Washington.

DR No. 50: Data Request No. 50 requests copies of all operating plans, safety training manuals or materials, other training manuals or materials, policies, protocols and procedures that Sure-Way intends to use in connection with its proposed biomedical waste collection, transportation, treatment and disposal services. Sure-Way did not object to this request. However, the documents provided in response to this request are incomplete. Thus, the "Sure-Way Systems, Inc. Contingency Plan" includes on a list of its contents on p. 1 but the following listed elements of the Contingency Plan were omitted from the copy produced to Stericycle: "Radiation Daily SOP [Standard Operating Procedure] for Plant Operations," "Arrangements," "Radiation Alarm Procedures," "Radiation Alarm Incident Report," "Job Descriptions," "Facility Layout Drawing." Similarly, the "Sure-Way Systems, Inc. Employee Handbook" refers to a "Safety Manual" which the Handbook indicates (under the heading "Safety" on p. 7) is "included at the end of the employee handbook." However, no "Safety Manual" was included in the materials produced by Sure-Way. Although one of the documents produced describes a "Training Plan" and provides an outline of the "Contents of the [Sure-Way] Training Program," no actual training or instructional materials were produced. Although Sure-Way's response to



Data Request No. 62 refers to an "Operations manual," no such document was produced. Finally, various attachments are identified at the end of the third document produced in response to this data request (apparently part of a permit application) but the attachments were not produced; i.e., "Facility Plan/Site Layout," "Property Map," "Job Descriptions." Sure-Way must produce a complete copy of its Contingency Plan, its Safety Manual, its Operations manual, all training materials and all attachments to the documents previously produced.

DR No. 51: Data Request No. 51 requests information concerning each of Sure-Way's officers and employees who will be involved "in any way" in providing Sure-Way's proposed services to Washington generators, including the annual compensation to be paid to each such person and the percentage of such person's time that will be devoted to such activities. Sure-Way did not object to this data request but provided compensation information only for two of the three individuals Sure-Way identified in response to Data Request No. 26 as personnel that would be involved in Washington operations (Miller and Crossler but not Gary Chilcott). Further, it is obvious that Sure-Way's response to this data request is incomplete, since no information is provided concerning Sure-Way personnel who will be involved in treating waste, processing containers handled by Sure-Way for Washington generators, transporting treated waste for disposal or in administrative functions related to the collection, transportation, treatment or disposal of Washington waste. Sure-Way must provide the requested information for all of the Sure-Way personnel who will be involved in any way in providing the proposed services, including the treatment and disposal of Washington-source waste and the processing of containers for re-use. This information is relevant to Sure-Way's costs and to Sure-Way's financial fitness.

DR No. 57: Data Request No. 57 seeks information with respect to the treatment or disposal facilities which Sure-Way would use if its application is granted and requests that Sure-Way produce copies of all contracts with each such facility and any other documents describing applicable charges, terms or conditions applicable to the treatment or disposal of waste at the facility, including waste segregation requirements. Sure-Way did not object to this data request. However, Sure-Way provided no information or documents whatsoever in response to the request for contracts and other documents describing applicable charges and the terms and conditions applicable to the treatment or disposal of waste at the facilities identified. Further, Sure-Way failed to identify the landfills it proposes to use for the disposal of treated medical waste or the charges and other terms and conditions applicable to its use of those landfills. Sure-Way has acknowledged that it has documents responsive to this request, stating that it "reserves the right to redact confidential information from documents that may eventually be produced in response to this request," but provided no explanation for entirely withholding such documents. Sure-Way must respond fully to this data request with respect to the treatment or disposal facilities it intends to use in providing services to Washington generators. To the extent it seeks to withhold any relevant information covered by this request, Sure-Way must seek a protective order.



DR No. 58: Data Request No. 58 asks Sure-Way to identify each facility to which Sure-Way intends to deliver amalgam waste or other materials for recycling, reclamation or disposal and to produce copies of all contracts with each such facility and any other documents describing applicable charges, terms or conditions applicable to the recycling, reclamation or disposal of such materials at the facility. Sure-Way did not object to this request but simply referred to its response to Data Request No. 57. However, its response to Data Request No. 57 does not identify which of the facilities referenced there would be used by Sure-Way for the recycling, reclamation or disposal of amalgam waste or other materials. It is not credible to suggest that Sure-Way will use the autoclave facilities in Montana and North Dakota it has identified in response to Data Request No. 57 for the recycling, reclamation or disposal of amalgam waste or other non-biomedical waste materials. Sure-Way must respond to Data Request No. 58 and specifically identify the facilities it proposes to use for the recycling, reclamation or disposal of amalgam waste or other non-biomedical waste materials and produce all contracts and other documents setting out the terms and conditions on which such use would be permitted. Sure-Way has acknowledged that it has documents responsive to this request, stating that it "reserves the right to redact confidential information from documents produced in response to this request," but provided no explanation for entirely withholding such documents. No such documents were produced. Sure-Way must respond fully to this data request and produce copies of all relevant contracts and other documents.

DR No. 59: Data Request No. 59 asks Sure-Way to identify each facility to which Sure-Way intends to deliver pathological or gross pathological waste for disposal and to produce copies of all contracts with each such facility and any other documents describing applicable charges, terms or conditions applicable to the disposal of such waste at the facility. Sure-Way did not object to this request. While Sure-Way's response to Data Request No. 57 identifies the facilities it would propose to use for the disposal of pathological wastes, Sure-Way has produced no contracts or other documents defining the charges and other terms and conditions on which Sure-Way would be allowed to dispose of such wastes at these facilities. Sure-Way has acknowledged that it has documents responsive to this request, stating that it "reserves the right to redact confidential information from documents that may be produced in response to this request," but provided no explanation for entirely withholding such documents. Sure-Way must respond fully to this data request and produce all relevant contracts and other documents.

DR No. 60: Data Request No. 60 asks Sure-Way to identify each facility to which Sure-Way intends to deliver chemotherapy or trace chemotherapy waste for disposal and to produce copies of all contracts with each such facility and any other documents describing applicable charges, terms or conditions applicable to the recycling, reclamation or disposal of such materials at the facility. Sure-Way did not object to this request but simply referred to its response to Data Request No. 57. However, its response to Data Request No. 57 does not identify which of the facilities referenced there would be used by Sure-Way for the disposal of chemotherapy or trace chemotherapy waste. Stericycle cannot assume that such waste may be handled at the autoclave facilities in Montana and North Dakota Sure-Way has identified in



response to Data Request No. 57 for the disposal of such waste. Sure-Way must respond to Data Request No. 60 and specifically identify the facilities it proposes to use for the disposal of chemotherapy or trace chemotherapy waste and produce all contracts and other documents setting out the terms and conditions on which such use would be permitted. Sure-Way has acknowledged that it has documents responsive to this request, stating that it “reserves the right to redact confidential information from documents produced in response to this request,” but provided no explanation for entirely withholding such documents. No documents were produced. Sure-Way must respond fully to this data request.

DR Nos. 62 and 63: Data Requests Nos. 62 and 63 request that Sure-Way describe “in complete detail” all employee training Sure-Way presently provides to its employees or intends to provide to its employees in connection with its proposed services to Washington generators. Sure-Way did not object to these data requests. However, Sure-Way’s responses are incomplete. Sure-Way indicates that its employees are required to complete an “orientation, and a series of safety training sessions,” but Sure-Way does not describe the content of the “orientation” or the “series of safety training sessions.” Sure-Way must describe in detail the subjects dealt with in its training program so that Stericycle and the Commission will be able to determine whether Sure-Way’s training program meets applicable regulatory requirements and is protective of employee health and safety, as well as public health and safety. This information is relevant to Sure-Way’s regulatory fitness and to the issue of the public interest. As required by Data Request No. 50, Sure-Way must also produce all training manuals or other training materials used in its training program.

DR No. 64: Data Request No. 64 requests the names and addresses of the officers, directors and shareholders of Western States Medical Waste Group, Inc. (“Western States”), the entity identified as the “insured” on the Certificate of Insurance filed with the Commission by Sure-Way with its application, and asks Sure-Way to “describe in detail” the relationship between Sure-Way and Western States. Sure-Way did not object to this data request. Sure-Way identifies Gary and Dudley Chilcott as the officers and directors of Western States but does not identify the shareholders of Western States. This information must be supplied. To the extent that Sure-Way identifies Western States as “comprised of Entech, Inc. . . . and Sure-Way incorporated [sic],” it is unclear whether Western States owns Entech and Sure-Way or Sure-Way and Entech own Western States. In either case, Sure-Way has failed to adequately describe the relationship between Sure-Way and Western States, as requested. Sure-Way must identify the shareholders of Western States and provide a full, complete and coherent description of its legal and business relationship with Western States.

DR No. 66: This data request seeks information with respect to any corporation, partnership or other entity in which Sure-Way or any of its officers, directors or shareholders holds an ownership interest, including any such affiliated entity that will provide services, facilities or any other thing of value to Sure-Way in connection with its proposed services to Washington generators. Sure-Way objected that obtaining the requested information would be



unduly burdensome to the extent the information sought was not "associated with" the services proposed in the application and that the information requested is not reasonably calculated to lead to the discovery of admissible evidence. However, Sure-Way's objections are not well taken. The business involvements and business history of Sure-Way's officers, directors and shareholders is relevant to an evaluation of their honesty and integrity and thus to Sure-Way's regulatory fitness. For example, if Sure-Way's principals have been involved, through other business entities, in criminal actions, consumer protection violations, fraud or other types of dishonesty or malfeasance, this would be relevant to Sure-Way's regulatory fitness and the public interest. Based on Sure-Way's response to Data Request No. 64, we know that Sure-Way's principals have some involvement in an entity known as Entech, Inc, a company apparently engaged in the solid waste business in Alaska. Based on Sure-Way's response to Data Request No. 1, we know that Sure-Way is a part owner of "Hawaii BioWaste" and that Hawaii BioWaste "has operations in Honolulu for sharps disposal and medical waste treatment services." Clearly, the conduct of Sure-Way and its principals through other entities in any business context but particularly in solid waste and biomedical waste collection and disposal operations is relevant to their application to conduct biomedical waste collection activities in Washington through Sure-Way. Sure-Way's principals cannot be permitted to hide their business and legal compliance histories by operating through other entities and refusing to identify those entities. Sure-Way's involvement with other entities in which its officers, directors or shareholders hold interests is also important to understanding Sure-Way's business and whether any "affiliated interest" issues arise under the Commission's rules. Sure-Way must respond fully and completely to Data Request No. 66 (including providing the requested information for the entity in which Christie Shelton has an interest that owns the building used by Sure-Way in Montana).

DR No. 68: Data Request No. 68 requests the identity of any independent contractors Sure-Way proposes to use to perform activities related to its proposed services to Washington generators. Sure-Way objected on the sole ground that the information requested is "confidential." This objection is not well taken and the requested information must be produced. The identity of any independent contractor who will provide any activity related to the proposed services to Washington generators is relevant to Sure-Way's ability to provide the proposed services, the cost of its services and its regulatory and financial fitness. The identity of such independent contractors is also necessary to permit the Commission and Stericycle to evaluate whether any "affiliated interest" issues arise under the Commission's rules. Sure-Way cannot fail to provide Stericycle and the Commission with this information on the basis of the simple assertion that the information requested is "confidential." If there is a legitimate confidentiality issue, Sure-Way may seek a protective order, either by agreement with Stericycle or by motion to the Commission.

DR No. 69: Data Request No. 69 asks Sure-Way to identify in complete detail "all costs that will be incurred" by Sure-Way for each category of biomedical waste or other material that will be collected by Sure-Way from Washington generators. Sure-Way did not object to this



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Data Request but simply failed to respond, stating that "a pro-forma income statement will be produced when generated." Thus, Sure-Way has simply disregarded its obligation under the Commission's discovery rules duty to respond fully and completely to Stericycle's data request. The reference to the broad general cost projections provided by Sure-Way in response to Data Request No. 44 is not responsive to Data Request No. 69 for "all costs" by each category of waste or other material that Sure-Way proposes to handle. Sure-Way must respond fully and completely to this data request.

Greg, Sure-Way's responses to Stericycle's data requests are so superficial and unresponsive that I find it hard to believe that you actually read them before signing the CR 26(g) certification. I will contact you by telephone later today to arrange a time when we can discuss these issues in detail. Unless you make immediate arrangements satisfactory to Stericycle to fully and completely respond to Stericycle's First Data Requests, Stericycle will seek an order from the Commission to compel Sure-Way to respond and will further seek an order modifying the case schedule to take into account the effects on Stericycle's case preparation resulting from Sure-Way's disregard for the Commission's discovery rules.

Sincerely,

GARVEY SCHUBERT BARER

By

Stephen B. Johnson

Cc: Greg Trautman
Mike Philpott