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BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

STERICYCLE OF WASHINGTON, INC.,

For an Order Suspending Tariff Filings and
Initiating an Adjudicatory Proceeding
concerning the Proposed Biomedical Waste
Collection and Transportation Services of
Waste Management of Washington, Inc., dba
WM Healthcare Solutions (G-237)

Docket No. TG-110287

COMMENTS OF WASTE
MANAGEMENT OF WASHINGTON,
INC. IN RESPONSE TO THE
COMMISSION'S NOTICE OF
OPPORTUNITY TO COMMENT

1. In response to the Notice of Opportunity to Comment issued by the Washington Utilities and
Transportation Commission ("WUTC" or "Commission") that solicits input on the Petition
of Stericycle of Washington, Inc. (the "Petition"), Waste Management of Washington, Inc.
("Waste Management") respectfully submits the following.

I. BACKGROUND AND PARTIES

2. Waste Management operates solid waste collection services in various territories within the
State of Washington under authority of Certificate of Convenience and Necessity No. G-237.
Waste Management or its predecessor companies have performed solid waste collection in its
territories since before 1961, when the statutory scheme established under Ch. 81.77 RCW
was first created. Certificate rights previously operated under various trade names and

1 subsidiaries were consolidated into Certificate No. G-237 in the late 1990's. Waste
2 Management's original territories have since been expanded through acquisitions of control
3 and transfers, as appropriately reviewed and approved by the Commission.

- 4 3. Stericycle of Washington, Inc. ("Stericycle") is a wholly-owned subsidiary of Stericycle,
5 Inc., and it operates biomedical waste collection services in Washington under authority of
6 Certificate of Convenience and Necessity No. G-244. Stericycle applied for and was granted
7 state-wide authority to perform biomedical waste collection in 1995. Order M.V.G. No.
8 1761, *In re Ryder Distribution Resources, Inc.*, App. No. GA-75154; *In re Stericycle of*
9 *Washington, Inc.*, App. No. GA-77539 (consolidated) (Aug. 1995), following four years of
10 administrative litigation to obtain that certificate right. Since obtaining its own authority,
11 Stericycle has acquired control of all other certificates specifically authorizing biomedical
12 waste. It bought the rights of BFI Medical Waste Systems of Washington in or around 2000;
13 and that company had previously acquired the rights of the other two solid waste collection
14 companies holding certificates specifically for biomedical waste collection, American
15 Environmental Management Corporation and Sureway. *See*, Order M.V.G. No. 1761 at 20.

16 II. COMMENTS

- 17 4. The Notice of Opportunity to Comment observes that the Petition lacks any allegations that
18 Waste Management has "filed tariffs or otherwise sought authority from the Commission to
19 enter into the business of collecting and transporting biomedical waste for disposal in
20 Washington...." Because Waste Management has not filed a tariff rate for collecting
21 biomedical waste, there is presently no case or controversy before the Commission.
- 22 5. Waste Management already holds authority to perform biomedical waste collection.
23 Certificate No. G-237 broadly authorizes solid waste collection, and the Commission has
24 long held that traditional solid waste certificates subsume the right to perform biomedical
25 waste collection and disposal. Order M.V.G. No. 1452, *In the Matter of American*
26

1 *Environmental Management Corp.*, App. No. GA-874 (Nov. 1990), at 7 (“the permanent
2 authority of existing G-certificate holders includes the authority to collect infectious waste”).
3 The only further Commission “authorization” that Waste Management needs to commence
4 biomedical waste collection services is to have a rate stated in its tariffs.¹

5 6. However, as the Notice of Opportunity to Comment notes, Waste Management has not yet
6 filed a tariff rate for collection of biomedical waste. There is nothing before the Commission
7 from a regulated entity seeking agency action. Under Commission rules and judicial
8 decisions, Waste Management is not involved in an actual case or controversy that would
9 make the matters raised in the Petition subject to the Commission’s jurisdiction. WAC 480-
10 07-305(2). Deciding whether a case presents a cause of action ripe for judicial determination
11 requires an evaluation of “the fitness of the issues for judicial decision and the hardship to the
12 parties of withholding court consideration.” *First Covenant Church v. Seattle*, 114 Wn.2d
13 392, 400, 787 P.2d 1352 (1990) (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149,
14 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681 (1967)); *Standard Alaska Prod. Co. v. Schaible*, 874
15 F.2d 624, 627 (9th Cir.1989). “A claim is fit for [judicial] decision if the issues raised are
16 primarily legal, do not require further factual development, and the challenged action is
17 final.” 874 F.2d at 627.

18 7. Stericycle’s Petition presents a purely academic issue. The parties do not have a disputed
19 issue, and therefore “an administrative hearing would be pointless within the APA context.”
20 *Lawrence v. Department of Health*, 133 Wn. App. 665, 678, 138 P.3d 124 (2006). Thus,
21 Stericycle’s Petition should be dismissed as premature.

22 8. With candor to the Commission, however, Waste Management acknowledges that it does
23 intend to file a tariff and take steps necessary to collect and transport biomedical waste in

24 ¹ There are regulatory requirements for performing biomedical waste collection under the Commission’s rules,
25 and Waste Management would also need to satisfy those operational conditions before it could commence
26 biomedical waste collection services. *See, e.g.*, WAC 480-70-436 (requiring a biomedical waste operating plan to
be prepared and maintained).

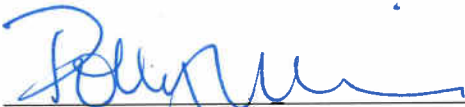
1 Washington at some point in time. The Company is indeed planning to enter the market.
2 Unless and until that rate is filed, however, there is nothing to review and no dispute to
3 resolve. Many of the allegations in the Petition apply to the rate-setting process and the
4 amounts, and presents arguments which Waste Management believes are specious but which
5 nonetheless are not ripe for review.

6 9. Waste Management can only provide collection within the territory authorized by Certificate
7 G-237. On the other hand, Stericycle sought and obtained authority to provide universal
8 service throughout the state. It is required to perform service throughout the territory, just as
9 it requested and battled in hearings to obtain. Petitioner seems disgruntled with its service
10 obligations, but if Stericycle wishes for relief from its conditions of operations in
11 Washington, it should utilize statutory provisions and request that its certificated territory be
12 amended.

13 **III. CONCLUSION**

14 10. The Petition must be dismissed due to the absence of jurisdictional grounds. The Petition
15 should be dismissed because Waste Management would be operating within the clear
16 parameters of the law if it were to commence biomedical waste collection services by filing a
17 tariff.

18 DATED this 4th day of March, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

Steven B. Johnson Donald B. Scaramastra Garvey Schubert Barer 1191 Second Ave., Suite 1800 Seattle, WA 98101 (206) 464-3939 sjohnson@gsblaw.com	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
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	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

DATED at Seattle, Washington, this 4th day of March, 2011.



Kathy Moll