

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

STERICYCLE OF WASHINGTON,)	DOCKET TG-121597
INC.,)	
)	
Complainant,)	ORDER 04
)	
v.)	
)	ORDER AUTHORIZING AND
WASTE MANAGEMENT OF)	LIMITING DISCOVERY
WASHINGTON, INC., d/b/a WM)	
HEALTHCARE SOLUTIONS OF)	
WASHINGTON,)	
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On October 3, 2012, Stericycle of Washington, Inc. (Stericycle) filed a complaint stating two causes of action against Waste Management of Washington, Inc., d/b/a WM Healthcare Solutions of Washington (Waste Management).
- 2 On November 29, 2012, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Prehearing Conference Order (Order 01), and determined that discovery was not then required in this matter. Order 01 established a timetable for resolving potentially dispositive motions and also scheduled a status conference for February 8, 2013, to further develop the docket’s procedural schedule and re-address the need for discovery in the case.
- 3 On February 8, 2013, the Commission conducted the above-noted status conference at which the parties agreed to collaborate and submit a proposed Discovery Plan.
- 4 On March 1, 2013, Stericycle filed its proposed Discovery Plan. On March 5, 2013, Waste Management filed its Response. On March 7, 2013, the Commission conducted a telephonic status conference to review the Discovery Plan and establish appropriate limitations for the discovery process in this matter.

PROPOSED DISCOVERY PLAN

5 The parties agree that discovery is appropriate in this proceeding and should now be authorized. They jointly recommend that Stericycle conduct discovery in two overlapping phases, as follows:

		<u>Commence</u>	<u>Cutoff</u>
Phase I	from Waste Management	March 2013	June 28, 2013
Phase II	from Third Parties	June 1, 2013	August 9, 2013

Stericycle proposes to utilize data requests and depositions.

6 WAC 480-07-405(7)(b) requires parties to respond to data requests within ten business days after the request is received. However, the parties agree that the time for such responses in this case should be extended to 30 calendar days.

7 Waste Management seeks to limit depositions of its employee witnesses to a total of seven hours. Waste Management also asks that the presiding officer approve any subpoenas Stericycle seeks to issue to third parties. Both parties acknowledge that any deposition of a third party must be pre-approved by the presiding officer.

8 Staff asks to receive copies of all records produced by third parties and to be notified of the times and dates of all depositions. No party objects to Staff's request.

9 The parties generally agree on the scope of the list of relevant subjects set out in the proposed Discovery Plan with regard to each of Stericycle's claims against Waste Management. During the status conference, counsel for Waste Management and Stericycle clarified the intended scope of certain inquires. In addition, Staff recommended the addition of certain language to ensure that any expansion of those lists be accomplished by agreement of the parties or by Commission order.

DECISION

10 This proceeding involves a complaint alleging claims of anticompetitive conduct. Pursuant to WAC 480-07-400(2)(b)(iii), discovery should be expanded beyond the use of subpoenas in this docket. Discovery will be governed by WAC 480-07-400 through -425, limited by the scope of discovery set forth in WAC 480-07-400, and further limited by the terms of this order.

- 11 The Commission recommends that parties complete as much of the discovery process as possible in an informal manner. The Commission further recommends that the parties engage in a discovery conference pursuant to WAC 480-07-415 before commencing formal discovery.
- 12 Discovery shall occur in phases, only the first of which is now approved. Phase I shall commence on the date of this order and end on June 28, 2013. Phase I is subject to extension by agreement of the parties and approval from the presiding officer.
- 13 Discovery in Phase I may consist of written discovery and the deposition of Waste Management employees. Unless Waste Management objects to a particular deposition, the Commission will not require Stericycle to obtain the presiding officer's approval before deposing Waste Management employees. Further, the Commission declines at this time to adopt a limitation on the number of hours Stericycle may depose Waste Management employees.
- 14 The parties request Phase II of discovery to commence on June 1, 2013, and end on August 9, 2013. At this time, the Commission adopts the concept of Phase II discovery but does not yet authorize Stericycle to proceed with third party discovery. Phase II discovery may be approved upon a showing that Stericycle cannot obtain information necessary to support its claims in any other way. The Commission will also consider third party opposition to discovery requests.
- 15 The Commission adopts the parties' stipulated response time of 30 calendar days for responses to data requests. Stericycle shall provide copies of all records produced by third parties to Waste Management and to Commission Staff.
- 16 Depositions shall be scheduled at times and places reasonably convenient to the witnesses and to all parties. Commission Staff shall be invited to attend any depositions of Waste Management employees. Waste Management and Commission Staff may participate in any third party depositions scheduled by Stericycle.
- 17 Stericycle may conduct discovery into the following subjects relevant to its claim of unlawful rebating:
- Entities to whom Waste Management has solicited, offered or provided commercial recycling services *and* solicited, offered or provided regulated biomedical waste services;

- The terms of any such solicitations, offers or agreements to provide commercial recycling and biomedical waste services;
- Waste Management's invoicing of commercial recycling and medical waste services to medical waste generators where both services are provided and/or of bundled services including both commercial recycling and medical waste services;
- Communications between Waste Management and any medical waste generator concerning any solicitation by, offer by or agreement with Waste Management to provide commercial recycling and biomedical waste services;
- Internal Waste Management communications concerning its pricing and marketing of commercial recycling services to medical waste generators and solicitations to, offers to or agreements with medical waste generators to provide commercial recycling and biomedical waste services;
- Internal medical waste generator communications concerning any solicitation by, offer by or agreement with Waste Management relating to the provision of commercial recycling and biomedical waste services;
- Waste Management's offered and actual rates for commercial recycling services and/or bundled services including commercial recycling and biomedical waste services to medical waste generators.

18 Stericycle may conduct discovery into the following subjects relevant to its claim that Waste Management's ecoFinity sharps recycling service is being unlawfully offered and provided as a commercial recycling service:

- The terms and conditions, formalized and in practice, of the relationships, agreements, or contracts between Waste Management, Becton Dickinson, and Talco Plastics, or their affiliates, related to the ecoFinity program;
- Payments, monetary, in-kind, or otherwise, between Waste Management, Becton Dickinson, and Talco Plastics, or their affiliates, related to the ecoFinity program;

- Any other payments, monetary, in-kind, or otherwise, related to the ecoFinity program or any waste or recyclable materials processed or produced by the ecoFinity program;
- The amount, quality, and characteristics of reclaimed plastics and other recyclable materials transferred from Talco Plastics to Becton Dickinson and Becton Dickinson's use or other disposition of such reclaimed plastics and other recyclable materials;
- The volume or weight of ecoFinity sharps waste containers and of the waste contained within those containers;
- Medical waste generators in Washington to whom ecoFinity services have been offered or are being provided, beyond the known participant in the program, St. 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.

The parties recognize that Stericycle's inquiry into these areas may seek information not controlled by or immediately accessible to Waste Management of Washington, Inc. Nevertheless, Respondent Waste Management of Washington, Inc., shall make all reasonable efforts to obtain requested information from other Waste Management entities, affiliates, or other third parties involved in the ecoFinity program.

19 Stericycle may conduct discovery into additional subjects relevant to either claim consistent with the scope of discovery permitted under WAC 480-07-400 and agreed to by the parties or approved by further order of the Commission.

20 The Commission will strictly enforce the restrictions on discovery set out above. The Commission will resolve disputes in accordance with WAC 480-07-425(1).

ORDER

21 THE COMMISSION ORDERS That the parties may engage in Phase I discovery subject to WAC 480-07-400 through -425 and the limitations set forth in the body of this order.

Dated at Olympia, Washington, and effective March 8, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge