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6 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

7 STERICYCLE OF WASHINGTON, INC.,

Docket No. TG-121597

8 Complainant,

**STIPULATION REQUESTING
ENTRY OF PROTECTIVE ORDER**

9 v.

10 WASTE MANAGEMENT OF WASHINGTON,
11 INC., d/b/a WM Healthcare Solutions of
Washington,

12 Respondent.
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14 Complainant Stericycle of Washington, Inc. ("Stericycle") and Respondent Waste
15 Management of Washington, Inc., stipulate to, and request entry of, the attached proposed
16 Protective Order to permit discovery by Stericycle of certain confidential documents from Waste
17 Management. Counsel for Commission Staff has advised that he has no objection to entry of the
18 proposed Protective Order.

19 DATED this 7th day of June, 2013.


20 GARVEY SCHUBERT BARER

21 By 

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Solutions of Washington*


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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.

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 checked="" type="checkbox"/> Via Federal Express <input checked="" type="checkbox"/> Via Email
Adam E. Torem Administrative Law Judge Washington Utilities and Transportation Commission atorem@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
Steven W. Smith Attorney General's Office of Washington PO Box 40128 Olympia, WA 98504-0128 (360) 664-1225 ssmith@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
Stephen B. Johnson Jared Van Kirk Garvey Schubert Barer 1191 Second Avenue, Suite 1800 Seattle, WA 98101 (206) 464-3939 sjohnson@gsblaw.com jvankirk@gsblaw.com v Bowen@gsblaw.com dbarrientes@gsblaw.com <i>Attorneys for Stericycle of Washington, Inc.</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
James K. Sells Attorney at Law PMB 22 3110 Judson Street Gig Harbor, WA 98335 jamesells@comcast.net cheryls@rsulaw.com <i>Attorneys for Washington Refuse and Recycling Association</i>	<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 7th day of June, 2013.



 Deanna Schow

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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

ORDER 05

PROTECTIVE ORDER

1 1. The Washington Utilities and Transportation Commission (Commission) finds that a
2 protective order to govern disclosure of proprietary and confidential information in discovery is
3 necessary in this proceeding. The Commission provided the parties an opportunity to comment on the
4 need for a protective order and submit proposed orders, considered their comments and submissions,
5 and finds as follows:

6 a. It is likely that proprietary and confidential information will be requested in
7 discovery in regard to the issues in this proceeding.

8 b. Absent a protective order, a significant risk exists that confidential information
9 might become available to persons who have no legitimate need for such
10 information and that injury to the information provider could result.

11 2. Accordingly, the Commission enters this Protective Order in accordance with RCW
12 34.05.446 to govern the discovery and use of proprietary and confidential documents in this proceeding.

13 **A. General Provisions.**

14 3. **Confidential Information.** All access, review, use, and disclosure of any material
15 designated by a party to this proceeding as confidential (referred to in this Order as “Confidential
16 Information”) is governed by this Order. The Commission expects Confidential Information may
17 include customer names, customer lists, marketing methods or strategies, business plans and policies,
18 pricing information, and various other materials concerning commercially sensitive information or trade
19 secrets; however, the party wishing to designate material as Confidential Information carries the burden
20 of proving proper designation (*see* ¶ 13 of this Order).

21 4. Parties must scrutinize potentially confidential material and limit the amount they
22 designate “Confidential Information” to only information that truly might compromise their ability to
23 compete fairly or that otherwise might impose a business risk if disseminated without the protections
24 provided in this Order. The first page and individual pages of a document determined in good faith to
25 include Confidential Information must be marked by a stamp that reads: “**Confidential Per Protective**
26 **Order in WUTC Docket TG-121597.**” Placing a Confidential Information stamp on the first page of a
27 document indicates only that one or more pages contains Confidential Information and will not serve to
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1 protect the entire contents of the multi-page document. Each page of a document that contains
2 Confidential Information must be marked separately to so indicate.

3 **5. Purpose of Access and Use; Confidentiality.** No Confidential Information distributed
4 or obtained pursuant to this Protective Order may be requested, reviewed, used or disclosed, directly or
5 indirectly, by any party, or counsel or any other person having access pursuant to this Order, except for
6 purposes of this proceeding. Persons having access to the Confidential Information pursuant to this
7 Order must request, review, use or disclose Confidential Information only in accordance with the terms
8 specified in this Order. Without limiting the foregoing, persons having access to Confidential
9 Information shall not use any Confidential Information to design, develop, provide, or market any
10 product, service, or business strategy which would compete with any product of the party asserting
11 Confidentiality.

12 **B. Disclosure of Confidential Information.**

13 **6. Persons Permitted Access.** No Confidential Information may be made available to
14 anyone other than Commissioners, the Presiding Officer, Commission Staff and counsel for the parties
15 for this proceeding, including counsel for Commission Staff, and attorneys' administrative staff such as
16 paralegals. Counsel may authorize those persons designated as their party's experts in this matter to
17 access any Confidential Information solely for the purposes of this proceeding. No such expert may be
18 an officer, director, direct employee, major shareholder, or principal of any party or any competitor of
19 any party. Outside counsel are responsible for appropriate supervision of their staff and experts to
20 ensure the protection of all Confidential Information consistent with the terms of this Order. Any
21 dispute concerning persons entitled to access Confidential Information must be brought before the
22 Presiding Officer for resolution.

23 **7. Nondisclosure Agreement.** Before being allowed access to any Confidential
24 Information designated for this docket, each person permitted access subject to Paragraph 6, other than
25 the Commissioners and the Presiding Officer, must agree to comply with and be bound by this Order on
26 the form of Exhibit A attached to this Order. Counsel seeking access to the Confidential Information
27 must deliver to counsel for the party producing Confidential Information a copy of each signed
28 agreement.

1 8. **Access to Confidential Information.** Requests for special provisions for inspection,
2 dissemination or use of Confidential documents must be submitted to the Presiding Officer if not agreed
3 by the parties. The parties must neither distribute copies of documents that include Confidential
4 Information to, nor discuss the contents of Confidential documents with, any person not bound by this
5 Order and authorized pursuant to Paragraph 6. Persons to whom copies of documents are provided
6 pursuant to this Order warrant by signing the confidentiality agreement that they will exercise all
7 reasonable diligence to maintain the documents consistent with the requirements herein.

8 9. **Inadvertent Disclosure.** In the case of inadvertent disclosure of Confidential
9 Information without the appropriate markings to designate confidentiality and invoke the protections of
10 this Order, a party wishing to later designate any previously disclosed item(s) as “Confidential
11 Information” shall immediately notify all receiving parties. The previously received item(s) shall be
12 promptly returned to the originating party (in a method akin to the procedures for Return of Confidential
13 Information set out in Paragraph 14 of this Order) and the originating party shall promptly replace the
14 items with corrected documents carrying the required markings. In such a circumstance, all parties must
15 take reasonable steps to ensure that late-designated Confidential Information is afforded the same
16 protections as though originally so designated, to include retrieval of any copies made or shared.

17 **C. Use of Confidential Information in this Proceeding.**

18 10. **Protected Use by Agreement.** Any party who intends to use any Confidential
19 Information in the course of this proceeding, including but not limited to testimony to be filed by the
20 party, exhibits, direct and cross-examination of witnesses, rebuttal testimony, or a proffer of evidence,
21 shall give at least 16 days notice of such intent to all parties and to the Presiding Officer, and attempt in
22 good faith to reach an agreement to use the Confidential Information in a manner which will protect its
23 trade secret, proprietary, or other confidential nature. The parties shall consider such methods as: (1)
24 use of clearly redacted versions of Confidential documents, (2) characterizations of data rather than
25 disclosure of substantive data, and (3) aggregations of data. The goal is to protect each party’s rights
26 with respect to Confidential Information while allowing all parties the latitude to present the evidence
27 necessary to their respective cases.
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1 11. If the parties cannot reach agreement about the use of Confidential Information in this
2 proceeding, they must notify the presiding officer, who will determine the manner of best protecting the
3 Confidential Information while ensuring that all parties are afforded their rights to due process,
4 including the right to cross-examine witnesses.

5 12. **Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict
6 any party's right to challenge the admissibility or use of any Confidential Information on any ground
7 other than confidentiality, including but not limited to competence, relevance, or privilege.

8 13. **Right to Challenge Confidentiality.** Any party may challenge another party's
9 contention that information should be entitled to protection under this Order. The Presiding Officer will
10 conduct an *in camera* hearing to determine whether the information shall be accorded protection under
11 the terms of this Order. The party asserting confidentiality bears the burden of proving that confidential
12 designation is proper. Pending determination, the challenged information shall be treated in all respects
13 as protected under the terms of this Order. If the Presiding Officer determines the challenged
14 information is not entitled to protection under this Order, the information continues to be protected
15 under this Order for ten days thereafter to enable the producing party to seek Commission or judicial
16 review of the determination, including a stay of the decision's effect pending further review.

17 14. **Return of Confidential Information.** Within thirty days after the conclusion of this
18 proceeding, including any administrative or judicial review, every person who possesses any
19 Confidential Information (including personal notes that make substantive reference to Confidential
20 Information and transcripts of any depositions to which a claim of Confidentiality is made) must return
21 all Confidential Information to the party that produced it, or at the producing party's election, must
22 certify in writing that all copies and substantive references to Confidential Information in notes have
23 been destroyed. The only exceptions are: (1) that counsel may retain exhibits as counsel records, for
24 only so long as counsel represents the participant in this proceeding and any administrative or judicial
25 review; and (2) that the Commission will retain a complete record of the testimony and documentary
26 evidence admitted to the record or refused admission, including Confidential Information, as part of the
27 Agency's official records.

EXHIBIT A

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION IN DOCKET TG-121597

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket TG-121597 and acknowledge that I have read the Protective Order and fully understand its terms and conditions.

Signature

Date

Address