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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

SUPPLEMENTAL DECLARATION OF
STEPHEN JOHNSON IN SUPPORT OF
STERICYCLE OF WASHINGTON, INC.'S
MOTION FOR RECONSIDERATION OF
ORDER DENYING THIRD-PARTY
DISCOVERY

1. I, Stephen B. Johnson, am over 18 and competent to testify as to the matters stated herein. I make this declaration based on my own personal knowledge.

2. I am counsel to Complainant Stericycle of Washington, Inc. in this matter.

3. Attached hereto as Exhibit 1 is a true and correct copy of a February 28, 2012 email from Juan Escalante of Northwest Hospital & Medical Center to James Ryan of Stericycle.

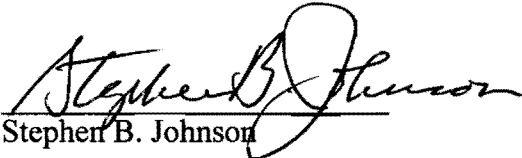
4. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the July 17, 2013 Deposition of Jeffery Norton.

5. Attached hereto as Exhibit 3 are proposed subpoenas and subpoenas duces

1 tecum from the Commission to Northwest Hospital & Medical Center and Juan Escalante and
2 Rose Hong, its employees.

3 6. I declare under penalty of perjury under the laws of the State of Washington that
4 the foregoing is true and correct to the best of my knowledge and belief.

5 SIGNED this 26th day of August, 2013 at Seattle, Washington

6
7 
8 Stephen B. Johnson
9

1 **CERTIFICATE OF SERVICE**

2 I, Vickie L. Owen, certify under penalty of perjury under the laws of the State of
3 Washington that, on August 26, 2013, I caused to be served on the person(s) listed below in the
4 manner shown a copy of SUPPLEMENTAL DECLARATION OF STEPHEN JOHNSON IN
5 SUPPORT OF STERICYCLE OF WASHINGTON, INC.'S MOTION FOR
6 RECONSIDERATION OF ORDER DENYING THIRD-PARTY DISCOVERY:

7 Washington Utilities and
8 Transportation Commission
9 1300 S. Evergreen Park Dr. SW
10 PO Box 47250
11 Olympia, WA 98504-7250
12 (360) 664-1160
13 records@utc.wa.gov

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

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

- Via Email

17 Jessica Goldman
18 Polly L. McNeill
19 Summit Law Group
20 315 5th Avenue South, Suite 1000
21 Seattle, WA 98104
22 jessicag@summitlaw.com
23 pollym@summitlaw.com
24 katiea@summitlaw.com
25 brians@summitlaw.com

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

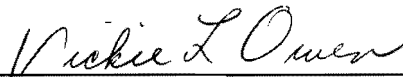
26 Steven W. Smith
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
PO Box 40128
Olympia, WA 98504-0128
(360) 664-1225
(360) 586-5522 Fax
ssmith@utc.wa.gov

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

1 James K. Sells
2 Attorney at Law
3 PMB 22, 3110 Judson Street
4 Gig Harbor, WA 98335
5 jamesells@comcast.net
6 cheryls@rsulaw.com
7 *Attorney for Washington Refuse and*
8 *Recycling Association*

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

9
10 Dated at Seattle, Washington this 26th day of August, 2013.

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26


Vickie L. Owen
vowen@gsblaw.com

EXHIBIT 1

From: Juan Escalante [<mailto:Juan.Escalante@nwhsea.org>]

Sent: Tuesday, February 28, 2012 9:10 AM

To: Ryan, James

Subject: RE: Terminating Stericycle letter

James,

There was not a specific percentage. All together, we were expecting a savings of \$6,000. We can discuss more following the sharps meeting later this week.

Thanks!

Juan Escalante | *Environmental Services Manager*

Northwest Hospital & Medical Center

1550 N 115th Street, MC - E110, Seattle, WA 98133

PH 206-368-2125 | FAX 206-368-2126 | www.nwhospital.org

Please consider the impact to the environment before printing this e-mail.

UW Medicine

NORTHWEST HOSPITAL
& MEDICAL CENTER

From: Ryan, James [<mailto:JRyan@STERICYCLE.com>]

Sent: Tuesday, February 21, 2012 8:25 PM

To: Juan Escalante

Subject: RE: Terminating Stericycle letter

Juan,

Can you tell me the percentage of cost savings that Waste Management is guaranteeing you?

Thanks,

James

From: Juan Escalante [<mailto:Juan.Escalante@nwhsea.org>]

Sent: Tuesday, February 21, 2012 3:16 PM

To: Ryan, James

Subject: Terminating Stericycle letter

James,

As we discussed, Northwest Hospital and Medical Center will be terminating Regulated Medical Waste services with Stericycle. Attached you will find a termination letter which is also being sent via US Mail.

We plan to continue using the Biosystems Sharps Management Program from Stericycle.

Thank you.

Juan Escalante | *Environmental Services Manager*

Northwest Hospital & Medical Center
1550 N 115th Street, MC - E110, Seattle, WA 98133
PH 206-368-2125 | FAX 206-368-2126 | www.nwhospital.org
Please consider the impact to the environment before printing this e-mail.

UW Medicine

NORTHWEST HOSPITAL
& MEDICAL CENTER

CONFIDENTIALITY NOTICE: The information in this Email is confidential and may be privileged. This Email is intended solely for the named recipient or recipients. If you are not the intended recipient, any use, disclosure, copying or distribution of this Email is prohibited. If you are not the intended recipient, please inform us by replying with the subject line marked "Wrong Address" and then deleting this Email and any attachments. Stericycle, Inc. uses regularly updated anti-virus software in an attempt to reduce the possibility of transmitting computer viruses. We do not guarantee, however, that any attachments to this Email are virus-free.

Nota de confidencialidad: La información que presenta este correo es confidencial, y puede ser de uso privilegiado. Este correo intenta ser enviado solo al destinatario, o a los destinatarios. Si usted no es el destinatario, no podrá usar, desglosar, copiar, o distribuir la información de este correo ya que está prohibido. Si usted no es el correcto destinatario, por favor infórmenos reenviándonos el mismo con el asunto "Dirección Incorrecta", y luego borre el correo y los adjuntos. Stericycle, Inc. usa regularmente actualizaciones de software anti-virus para así reducir posibles virus. De todas maneras, no garantizamos que los adjuntos estén libres de virus.

EXHIBIT 2

Byers & Anderson Court Reporters/Video/Videoconferencing
Seattle/Tacoma, Washington

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1 out --

2 Q All right.

3 A -- I'm sure I mentioned that.

4 Q That's what I meant.

5 A Yeah.

6 Q Before this written recycling offer was made on
7 July 1st, 2011, you communicated about both potential
8 services.

9 A Yes.

10 Q Okay. In the ways that you already described.

11 And you don't recall whether or not you talked
12 about them at the same meetings or not.

13 A I am sure I did.

14 Q Okay. So you did talk about them in the same meetings.

15 A I don't know about all of them, but some of them, yes.

16 Q They were talked about at the same time, at least
17 sometimes.

18 A Yes.

19 Q Okay. And then this -- and then in this email that we
20 looked at from November 1st, 2011, it states that they
21 finally let you know that they were going to go with
22 Waste Management with respect to both services.

23 And you told me you couldn't say one way or the
24 other whether that happened at the same time or not.

25 A Correct.

Jeff Norton
July 17, 2013

1 Q Okay. You agree with me that the email could be read
2 to indicate that they did.

3 A It could be read that way, yes.

4 Q And you could have meant it that way?

5 A Yes.

6 Q Okay. And then both the agreements were signed on the
7 same date.

8 A Correct.

9 Q Isn't it the case then that these two agreements were
10 linked in your offer to Northwest in a package deal?

11 A I wouldn't call them a package deal, no, because I
12 would have had a bundled agreement like I did with
13 Skagit or -- these were separate services that we
14 talked about. Since they already had other services
15 with us, it made sense to do them all at the same time.

16 Q So it's your testimony that they didn't have to agree
17 to one to do the other.

18 A That's correct.

19 Q Did you ever communicate that to them, that they could
20 choose either or both services at their discretion?

21 A I'm sure I did.

22 Q Do you recall having done that, or --

23 A No.

24 Q -- is that something you just think you would have
25 done?

Jeff Norton
July 17, 2013

1 A I think I would have done. I don't recall.

2 (Exhibit 4 marked for
3 identification.)
4

5 Q (By Mr. Van Kirk) You've definitely seen this email
6 before. Please turn to the second page of Exhibit 4.

7 A (Witness complies.)

8 Q Look at that top email. I'm sure you remember it.

9 A Yes.

10 Q Okay. Of course this is the email where you're writing
11 to someone about a medical center, and you --

12 A Correct.

13 Q -- make the statement there that starts, "We can also
14 service you for medical waste similar to what we did
15 for Northwest Hospital."

16 So given the -- the similarity and the timeline of
17 the negotiation with the hospital that we already
18 talked about, and then on top of it the subsequent
19 email where you say that the deal with Northwest
20 Hospital was similar to your offer to provide reduced
21 recycling rates in exchange for medical waste service,
22 it's still your testimony that the two were not linked?

23 MS. GOLDMAN: Objection. Misstates the
24 email that's being referenced.

25 THE WITNESS: Yes.

Jeff Norton
July 17, 2013

1 Q (By Mr. Van Kirk) Is there anything -- so you did say
2 this is similar to what we did for Northwest Hospital.

3 If not -- what could possibly be similar to what
4 you did for Northwest Hospital other than an offer to
5 reduce recycling rates in exchange for an agreement to
6 provide medical waste?

7 A Well, this is purely me trying to get some more medical
8 waste business. The rates aren't the same as Northwest
9 Hospital. I believe that's because they weren't giving
10 any cardboard. And I was trying to get some medical
11 waste business separately.

12 I did mention Northwest Hospital, but probably
13 just as a reference that we're getting their -- their
14 business as well.

15 Q But you understand that's not what -- that's not what
16 this language means, right?

17 MS. GOLDMAN: Objection. Asked and
18 answered.

19 Q (By Mr. Van Kirk) Do you agree that what you just told
20 me is not the same as what's written in this email?

21 A Yes.

22 Q Can you think of any reason why you wouldn't have been
23 saying something that was accurate in this email?

24 A I just knew that I could get approved for that pricing,
25 those two different prices, and I was trying to get

Jeff Norton
July 17, 2013

1 medical waste service for this account. I mentioned
2 Northwest Hospital just as a reference.

3 (Exhibit 5 marked for
4 identification.)

5

6 Q (By Mr. Van Kirk) I'm handing you Exhibit 5.

7 MR. VAN KIRK: Jessica, this is the
8 first one that has confidential stamp on it from what
9 you sent me the other day.

10 We can go off the record.

11 (Brief pause in the
12 proceedings.)

13

14 MR. VAN KIRK: So we just talked briefly
15 off the record about confidentiality procedures for
16 this deposition.

17 What I said was when we get the final transcript,
18 I won't pass it on immediately to my clients, let's
19 say, for three days, unless you tell me you need longer
20 than that. And you can look at the -- the discussion
21 of any confidential records that came up in this
22 deposition, you could let me know what portions of the
23 transcript you think reveal enough about those records
24 that they should also be deemed confidential. After
25 you do that, we'll treat them accordingly under the

Jeff Norton
July 17, 2013

EXHIBIT 3

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

[PROPOSED] SUBPOENA

AND

SUBPOENA DUCES TECUM FOR
PRODUCTION OF DOCUMENTS

The State of Washington to Northwest Hospital & Medical Center and to Juan Escalante:

You are commanded to appear to testify at the taking of a deposition in the above proceeding at 9:30 am on September 23, 2013 at Northwest Hospital & Medical Center, 1550 N. 115th Street Seattle, WA 98133-9733, or at an alternative time, date, and place to be agreed upon between Northwest Hospital & Medical Center, Juan Escalante, and legal counsel for Stericycle of Washington, Inc., to give testimony and evidence under oath concerning service agreements between Northwest Hospital and Waste Management for the provision of medical waste and/or recycling collection, transportation, processing and treatment services, and solicitations, negotiations or other communications related to such services. This is ordered pursuant to the subpoena powers granted in RCW 34.05.446, RCW 80.01.060(1) and RCW 81.04.510.

You are further commanded to bring with you the following documents:

For the time period of January 1, 2010 to the present, all documents and other records relating to: solicitations by Waste Management to provide medical waste and/or recycling collection, transportation, processing and treatment services; negotiations with Waste Management concerning such services; and the execution of service agreements between Northwest Hospital and Waste Management related to such services. This request includes but is not limited to communications between Northwest Hospital and Waste Management or communications internal to Northwest Hospital, including email communications.

In lieu of producing these documents at the deposition, you may mail a copy of the subpoenaed documents to legal counsel for Stericycle of Washington, Inc., together with your certification that the items produced are true and correct copies of the subpoenaed documents. If you choose to produce the subpoenaed documents by mailing them rather than producing them at the proceeding, the subpoenaed documents must be received by legal counsel for Stericycle of Washington, Inc. by a mutually agreeable date prior to the date set out above for the deposition.

DATED at Olympia, Washington, and effective September __, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

EXHIBIT 4

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

[PROPOSED] SUBPOENA

AND

SUBPOENA DUCES TECUM FOR
PRODUCTION OF DOCUMENTS

The State of Washington to Northwest Hospital & Medical Center and to Rose Hong:

You are commanded to appear to testify at the taking of a deposition in the above proceeding at 12:30 pm on September 23, 2013 at Northwest Hospital & Medical Center, 1550 N. 115th Street Seattle, WA 98133-9733, or at an alternative time, date, and place to be agreed upon between Northwest Hospital & Medical Center, Rose Hong, and legal counsel for Stericycle of Washington, Inc., to give testimony and evidence under oath concerning service agreements between Northwest Hospital and Waste Management for the provision of medical waste and/or recycling collection, transportation, processing and treatment services, and solicitations, negotiations or other communications related to such services. This is ordered pursuant to the subpoena powers granted in RCW 34.05.446, RCW 80.01.060(1) and RCW 81.04.510.

You are further commanded to bring with you the following documents:

For the time period of January 1, 2010 to the present, all documents and other records relating to: solicitations by Waste Management to provide medical waste and/or recycling collection, transportation, processing and treatment services; negotiations with Waste Management concerning such services; and the execution of service agreements between Northwest Hospital and Waste Management related to such services. This request includes but is not limited to communications between Northwest Hospital and Waste Management or communications internal to Northwest Hospital, including email communications.

In lieu of producing these documents at the deposition, you may mail a copy of the subpoenaed documents to legal counsel for Stericycle of Washington, Inc., together with your certification that the items produced are true and correct copies of the subpoenaed documents. If you choose to produce the subpoenaed documents by mailing them rather than producing them at the proceeding, the subpoenaed documents must be received by legal counsel for Stericycle of Washington, Inc. by a mutually agreeable date prior to the date set out above for the deposition.

DATED at Olympia, Washington, and effective September __, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge