

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of
WASTE MANAGEMENT OF
WASHINGTON, INC.
d/b/a WM Healthcare Solutions
of Washington
720 4th Ave. Ste 400
Kirkland, WA 98033-8136

Docket No. TG-120033
PROTESTANT STERICYCLE OF
WASHINGTON, INC.'S MOTION FOR
LEAVE TO TAKE DEPOSITIONS

PROTESTANT STERICYCLE OF WASHINGTON, INC.'S MOTION FOR
LEAVE TO TAKE DEPOSITIONS

GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
eighteenth floor
1191 second avenue
seattle, washington 98101-2939
206 464-3939

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. Introduction

1. Pursuant to WAC 480-07-410 and Prehearing Conference Order (Order 01), protestant Stericycle of Washington, Inc. ("Stericycle") respectfully requests the Commission's leave to take the depositions of four persons in the above captioned application proceeding. Stericycle requests depositions of two employees of Waste Management of Washington, Inc. ("Waste Management"), Jeff Daub and Jeff Norton, who have been identified by Waste Management as persons with significant knowledge relevant to this proceeding and who are, therefore, likely witnesses for Waste Management. Stericycle requests an order compelling the attendance of these party witnesses or, if necessary, the Commission's authorization for Stericycle's counsel to issue subpoenas compelling their attendance pursuant to RCW 34.05.446, at a time and place to be agreed upon by the parties to this proceeding, but not later than August 24, 2012.

2. Stericycle also requests leave to take the depositions of two third-party witnesses who are employed by Northwest Hospital, a customer of Waste Management. These depositions are sought to confirm and elucidate certain specific conduct of Waste Management that has been made known to Stericycle and which would constitute unlawful rebating of regulated medical waste collection charges specified in Waste Management's tariff. Stericycle requests the Commission's authorization to issue subpoenas duces tecum pursuant to RCW 34.05.446 compelling the attendance of these witnesses and production of relevant documents at a time and place to be agreed upon by the parties to this proceeding and each witness, but not later than September 21, 2012.

This Motion is based upon the Declaration of James Ryan, filed herewith, and the other files and records herein.

II. Discussion

1 3. WAC 480-07-410(1) provides that “[a] party may depose any person identified
2 by another party as a potential witness” and that “[a] party may depose a person who has not
3 been identified as a potential witness, if the presiding officer approves the deposition on a
4 finding that the person appears to possess information significant to the party's case.”

5 A. Waste Management Witnesses.

6 4. In its supplemental discovery responses and in verbal communications between
7 counsel, Waste Management has identified Jeff Daub, Senior District Manager, and Jeff
8 Norton, Account Development Manager, as knowledgeable on a multitude of issues relevant to
9 this application proceeding. For example, these Waste Management employees are identified
10 as knowledgeable concerning the nature of the biomedical waste collection, transportation, and
11 processing services that Waste Management intends to offer, the alleged need in the generator
12 community for the overlapping service proposed by Waste Management, Waste Management’s
13 advertising and commercial solicitation for its biomedical waste services, the sharps recycling
14 service Waste Management contends is not a regulated medical waste collection service, and
15 solicitations to and agreements with biomedical waste generators for recycling services which
16 Stericycle contends involve unlawful rebates. *See* Exhibit A attached, Waste Management’s
17 Supplemental Responses to Stericycle’s Data Requests No. 8-9, 14, 18, 20, 22, 24-26. Among
18 other issues, these areas of knowledge are relevant to the alleged public need for additional,
19 overlapping services that is at the core of this application proceeding and Waste Management’s
20 regulatory fitness to market and provide its services in a manner consistent with law and
21 Commission regulations.

22 5. Given the substantial knowledge that Waste Management has stated is possessed
23 by these two managers, they are potential Waste Management witnesses under WAC 480-07-
24 410(1) who are properly subject to deposition. Moreover, depositions would be an efficient
25 means for probing the knowledge of these witnesses, alleviating the need for additional detailed
26 written discovery through data requests. Stericycle understands that Waste Management

1 considers these two managers potential, if not likely, witnesses and believes their depositions
2 are appropriate. Stericycle respectfully requests an order allowing such depositions, and
3 compelling the attendance of Jeff Daub and Jeff Norton at a time to be fixed by agreement of
4 the parties, but not later than August 24, 2012.

5 A. Northwest Hospital Witnesses.

6 6. In February 2012, Northwest Hospital terminated its contract with Stericycle for
7 biomedical waste collection services. In the course of discussion with Stericycle's Major
8 Account Executive James Ryan, Northwest Hospital's Environmental Services Manager Juan
9 Escalante, informed Mr. Ryan that Waste Management had offered to reduce the cost of its
10 commercial recycling services to Northwest Hospital, which were already being provided by
11 Waste Management, if Northwest Hospital would agree to move its biomedical waste
12 collection business to Waste Management. J. Ryan Decl., ¶3. Mr. Ryan has indicated that
13 Rose Hong, Northwest Hospital's Facilities Director, was also involved in considering Waste
14 Management's offer and was involved in the decision to switch from Stericycle to Waste
15 Management for biomedical waste collection services. J. Ryan Decl., ¶4.

16 7. In its supplemental discovery responses Waste Management has confirmed
17 much of these events. It has confirmed that it now provides commercial recycling services to
18 Northwest Hospital at a discount from the rate offered before Northwest Hospital accepted
19 Waste Management's biomedical waste services. *See* Waste Management's Supplemental
20 Responses to Stericycle's Data Requests No. 20 ("Prior to providing biomedical waste services
21 to Northwest Hospital, Waste Management charged the hospital \$132 per haul for recycling.
22 Currently, Waste Management charges the hospital the competitive rate of \$95 per haul for
23 recycling with a \$40/ton refund based on the market commodity price obtained by Waste
24 Management for the recycled material."). Waste Management has also confirmed that Ms.
25 Hong is a Northwest Hospital representative knowledgeable concerning Waste Management's
26

1 solicitations from Jeff Norton concerning commercial recycling. *See* Waste Management's
2 Supplemental Responses to Stericycle's Data Requests No. 20, 22.

3 8. Stericycle contends that discounting unregulated services as an inducement to
4 obtain a generator's regulated medical waste collection business is unlawful rebating under the
5 Commission's precedent. *See In re Ryder Distribution Resources, Inc.*, Order M.V.G. No.
6 1761, Docket No. GA-75154 (Aug. 11, 1995), at pp. 7-8 (rejecting payments to a hospital
7 association as anti-competitive and an unlawful rebate because the payments served as an
8 inducement for the association's members to contract for regulated services). Waste
9 Management's failure to abide by the law when marketing its biomedical waste services to
10 current and potential customers is an issue that goes to both Waste Management's regulatory
11 fitness and to whether Waste Management's proposed new services are in the public interest.

12 9. Waste Management has indicated that it has approached other biomedical waste
13 generators to offer recycling services and there is every reason to believe that it has offered
14 discounts on unregulated services as an inducement to contract with Waste Management for
15 biomedical waste collection services and will continue to do so. *See* Waste Management's
16 Supplemental Responses to Stericycle's Data Requests No. 22. Stericycle believes that it is not
17 in the public interest for Waste Management to siphon customers from an established carrier
18 through direct or indirect rebates. Mr. Escalante's and Ms. Hong's depositions will allow
19 Stericycle to confirm and elucidate the full scope of these practices and present that information
20 at the hearing. For these reasons the depositions of Mr. Escalante and Ms. Hong are
21 appropriate under WAC 480-07-410(1) as they are third-party witnesses in possession of
22 information significant to Stericycle's case. Because Mr. Escalante and Ms. Hong are third-
23 party witnesses, Stericycle respectfully requests that the Commission authorize its counsel to
24 issue subpoenas duces tecum compelling their attendance at depositions and production of
25 documents at times to be fixed by Mr. Escalante, Ms. Hong, and the parties, but not later than
26 September 21, 2012.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


IV. Conclusion

10. For the foregoing reasons Stericycle respectfully requests leave to take the depositions of Jeff Daub and Jeff Norton of Waste Management and authorization, or if necessary, to issue subpoenas, compelling their attendance at an agreed date no later than August 24, 2012. Stericycle further respectfully requests leave to take the depositions of Juan Escalante and Rose Hong of Northwest Hospital, and authorization to issue subpoenas compelling their attendance on agreed dates no later than September 21, 2012.

DATED this 31st day of July, 2012.

Respectfully submitted,

GARVEY SCHUBERT BARER

By 

Stephen B. Johnson, WSBA #6196
Jared Van Kirk, WSBA #37029
Attorneys for Protestant Stericycle of
Washington, Inc.

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 July 31, 2012, I caused to be served on the person(s) listed below in the
4 manner shown a copy of PROTESTANT STERICYCLE OF WASHINGTON, INC.'S
5 MOTION FOR LEAVE TO TAKE DEPOSITIONS:

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

- 13 Via Legal Messenger
- 14 Via Facsimile
- 15 Via U.S. Mail, First Class,
16 Postage Prepaid
- 17 Via Email

18 Administrative Law Judge
19 Gregory Kopta
20 gkopta@utc.wa.gov

- 21 Via Email

22 Jessica Goldman
23 Polly L. McNeill
24 Summit Law Group
25 315 – 5th Avenue South
26 Seattle, WA 98104
jessicag@summitlaw.com
polym@summitlaw.com
kathym@summitlaw.com
deannas@summitlaw.com

- 27 Via Legal Messenger
- 28 Via Facsimile
- 29 Via U.S. Mail, First Class,
30 Postage Prepaid
- 31 Via Email

32 James K. Sells
33 Attorney at Law
34 PMB 22, 3110 Judson Street
35 Gig Harbor, WA 98335
36 jamesells@comcast.net
cheryls@rsulaw.com
*Attorney for Protestant WRRRA, Rubatino,
Consolidated, Murrey's and Pullman*


- 37 Via Legal Messenger
- 38 Via Facsimile
- 39 Via U.S. Mail, First Class,
40 Postage Prepaid
- 41 Via Email

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Frona Woods
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
fwoods@utc.wa.gov
BDeMarco@utc.wa.gov

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

Dated at Seattle, Washington this 31st day of July, 2012.



Vickie L. Owen
vowen@gsblaw.com

EXHIBIT A

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of

WASTE MANAGEMENT OF
WASHINGTON, INC.
d/b/a WM Healthcare Solutions
of Washington
720 4th Ave. Ste 400
Kirkland, WA 98033-8136

Docket No. TG-120033

**PROTESTANT STERICYCLE OF
WASHINGTON, INC.'S FIRST DATA
REQUESTS TO APPLICANT WASTE
MANAGEMENT OF WASHINGTON,
INC. AND SUPPLEMENTAL
RESPONSES THERETO**

Subject to and without waving its previously stated objections, Waste Management of Washington, Inc. ("Waste Management") supplements its July 5, 2012 responses to Stericycle's First Data Requests as follows.

DATA REQUESTS

DATA REQUEST NO. 8:

Identify and Describe all offers and/or solicitations Relating to Your current or proposed Biomedical Waste Services that You have made to any existing or prospective customer from January 1, 2010 to the present.

Produce all Documents and Communications with actual or potential customers Relating to the offers and/or solicitations identified and described in response to this Data Request No. 8.

Supplemental Response: Marketing materials Waste Management has used in soliciting new business and advertizing its biomedical waste services are produced herewith. Jeff Norton and Jeff Daub have knowledge regarding this response.

DATA REQUEST NO. 9:

Identify and Describe all Documents and other materials you have used to advertise, promote, or otherwise make known Your current Biomedical Waste Services and all materials you intend to use for such purposes should Your Application be approved.

Produce copies of all such advertising and promotional Documents and materials.

Supplemental Response: Marketing materials Waste Management has used in soliciting new business and advertizing its biomedical waste services are produced herewith. Jeff Norton and Jeff Daub have knowledge regarding this response.

DATA REQUEST NO. 12:

Please answer the following questions in detail with respect to any Biomedical Waste Services that You have offered or provided in Washington State since January 1, 2010 and the Biomedical Waste Services you intend to offer or provide if your Application is approved. In responding to this Data Request, please Identify and Describe any difference between the Biomedical Waste Services that You have offered or provided in Washington State and the Biomedical Waste Services you intend to offer or provide in Washington State in the future if your Application is approved:

- (A) Describe the types of Biomedical Waste you have collected or propose to collect from Washington State customers, including but not limited to softs, sharps, pathological waste, trace chemotherapy, pharmaceutical, or other Biomedical Waste.
- (B) Describe the policies and practices your Washington State customers are or will be required to follow Relating to their accumulation, segregation, packing, and preparation for collection and transportation of each waste type.
- (C) Describe Your policies and practices for ensuring and verifying that each waste type is correctly segregated, packed, and prepared for collection and transportation in accordance with the policies and practices described in (B) above.
- (D) Describe each type of container (including sharps containers) that Your Washington State customers have used or will in the future use to accumulate, segregate, pack, and prepare for collection and transportation each waste type, including but not limited to all specifications, weight limits, and manufacturer information for each such container.
- (E) Describe each type of container (including sharps containers) that You use, propose to use or require Your customers to use in collecting or transporting waste generated by Your Washington State customers, including but not limited to all specifications, weight limits, and manufacturer information for each such container.
- (F) Describe each type of bag or liner that You use, propose to use, or require Your Washington State customers to use in packing and preparing waste for collection and transportation, including but not limited to all specifications, weight limits, and manufacturer information for each such bag or liner.
- (G) Describe all tests or verification processes performed on each of the above referenced containers, bags and liners, including but not limited to tests or verification to ensure that each such container, bag or liner is in compliance with applicable government regulations, including but not limited to U.S. Department of Transportation regulations concerning permeability and weight limits.
- (H) State whether and under what circumstances each type of container, bag or liner described in response to this Data Request No. 12 is or will be reused, recycled,

incinerated, landfilled or otherwise disposed of in conjunction with Your Biomedical Waste Services. If any such containers are or will be reused, Describe the manner and methods by which they will be prepared for reuse. If any such containers are or will be recycled, in whole or in part, Describe the manner and methods by which each will be recycled, including any role of any of Your Affiliates or any third party in such recycling.

- (I) Describe Your policies and practices Relating to the collection of each waste type from Your Washington State customers, transferring the wastes to Your collection vehicle(s), and packing and transporting the collected wastes in those vehicles and in any vehicles used for accumulation, storage, or further (e.g., linehaul) transportation subsequent to collection.
- (J) Describe Your policies and practices for documenting Your receipt and disposition of each waste type and for tracking each waste type at all stages of Your Biomedical Waste Services through treatment and/or disposal.
- (K) Describe Your policies and practices for retaining and storing Documents Relating to Your Biomedical Waste Services and compliance with any governmental regulations Relating to retention and storage of such Documents, including but not limited to U.S. Department of Transportation regulations.
- (L) Describe each regular transportation or collection route that You currently use in providing Biomedical Waste Services and that you propose to use if your Application is granted and Describe how you provide or intend to provide Biomedical Waste Services to customers that are not located on or near a regular transportation or collection route.
- (M) Describe the schedules You use or propose to use for collection of Biomedical Waste from Your Washington State customers. Please state whether You offer or propose to offer "on call" collection services and, if so, Describe your policies and practices for responding to calls for collection, including but not limited to Your proposed response time(s).
- (N) Describe any location or facility to which You currently transport or to which You propose to transport in the future each waste type after collection for the purposes of accumulation, storage, or transfer.
- (O) Describe Your policies and practices Relating to accumulation, storage, or transfer of each waste type.
- (P) Describe each treatment or disposal facility to which You transport or propose to transport Biomedical Waste collected in Washington State and Describe the types of waste and/or circumstances in which You use or propose to use each such treatment or disposal facility.

Produce all contracts, agreements, regulations or protocols governing or specifying the terms and limitations of Your use of each such treatment or disposal facility and related costs or charges.

- (Q) Describe the treatment or disposal method employed by each treatment or disposal facility with respect to each type of Biomedical Waste that You transport or propose to transport to that treatment or disposal facility.
- (R) Describe Your policies and practices Relating to the treatment or disposal of each waste type.
- (S) Describe any waste type that you recycle or propose to recycle, in whole or in part, and Describe your policies and practices Relating to the recycling of any such waste type.
- (T) Describe Your policies and practices Relating to workplace, employee, and public safety at all stages of Your current and proposed Biomedical Waste Services.

Supplemental Response: The materials used for driver training are produced herewith.

- (U) Describe Your policies and practices Relating to spill and accident prevention, notification, clean-up, decontamination, or remediation at all stages of Your Biomedical Waste Services.
- (V) Describe by job category Your training and certification policies and practices for employees involved in offering or providing Your Biomedical Waste Services to Washington State customers.

Supplemental Response: The materials used for driver training are produced herewith.

- (W) Describe any Services Relating to Biomedical Waste, other than the Biomedical Waste Services as defined and described above, that You offer or propose to offer Washington State customers.
- (X) Describe any circumstance in which Your current operations or proposed future operations will involve removal of any waste type from one container and transfer of the waste to another container after Your receipt of such waste and prior to treatment or disposal.
- (Y) Produce copies of any Documents containing or describing any of the policies and practices Described in response to this Data Request No. 12, including all Documents provided to customers for this purpose.

Supplemental Response: The materials used for driver training are produced herewith. Jeff Norton and Jeff Daub have knowledge regarding this response.

DATA REQUEST NO. 14:

Identify and Describe (a) each vehicle and any other transportation equipment You, Your Affiliates, or any independent contractor or other third party currently use in providing Biomedical Waste Services to Washington State customers and (b) any additional vehicles and other transportation equipment you intend to use in providing such Services if your Application is granted. Include in Your response a description of all features, design elements or modifications to such vehicles or equipment made for the purpose of preparing them for use to store or transport Biomedical Waste, DOT numbers, registration numbers, licensing information, signage, and vehicle markings, and state whether You own, lease, or rent the vehicle or other equipment and, if leased or rented, the name and address of the title holder.

Supplemental Response: A description of Waste Management's vehicles is produced herewith. Waste Management marks its vehicles in compliance with US DOT regulations. Jeff Norton and Jeff Daub have knowledge regarding this response.

DATA REQUEST NO. 18:

Describe any Services You offer involving the collection and transportation of sharps or sharps waste, including but not limited to any Service Relating to the BD ecoFinity Life Cycle Solution sharps program. Your answer must include, without limitation:

(a) A statement characterizing Your Service either as involving the collection and transportation of recyclable materials unregulated by the WUTC or as involving the collection and transportation of Biomedical Waste regulated by the WUTC;

(b) A description of the material collected and transported;

(c) A description of the sharps containers used, including all specifications, their manufacturers, and all manufacturer's information;

(d) A description of all treatment and disposal methods employed for the material, including sharps containers;

(e) If You contend that any portion of the sharps, sharps waste or sharps containers are recycled, a description of the material recycled, the methods used in such recycling, the percentage of the sharps or sharps containers that is recycled, and the methods used in tracking, calculating, and/or documenting the amounts recycled;

(f) The rates You charge for any such Services; and

(g) The Washington State generators of Biomedical Waste to whom you provide any such Services.

Produce copies of all contracts, agreements, purchase orders, invoices, Communications, or other Documents describing or otherwise Related to any Services Identified in response to this Data Request No. 18.

Supplemental Response: Waste Management autoclaves the majority of sharps waste collected. Approved sharps containers are deposited into Waste Management's lined, reusable tubs and are transported to the Seattle processing plant for autoclaving. The sterilized sharps are then transported to Columbia Ridge or Greater Wenatchee Landfill for final disposal. BD ecoFinity is a sharps recycling program rolled out to hospitals in 2011 by Waste Management and Becton Dickenson. Waste Management collects full sharps containers weekly from St. Joseph Medical Center in Bellingham. The contract with St. Joseph Medical Center is produced herewith. The sharps containers are delivered to the Seattle processing facility and are loaded to 1-yard Gaylord's, placed on a 53' trailer and transported to Vernon, California for processing in a Red Bag Solutions machine. The sterilized, washed and shredded sharps containers and their contents are then sent to Talco Corporation where the material is separated utilizing float/sink technology. The plastics recovered in this process are pelletized and used in the remanufacturing of sharps containers. In May and June 2012, recycled sharps and sharps containers yielded between 17% and 28% of the recycled product. Waste Management accepts all approved sharps and sharps containers under both its BD ecoFinity program and its regulated biomedical waste program. Waste Management charges competitive market rates for its BD ecoFinity program and tariff rates for its regulated biomedical waste program. Jeff Daub, Jeff Norton and Tim Tucker have knowledge regarding this response.

DATA REQUEST NO. 20:

Describe each offer, solicitation, meeting, negotiation, or other Communication, and any agreement, contract, or other understanding reached or in effect, within the past 24 months Related to (1) Your Biomedical Waste Services, (2) Your Services Related to the collection, transportation or recycling of recyclable materials, and (3) Your rates or charges for any of such Services, with or involving any representative of each of the following:

- (a) Skagit Valley Hospital (Mt. Vernon)
- (b) Northwest Hospital (Seattle)
- (c) St. Joseph's Hospital (Bellingham)
- (d) Sacred Heart Hospital (Spokane)
- (e) Holy Family Hospital (Spokane)
- (f) Pathology Associates Medical Laboratories.

Produce all Communications, notes, reports, contracts, agreements, or other Documents Related to any offer, solicitation, meeting, negotiation, or other Communication, or any agreement, contract or understanding referenced in this Data Request No. 20.

Supplemental Response: The contracts with these entities along with the one email exchange which is responsive are produced herewith. Waste Management does not perform recycling services for Sacred Heart Medical Center, Holy Family Hospital, or Pathology Associates

Medical Laboratories. Prior to providing biomedical waste services to Skagit Valley Hospital, Waste Management charged the hospital \$600/month for recycling. Currently, Waste Management charges the competitive rate of \$1,800/month for increased recycling at Skagit Valley Hospital. Prior to providing biomedical waste services to Northwest Hospital, Waste Management charged the hospital \$132 per haul for recycling. Currently, Waste Management charges the hospital the competitive rate of \$95 per haul for recycling with a \$40/ton refund based on the market commodity price obtained by Waste Management for the recycled material. Waste Management does not provide regulated biomedical waste services to St. Joseph Medical Center and does not provide recycling services to Sacred Heart Hospital, Holy Family Hospital or PAML. Jeff Norton, Jeff Daub, Mike Charles, Rodger Lycan, Rob Spohn, Rose Hong, and Bill Montgomery have knowledge regarding this response.

DATA REQUEST NO. 22:

Describe each offer, solicitation, meeting, negotiation, or other Communication involving Jeff Norton and (i) any of Your other employees, agents, contractors or representatives, or (ii) the representative(s) of any hospital, healthcare facility, medical laboratory or other biomedical waste generator Related to the collection, transportation or recycling of recyclable materials, Your rates or charges for any such Services or any contract, agreement or understanding Related to such Services within the past 24 months.

Produce all Communications, notes, reports, contracts, agreements, or other Documents Related to any offer, solicitation, meeting, negotiation, or other Communication, or any contract, agreement or understanding referenced in this Data Request No. 22.

Supplemental Response: Waste Management has offered recycling services to the following biomedical waste generators: Northwest Hospital, Virginia Mason, Skagit Valley Hospital, St. Joseph Medical Center, Evergreen Hospital, Seattle Genetics, Swedish Medical Center, PeaceHealth, Bayer Healthcare, and Sacred Heart Medical Center. In each case, Waste Management has made a competitive bid in line with the local market. Because hospitals provide a wide range (and usually large volumes) of commodities, this market is very competitive. In the case of Northwest Hospital and Virginia Mason, the pricing was provided to Waste Management by the hospitals. Waste Management has a state-of-the-art recycling facility in Woodinville and offers facilities competitive options. Responsive documents are produced herewith. Jeff Norton, Mike Jefferies, Kelly Macy, Rob Spohn, Ray Moore, Bill Montgomery, Mike Smith, Juan Escalante, Rose Hong, Andy Flodin, James Owen, David Wick, and Mike Charles have knowledge regarding this response.

DATA REQUEST NO. 24:

Describe any contention by You that there is a need for Your Biomedical Waste Services in the territory covered by Your application and the factual basis for each such contention. Your complete answer must include, but not be limited to:

- (a) the name and address of each generator of Biomedical Waste in Washington State known or believed to be dissatisfied with currently available Biomedical Waste Services;
- (b) the name and job title of each representative of such generators who have communicated such dissatisfaction;
- (c) a description of the manner or method in which such dissatisfaction has been communicated (produce a copy of any such Communication known to You to have been made or memorialized in written, recorded or electronic form);
- (d) identification of the Biomedical Waste Service provider currently providing Biomedical Waste Services to each such generator; and
- (e) a detailed description of the reasons given by each such generator for its dissatisfaction.

Produce all Documents Relating to any complaint or Communication of dissatisfaction described in response to this Data Request No. 24.

Supplemental Response: Generators of biomedical waste who are dissatisfied with currently available biomedical waste services include the following:

- Pathology Associated Medical Laboratories
Rodger Lycan, Procurement Manager
PO Box 2687
Spokane, WA 99204
Dissatisfaction was communicated orally.
Waste Management services approximately 40 sites within the G-237 territory and Stericycle provides services where there is no other choice.
Dissatisfied that Stericycle is the only choice for many of their sites nationwide and that Stericycle's services were overpriced in Kentucky.
- PeaceHealth
Ray Moore, System Contract Manager
James Owen, System Supply Chain Manager
1115 SE 164th Avenue
Vancouver, WA 98683
Dissatisfaction was communicated orally.
Stericycle provides biomedical waste service.
Dissatisfied that Stericycle has monopolized the market for years and has no other option.
PeaceHealth requires a single biomedical waste service provider to all of its facilities.
- Kennewick General Hospital
Christy Kuhn, Director of Environmental Services
900 S Auburn Street
Kennewick, WA 99336
Dissatisfaction about Stericycle's services was communicated orally to Waste Management and was also communicated to Stericycle.

Waste Management now provides biomedical waste service.
Dissatisfied with Stericycle's services because Stericycle missed pickups, left containers behind, and had rude drivers.

- University of Washington
Emily Newcomer, Recycling and Solid Waste Manager
206-685-8928
Dissatisfaction was communicated orally.
Waste Management and Stericycle both provide biomedical waste service.
Dissatisfied with Stericycle's customer service, would like to consolidate all of its biomedical waste with one service provider for the sake of administrative efficiency, and would like there to be competition among service providers to ensure the best price for generators.

Jeff Norton and Jeff Daub, along with each of the individuals identified above, have knowledge regarding this response.

DATA REQUEST NO. 25:

Describe any Biomedical Waste Service You offer or propose to offer that You contend will fill any need described in response to Data Request No. 24.

Supplemental Response: Waste Management will offer competition against Stericycle and a choice for generators for statewide service, offering more complete customer service, local processing, and sharps recycling for large hospitals or rural hospitals. Jeff Norton and Jeff Daub have knowledge regarding this response.

DATA REQUEST NO. 26:

Describe any contention that You offer or will offer Biomedical Waste Services to Washington State generators that are different from those offered by Stericycle or that You believe are or would be superior in any respect to the Biomedical Waste Services offered by Stericycle.

Supplemental Response: Waste Management's treatment facility in Seattle is closer to most of the facilities generating medical waste in Washington than is Stericycle's treatment facility in Lewis County. This includes generators in King, Pierce, Snohomish and Spokane Counties which represent the large majority of biomedical waste. Less travel time for untreated waste from the generator to the treatment facility reduces the risk of liability and the environmental impact of the transportation. Waste Management also has the ability to utilize rail for final disposal, further reducing the number of trucks on the road. Moreover, proximity to the treatment facility makes it more convenient for generators to perform audits on their service provider. Waste Management offers an upgraded containment system for generators including 17-, 31-, and 43-gallon containers with attached lids made by Rehrig. Stericycle only began offering these containers to generators when Waste Management began competing with Stericycle in the G-237 territory and, presently, only offers these containers to generators who

specifically ask for them. Additionally, Waste Management is currently piloting various projects which will offer more sustainable ways to handle biomedical waste, including the BD ecoFinity program to recycle sharps containers (after rendering them non-infectious) and to reclaim the plastics and metals, the Daniels Healthcare reusable sharps container system which reuses sharps containers up to 600 times, the S-4 Plasma Arc Technology which converts any type of waste into synthetic gas and a glass product, and Agylix which converts all types of plastics to synthetic crude oil. Jeff Daub, Jeff Norton and Tim Tucker have knowledge regarding this response.

DATA REQUEST NO. 29:

Provide income statements and itemize Applicant's revenues and expenses for WM Healthcare Solutions of Washington and/or Applicant's current Biomedical Waste Services business for its most recent complete fiscal year and for the year to date. Please present such information in the manner, format and detail of the Annual Report (including all Schedules) that Class A Solid Waste Collection Companies are required to file with the Washington Utilities and Transportation Commission under WAC 480-70-071. Please separately itemize the revenues and expenses associated with Your Biomedical Waste collection and transportation services and Your services associated with treatment and disposal of Biomedical Waste.

Supplemental Response: Income statements are being produced herewith. Michael Weinstein has knowledge regarding this response.

DATA REQUEST NO. 32:

Describe the amount and sources, internal and external, of funds, financing, borrowing, or other financial or capital support that are available to WM Healthcare Solutions of Washington and/or Your Biomedical Waste Services business for the capital investment and operating capital required to support Your Biomedical Waste Services.

Supplemental Response: Waste Management of Washington, Inc. is the wholly-owned subsidiary of Waste Management, Inc. Waste Management, Inc. stands fully behind its Washington subsidiary's application for statewide biomedical waste authority and is committed to providing the financial support necessary to grow this start-up business to profitability. Waste Management, Inc.'s annual report for 2011 showing the corporate parent's financial wherewithal is produced herewith. Michael Weinstein has knowledge regarding this response.

DATA REQUEST NO. 38:

Identify by court, agency, case number and date of filing and Describe all lawsuits or administrative complaints, investigations or proceedings to which You or WM Healthcare Solutions, Inc. have been made a party since January 1, 2009.

Produce all Documents Relating to any lawsuits or administrative complaints, investigations or proceedings identified in response to this Data Request No. 38.

Supplemental Response regarding Waste Management of Washington, Inc.:

- *Melinda Gonzalez v. Waste Management of Washington*, Island County Superior Court No. 11-2-99844-9, filed 9/29/11 (employment case)
- *Jitterbugs Espresso, LLC v. Waste Management of Washington, Inc.*, Skagit County Superior Court No. 10-2-00691-8, filed 4/26/10 (claim of overpayment for services)
- *Mark Ricard v. Waste Management of Washington, Inc.*, Chelan County Superior Court No. 09-2005405, filed 5/8/09 (employment case)
- *Arthur Polkey v. Waste Management of Washington, Inc.*, King County Superior Court No. 09-2-10677-1 SEA, filed 3/5/09 (employment case)
- *Mark Ricard v. Waste Management of Washington, Inc.*, EEOC, filed 2/1/09
- *John Kovach v. Waste Management of Washington, Inc.*, EEOC, filed 2/16/10
- *Gary Klatz v. Waste Management of Washington, Inc.*, EEOC No. 551-2011-00166, filed 2/10/11
- *Debra Brown v. Waste Management of Washington, Inc.*, EEOC No. 846-2011-24043, filed 4/12/11
- *Daniel Flores v. Waste Management of Washington, Inc.*, EEOC No. 38H-2012-00615 and WSHRC No. 03EN-0902-11-2, filed 6/8/12

This response does not include, to the degree responsive, proceedings before OSHA (*see* www.OSHA.gov), NLRB (*see* www.NLRB.gov), local agencies, small claims courts, personal injury claims, and property claims. Katja Ellertson and Andrew Kenefick of Waste Management have knowledge regarding this response.

DATA REQUEST NO. 39:

Describe all citations, notices of violation, penalties, or other sanctions that have been issued to You or Your Affiliates by the federal government, any state, county, city, or other local government, or any agency or division thereof since January 1, 2009.

Produce all Documents Relating to any citations, violations, penalties, or other sanctions identified in response to this Data Request No. 39.

Supplemental Response:

- Skagit Hauling, Washington State Department of Labor and Industries, Inspection No. 314686866, 12/10 (WISHA)
- Puget Sound Clean Air Agency Notice of Violation and Civil Penalty No. 09-297CP, issued 12/22/09 (dust emissions)
- Puget Sound Clean Air Agency Notice of Violation No. 3-005113, issued 7/1/09 (dust emissions)
- Cascade Recycling Center, Department of Labor and Industries No. 313392771, issued 9/28/09 (OSHA logs)

- Cascade Recycling Center, Department of Labor and Industries No. 312648249, issued 7/1/09 (hand protection and recording of injuries)
- Washington Utilities & Transportation Commission, No. TG-091127, filed 10/20/09 (billing of fuel/environmental charge)
- Seattle Public Utilities Notice of Violation, No. 2011-031, issued 12/8/11 (water discharge)
- Washington Department of Ecology Notice of Violation, No. 9274, issued 6/26/12 (water discharge)

There are no responsive weigh master or driver/vehicle citations from Waste Management's biomedical waste services. This response does not include, to the degree responsive, any weigh master or driver/vehicle citations arising in other services provided by Waste Management. Documents regarding the Department of Ecology matter are being produced herewith. Jeff Daub, Katja Ellertson and Andrew Kenefick have knowledge regarding this response.

DATA REQUEST NO. 41:

Identify any person (not previously identified) that Applicant believes has knowledge or information Relating to this proceeding, the Application, the merits of any protest of the Application, Applicant's current or proposed Biomedical Waste Services, Applicant's fitness to provide such services in Washington State, and/or the need for Applicant's proposed Biomedical Waste Services in Washington State. For each person identified, provide a description of the knowledge or information that person is believed to have.

Supplemental Response: In addition to those mentioned above, persons who may have knowledge or information relating to this proceeding include the following:

- Jeff Daub, Senior District Manager, Waste Management, c/o Summit Law Group. Has knowledge regarding Washington's biomedical waste service market.
- Jeff Norton, Account Development Manager, Waste Management, c/o Summit Law Group. Has knowledge regarding Washington's biomedical waste service market.
- Michael Weinstein, Senior Area Pricing Manager, Waste Management, c/o Summit Law Group. Has knowledge regarding Washington's biomedical waste service market.
- Tim Tucker, District Manager, Waste Management, c/o Summit Law Group. Has knowledge regarding the BD ecoFinity program.
- Kelly Macy, Recycling Subject Matter Expert, Waste Management, c/o Summit Law Group. Has knowledge regarding the recycling service market.
- Katie Salinas, Public Sector Account Manager, Waste Management, c/o Summit Law Group. Has knowledge regarding Washington's biomedical waste service market.
- Rod Rosatto, Plant Manager, Waste Management, c/o Summit Law Group. Has knowledge regarding Washington's biomedical waste service market.
- Ray Moore, System Contract Manager, PeaceHealth, 425-649-3884. Has knowledge regarding Washington's biomedical waste service market.
- James Owen, Systems Director Supply Chain, PeaceHealth, 425-649-3866. Has knowledge regarding Washington's biomedical waste service market.

- Jerry Quinn, former Regional Supply Chain Director, Providence Healthcare. Has knowledge regarding Washington's biomedical waste service market.
- Kevin Campbell, Regional Supply Chain Director, Providence Healthcare, 503-215-4063. Has knowledge regarding Washington's biomedical waste service market.
- Jason Moulding, Regional Supply Chain Director, Providence Healthcare, 909 Broadway, Everett, WA 98206. Has knowledge regarding Washington's biomedical waste service market.
- David Loewe, CEO, Humane Society, 425-649-7556. Has knowledge regarding Washington's biomedical waste service market.
- Michael Walsh, Director, Washington State Dental Association, 206-448-1914. Has knowledge regarding Washington's biomedical waste service market.
- Christy Kuhn, Director, Environmental Services, Kennewick General Hospital, 509-586-5809. Has knowledge regarding Washington's biomedical waste service market.
- Roger Lycan, Supply Chain Director, Pathology Associates Medical Labs, 509-755-8789. Has knowledge regarding Washington's biomedical waste service market.
- Lori Creighton, Purchasing Manager, Pathology Associates Medical Labs, 509-755-8783. Has knowledge regarding Washington's biomedical waste service market.
- Mike Charles, Director of Environmental Services, Sacred Heart Medical Center, 509-474-3261. Has knowledge regarding Washington's biomedical waste service market.
- Rob Spohn, Director of Environmental Services, Skagit Valley Hospital, 360-770-2659. Has knowledge regarding Washington's biomedical waste service market.
- Juan Escalante, Director of Environmental Services, Northwest Hospital, 206-368-2125. Has knowledge regarding Washington's biomedical waste service market.
- Bill Montgomery, Director of Environmental Services, St. Joseph Medical Center, 360-738-6328. Has knowledge regarding Washington's biomedical waste service market.
- Rose Hong, Director of Facilities, Northwest Hospital, 1550 115 Street, Seattle, WA 98133. Has knowledge regarding Washington's biomedical waste service market.
- Andy Flodin, Director, Support Services, Virginia Mason Medical Center, 425-864-6273. Has knowledge regarding Washington's biomedical waste service market.
- Mike Smith, Waste Manager, Swedish Medical Center – Issaquah. Has knowledge regarding Washington's biomedical waste service market.
- David Wick, Environmental Health and Safety, Bayer Healthcare. Has knowledge regarding Washington's biomedical waste service market.

SUPPLEMENTAL RESPONSES DATED this 27th day of July, 2012.

SUMMIT LAW GROUP PLLC

By Jessica L. Goldman
Polly L. McNeill, WSBA #17437
Jessica L. Goldman, WSBA #21856
pollym@summitlaw.com
jessicag@summitlaw.com


*Attorneys for Waste Management of
Washington, Inc.*

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 indicated below, pursuant to WAC 480-07-150.

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 dbarrientes@gsblaw.com <i>Attorneys for Stericycle of Washington, Inc.</i>	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
James K. Sells 3110 Judson Street Gig Harbor, WA 98335 (360) 981-0168 jamesells@comcast.net cheryls@rsulaw.com <i>Attorney for Protestant WRRRA, Rubatino, Consolidated, Murrey's, and Pullman</i>	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Frona Woods Attorney General's Office of Washington PO Box 40128 Olympia, WA 98504 (360) 664-1225 fwoods@utc.wa.gov bdemarco@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 27th day of July, 2012.


Deanna Schow