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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of:

WASTE MANAGEMENT OF WASHINGTON,
INC. D/B/A WM HEALTHCARE SOLUTIONS
OF WASHINGTON

For an Extension of Certificate G-237 for a
Certificate of Public Convenience and Necessity
to Operate Motor Vehicles in Furnishing Solid
Waste Collection Service

Docket No. TG-120033


**DECLARATION OF POLLY L.
McNEILL IN SUPPORT OF WASTE
MANAGEMENT'S OPPOSITION TO
STERICYCLE'S MOTION TO
COMPEL**

I, Polly L. McNeill, declare as follows:

1. I am counsel for Waste Management in this matter and I make this declaration based on personal knowledge.
2. Attached hereto as Exhibit 1 is a true and correct copy of Jessica L. Goldman's letter to Stephen B. Johnson dated July 20, 2012.
3. Attached hereto as Exhibit 2 is a true and correct copy of Jessica L. Goldman's letter to Stephen B. Johnson dated July 25, 2012.
4. Waste Management has now produced 688 pages of documents to Stericycle.

1 I declare under penalty of perjury under the laws of the State of Washington and the United
2 States that the foregoing is true and correct.

3 EXECUTED this 6th day of August, 2012 at Seattle, Washington.

4 
5 _____
6 Polly L. McNeill

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

Table with 2 columns: Recipient Information and Service Method. Rows include Washington Utilities and Transportation Commission, Gregory J. Kopta, Fronda Woods, Stephen B. Johnson, Jared Van Kirk, Garvey Schubert Barer, James K. Sells, and Cheryl Sells.

DATED at Seattle, Washington, this 6th day of August, 2012.

Handwritten signature of Deanna L. Schow

Deanna L. Schow

Exhibit 1

SUMMIT LAW GROUP®

a professional limited liability company

JESSICA L. GOLDMAN
DID: (206) 676-7062
EMAIL: jessicag@summitlaw.com

July 20, 2012

Via Email

Stephen B. Johnson
Jared Van Kirk
Garvey Schubert Barer
1191 Second Avenue, 18th Floor
Seattle, WA 98101-2939

Re: Waste Management's Supplemental Response to Stericycle's Data Requests

Dear Steve and Jared:

When we conducted our discovery conference on July 18, we each agreed to respond in writing by today to each other's requests for supplementation of discovery responses. This letter addresses Stericycle's requests that Waste Management supplement its responses to Stericycle's Data Requests. In the interest of clarity, I have summarized your supplementation requests made by phone in our discovery conference or as set forth in the subsequent e-mail from Jared of the same date.

DR Nos. 8-9.

Supplementation Request: "Waste Management has declined to respond or produce documents responsive to our queries seeking information on Waste Management's advertising and marketing of its Biomedical Waste Services to customers. We believe these external communications concerning Waste Management's services are relevant to understanding the nature of the services that will be offered and, hence, to public need/necessity. Your client's external presentation of its services to customers is also relevant to evaluating regulatory compliance (e.g. the recycling discounting issues discussed on the phone) and the economic impact of such services on other carriers and the public in the new territory

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sought. This information would likely not be any kind of trade secret since solicitations and advertising are externally disclosed.”

WM’s Response: There is no legitimate reason for Stericycle to be informed of the identity of all of Waste Management’s biomedical waste clients and prospective clients. That information is Waste Management’s confidential business information and it remains unduly burdensome for Waste Management to search for and identify all responsive documents. Based on the justification you set forth above, we will produce marketing materials Waste Management has used in soliciting new business and advertizing its biomedical waste services.

DR No. 10.

Supplementation Request: “The names of customers of your Biomedical Waste services are highly relevant because these are potential witnesses to the public need and public interest issues. They can explain the reasons why they chose Waste Management and the Commission can decide if those are reasons that would justify public need for additional service in the new territory or serve the public interest. We are also willing to limit the production of documents required by this request to one example of each version of your contract for Biomedical Waste Services, so long as you make full production of documents related to those customers who have also been offered or provided recycling services as discussed on the phone today in relation to Requests 20-22.”

WM’s Response: This is a bald fishing expedition. There is no legitimate reason for Stericycle to receive this information. Waste Management bears the burden of proving the “sentiment in the community ... as to the necessity for such a service.” RCW 81.77.040. Waste Management, not Stericycle, will determine which of Waste Management’s customers have relevant information to provide to the Commission justifying the necessity for Waste Management’s biomedical waste service. The fact that other Waste Management customers prefer Waste Management to Stericycle for additional reasons, not relevant to the statutory inquiry, cannot justify your request.

DR No. 12(T).

Supplementation Request: “Waste Management states its complies with OSHA and WISHA. If WM has any written policies or procedures intended to ensure workplace or public safety (other than the autoclave operations plan), it should produce them. See Request 12(Y). This information is relevant to a comparison of services between our clients under the rubric of public need/necessity/interest.”

WM's Response: See WM Healthcare Solutions Biomedical Waste Operating Plan for WM of WA previously produced to you. In addition, we will produce the materials used for driver training.

DR No. 12(V).

Supplementation Request: "This answer does not describe any of the listed training programs. Please describe them or produce descriptive documents (which are requested in Request 12(Y))."

WM's Response: We will produce documents the materials used for driver training.

DR Nos. 12(Y), 15, 45.

Supplementation Request: "As we discussed on the phone, our initial question is: Are there more responsive documents in your possession that are not currently being produced? If so, what are grounds for withholding any documents that speak to the nature of Waste Management's services, particularly those provided to customers or describing Waste Management's internal policies and practices? We do not believe there are any grounds for refusing to produce documents in Waste Management's possession or control that relate to subjects relevant to the Application proceeding. We also believe there must be more responsive documents, for example training materials, internal protocols/manuals, transportation plans and schedules, plans and projections for the new service, etc... We think your client needs to undertake a more comprehensive search for all responsive documents, not just the few referenced in the answers to our information requests."

WM's Response: Yes, there are many documents which Waste Management has not produced based on the objections stated in our initial responses, including that the Commission has forbidden the discovery, the search for responsive documents would be unduly burdensome, the documents are not reasonably calculated to lead to the discovery of admissible evidence, and/or the documents are cumulative. This is an administrative proceeding where discovery purposefully is meant to be less burdensome than in civil litigation, a point which the Commission reiterated to the parties in this action. Given what we have provided in discovery and the wealth of information you and your client have about Waste Management, there is no justification for providing Stericycle access to every last document referencing Waste Management's services or its business plan or making this process any more expensive and laborious than it already is.

DR No. 14.

Supplementation Request: “The response should provide complete descriptions or photographs of vehicle markings.”

WM’s Response: Waste Management will produce this information.

DR No. 18.

Supplementation Request: You requested the following information: (1) Where does Waste Management treat the BD ecoFinity waste to render it noninfectious? (2) Is infectious BD ecoFinity waste leaving Washington for treatment? (3) Who manufactures the sharps and sharp containers which Waste Management treats, respectively, under the BD ecoFinity program and under Waste Management’s alternative program? (4) What is the percentage of the sharps and sharps containers that is recycled? (5) What are the rates Waste Management charges to collect and transport sharps or sharps waste? (6) Production of documents regarding Waste Management’s sharps or sharps waste services.

WM’s Response: Waste Management will provide answers to questions (1) – (5) and will produce documents describing its sharps services.

DR Nos. 20-22.

Supplementation Request: You explained that these Data Requests seek information about your theory that Waste Management has “rebated” recycling services to improperly induce Stericycle customers to move their biomedical waste business to Waste Management. You asked that we provide the recycling fees charged to generators prior to their moving their biomedical waste service from Stericycle to Waste Management. You asked that we provide the recycling fees charged to generators for whom Waste Management also provides biomedical waste services. You asked that we provide promotional materials regarding the BD ecoFinity program.

WM’s Response: Waste Management will produce this information.

DR Nos. 24-26.

WM’s Response: Waste Management will produce the information requested in these Data Requests.

DR Nos. 28, 30-31.

Supplementation Request: You agreed that Waste Management's objections were proper based on Judge Kopta's order restricting discovery. You advised that you would nonetheless be moving to compel to preserve your record for appeal.

DR Nos. 29, 32-36.

Supplementation Request: You contend that these Data Requests are not subject to Judge Kopta's discovery prohibition because Stericycle wants this information to show that Waste Management's biomedical waste business is unprofitable now and is intended to be unprofitable going forward. You explained that Waste Management's business purpose is to push Stericycle out of the market and, thereby, harm the public. So, you contend, the information requested in these Data Requests goes to the public need and financial feasibility elements which you contend Judge Kopta did not specifically address. In support of your position, you cited me to the following language in the 1995 *Ryder* order: "The questions of an applicant's financial fitness and the cost and feasibility of the proposed operations are separate, but they are so interrelated that they will be discussed together." You further asserted that the *generators* are entitled to know that Waste Management's business plan is to be unprofitable so the generators may determine if Waste Management's service is in the generators' best interest.

WM's Response: With all due respect, the notion that Waste Management seeks statewide authority to conduct a non-profitable business is absurd. Moreover, as I asked you when we spoke, how can Stericycle reasonably contend that its business is profitable but that Waste Management, charging equivalent tariff rates, intends to be unprofitable? Judge Kopta limited your right to conduct discovery about Waste Management's financial and operational fitness because "the protesting parties do not have a significant interest" in those issues. While those issues will be fully explored by the Commission at the hearing, they are not properly the subject of burdensome and expensive discovery. The same is true even if you claim to be acting as an information-gatherer on behalf of "the generators." I carefully reviewed your *Ryder* citation and note that later on the same page the Commission held that: "This is not a rate case, in which precise historical evidence is required and future projections must often be known and measurable to be considered. The test here for financial feasibility is whether the applicant has the financing to conduct the operations for a reasonable period; whether it has reasonably considered the costs of providing service; and whether those costs appear to be reasonable." That is precisely the information regarding which Judge Kopta held the protestants lack a significant interest to justify discovery.

Nonetheless, Waste Management has created for you and will produce income statements separately itemizing the revenues and expenses associated with its

biomedical waste service. It will also produce the 2011 annual report of Waste Management, Inc. substantiating the financial wherewithal of Waste Management of Washington, Inc.'s corporate parent.

DR No. 38.

Supplementation Request: "We do not believe there are grounds for limiting Waste Management's disclosure of prior lawsuits to only those lawsuits related to Biomedical Waste Services. An Applicant's willingness to comply with regulations is a relevant issue and speaks to all of the applicant's business. If you think otherwise, please state the basis for your objection with more specificity so we can have a clear dispute."

WM's Response: I will follow up with our response on July 23, 2012.

DR Nos. 39-40.

Supplementation Request: "We do not believe there are grounds for limiting Waste Management's disclosure of prior violations, etc... to only those occurring after Waste Management filed its biomedical waste tariff (and to those related to Biomedical Waste Services, if that is an implicit limitation of these answers). An Applicant's willingness to comply with regulations is a relevant issue and speaks to all of the applicant's business. If you think otherwise, please state the basis for your objection with more specificity so we can have a clear dispute."

WM's Response: I will follow up with our response on July 23, 2012.

DR No. 41.

Supplementation Request: "We do not believe there are any grounds for refusing to identify persons Waste Management believes have knowledge of relevant topics and to summarize that knowledge. It is not unduly burdensome to describe Waste Management's knowledge of potential witnesses."

WM's Response: We will produce the requested information.

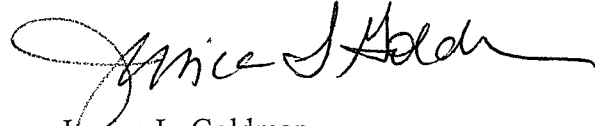
* * * * *

On Monday, we will be serving supplemental responses to your data requests along with additional documents. I look forward to speaking with you at 3pm Monday to tie up any loose ends.

Stephen B. Johnson
July 20, 2012
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Sincerely,

SUMMIT LAW GROUP PLLC

A handwritten signature in black ink, appearing to read "Jessica L. Goldman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jessica L. Goldman

cc: Fronda Woods
James K. Sells
Polly L McNeill

Exhibit 2

SUMMIT LAW GROUP[®]

a professional limited liability company

JESSICA L. GOLDMAN
DID: (206) 676-7062
EMAIL: jessicag@summitlaw.com

July 25, 2012

Via Email

Stephen B. Johnson
Jared Van Kirk
Garvey Schubert Barer
1191 Second Avenue, 18th Floor
Seattle, WA 98101-2939

Re: Waste Management's Supplemental Response to Stericycle's Data Requests

Dear Steve and Jared:

I write to follow up on and confirm our discussion on July 23 in regard to Waste Management's supplementation of its responses to Stericycle's discovery requests.

DR Nos. 12(Y), 15, 45.

You asked again whether there are any documents which reference the "nature of services" offered by Waste Management which Waste Management has not produced. Again, I answered affirmatively and referred you to our stated objections.

DR No. 18.

You requested that we advise of, alternatively, the names of Waste Management customers signed up for the BD ecoFinity program in Washington or the number of such customers. We will provide this information.

DR No. 20

I confirmed that Waste Management will produce correspondence and contracts with the six generators named in this Data Request.

DR No. 21

You advised that Waste Management need not produce the information requested in this Data Request pending your review of the materials we produce in response to Data Request No. 20.

DR No. 22

You explained that you seek the information requested in this Data Request based on your theory that Waste Management has improperly discounted its recycling services to attract biomedical waste business and your theory that Waste Management has improperly characterized its BD ecoFinity program as recycling. We will produce correspondence between Mr. Norton and any generators related to recycling.

DR No. 29

You agreed that you are satisfied with Waste Management's response to this Data Request.

DR Nos. 33, 35-36

You reiterated your request for the documents and information in these Data Requests. I reiterated our objections and that you are not entitled to discovery on these subjects.

DR No. 38.

In follow up to our prior discussion, I advised that we would provide you information regarding the requested lawsuits but we will not produce responsive documents. You agreed that we need not produce the documents.

DR No. 39

In follow up to our prior discussion, I advised that we would provide you the requested information. We will also produce responsive documents concerning Waste Management's biomedical waste services.

DR No. 40

I have consulted with Waste Management further in regard to this Data Request. Waste Management has a call center which handles customer calls from throughout the West Coast. There are more than one hundred employees who staff this call center. We do not believe that any information about customer complaints which may be found in the call center logs is relevant to the issue of Waste Management's regulatory fitness or justifies the burden of reviewing logs for possible customer complaints. Regulatory

Stephen B. Johnson

July 25, 2012

Page 3

fitness addresses whether the applicant has been found to have violated any state laws or Commission regulations. To the degree there are any relevant complaints about Waste Management's services, those complaints are available from the Commission.

DR No. 10.

You reiterated your request for Waste Management's entire customer list. You contend that Stericycle needs this information to contact Waste Management's customers and demonstrate to the Commission what is desired by the generator community. I reiterated our previous objections and noted that Stericycle currently serves the large majority of Washington generators and should have no trouble accessing the views of the generator community.

Sincerely,

SUMMIT LAW GROUP PLLC

A handwritten signature in black ink, appearing to read "Jessica L. Goldman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jessica L. Goldman

cc: Fronda Woods
James K. Sells
Polly L McNeill