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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

**WASTE MANAGEMENT'S RESPONSE  
TO STERICYCLE'S MOTION FOR  
LEAVE TO TAKE DEPOSITIONS**

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## I. RELIEF REQUESTED

1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington (“Waste Management”) does not oppose Protestant Stericycle of Washington, Inc.’s (“Stericycle”) request to depose Waste Management employees Jeff Norton and Jeff Daub so long as those depositions are scheduled to occur after the deadline for filing direct testimony. Waste Management requests that the Commission deny Stericycle’s motion for leave to take depositions of Northwest Hospital employees.

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## II. ARGUMENT

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### A. Waste Management Does Not Oppose the Request for Depositions of Jeff Norton and Jeff Daub.

11 2. Stericycle seeks leave to depose Messrs. Norton and Daub. Waste Management does  
12 not oppose this request. However, Waste Management does oppose the request that the depositions be  
13 completed by August 24, 17 days from today. That Messrs. Norton and Daub will be key witnesses for  
14 Waste Management comes as no surprise to Stericycle. Both witnesses are former Stericycle  
15 employees, and well known to Stericycle’s principals and its lawyers. Stericycle has not offered any  
16 justification for its sudden request for instantaneous depositions, and none exists. In its deposition  
17 motion, Stericycle has expressed the parties’ prior agreement to request a continuance of the deadline  
18 for prefiled direct testimony from August 14, 2012 until August 31, 2012. All of the parties are now in  
19 agreement that the hearing date should be continued by four to six weeks to allow the parties to  
20 complete discovery in an orderly and efficient fashion. Waste Management will make that request to  
21 the Presiding Officer at the August 8, 2012 telephonic hearing. If the Presiding Officer agrees to the  
22 requested continuance, the parties also are in agreement that all of the pre-hearing deadlines should be  
23 continued an equivalent amount of time. That would push the deadline for filing direct testimony until  
24 the end of September or the middle of October.

25 3. Whether the prefiled direct testimony deadline is moved to August 31 or later, there is  
26 no reason why the Norton and Daub depositions – which will not be the subject of Stericycle’s prefiled  
27 **direct testimony** – must take place in August. Moreover, Waste Management expects that Stericycle  
28 may **also** wish to depose Messrs. Norton and Daub after Waste Management files its direct testimony,

1 and Waste Management will oppose making these witnesses available for more than one deposition  
2 each. Furthermore, Messrs. Norton and Daub will be directly involved in preparing Waste  
3 Management's direct testimony and, with an August 31 deadline to file direct testimony, it will be  
4 burdensome to Waste Management and its counsel to have to interrupt that work to prepare for and  
5 offer up deposition testimony. Scheduled vacations in August will also compound the burdensomeness  
6 of the requested August depositions.

7 4. Waste Management asks that the requested Norton and Daub depositions take place after  
8 the deadline for prefiled direct testimony.

9 **B. Stericycle Should Not Be Permitted to Depose Employees of Waste Management's**  
10 **Customer Northwest Hospital.**

11 5. One of Stericycle's primary theories for opposing Waste Management's application is  
12 that Waste Management improperly offered both regulated and nonregulated services to Stericycle's  
13 former customer Northwest Hospital. In chasing this theory, Stericycle has propounded – and Waste  
14 Management has provided complete responses to – data requests regarding Waste Management's  
15 dealings with Northwest Hospital. In response to Stericycle's Data Request No. 20 regarding six  
16 named generators including Northwest Hospital, Waste Management responded:

17 The contracts with these entities along with the one email exchange which is responsive  
18 are produced herewith.... Prior to providing biomedical waste services to Northwest  
19 Hospital, Waste Management charged the hospital \$132 per haul for recycling.  
20 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.<sup>1</sup>

21 In response to Stericycle's Data Request No. 22 regarding solicitations made by Mr. Norton, Waste  
22 Management responded:

23 Waste Management has offered recycling services to the following biomedical waste  
24 generators: Northwest Hospital .... In each case, Waste Management has made a  
25 competitive bid in line with the local market. Because hospitals provide a wide range  
26 (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.<sup>2</sup>

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28 <sup>1</sup> Stericycle's Mot. to Compel, Ex. C, DR No. 20.

<sup>2</sup> *Id.*, DR No. 22.

1 As Stericycle acknowledges, "Waste Management has confirmed much of these events" alleged by  
2 Stericycle to be nefarious.<sup>3</sup>

3 6. Stericycle now seeks to take the depositions of Northwest Hospital employees Juan  
4 Escalante and Rose Hong. Waste Management has agreed to make Mr. Norton available for deposition  
5 and Stericycle will have an opportunity to ask him about his discussions with Northwest Hospital. That  
6 testimony will provide answers to any remaining **fact** questions Stericycle has about the  
7 communications between Waste Management and Northwest Hospital. Having not yet taken Mr.  
8 Norton's deposition, Stericycle cannot satisfy its burden of demonstrating a need for the requested  
9 third-party depositions. Pursuant to WAC 480-07-400(3), Stericycle "must not seek discovery that is  
10 unreasonably cumulative or duplicative, or is obtainable from some other source that is more  
11 convenient, less burdensome, or less expensive." That regulation prohibits Stericycle from using the  
12 discovery process to harass its former – and Waste Management's present – biomedical waste  
13 customer.<sup>4</sup>

14 **III. CONCLUSION**

15 7. Waste Management does not oppose Stericycle's request to depose Messrs. Norton and  
16 Daub, but requests that those depositions be permitted only after the filing of direct testimony. Waste  
17 Management further requests that the Commission deny Stericycle's request to depose the Northwest  
18 Hospital employees.

19 DATED this 7th day of August, 2012.

20 SUMMIT LAW GROUP PLLC

21 By 

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26 *Attorneys for Waste Management of  
27 Washington, Inc.*

28 <sup>3</sup> Deposition Mot. ¶ 7.  
<sup>4</sup> WAC 480-07-400(3).

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.

<p>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</p>	<p><input type="checkbox"/> Via Legal Messenger  <input type="checkbox"/> Via Facsimile  <input checked="" type="checkbox"/> Via Federal Express  <input checked="" type="checkbox"/> Via Email</p>
<p>Gregory J. Kopta  Administrative Law Judge  Washington Utilities and Transportation Commission  gkopta@utc.wa.gov</p>	<p><input type="checkbox"/> Via Legal Messenger  <input type="checkbox"/> Via Facsimile  <input type="checkbox"/> Via U.S. Mail  <input checked="" type="checkbox"/> Via Email</p>
<p>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</p>	<p><input type="checkbox"/> Via Legal Messenger  <input type="checkbox"/> Via Facsimile  <input type="checkbox"/> Via U.S. Mail  <input checked="" type="checkbox"/> Via Email</p>
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<p>James K. Sells  3110 Judson Street  Gig Harbor, WA 98335  (360) 981-0168  jamesells@comcast.net  cheryls@rsulaw.com  Attorney for Protestant WRRRA, Rubatino, Consolidated,  Murrey's, and Pullman</p>	<p><input type="checkbox"/> Via Legal Messenger  <input type="checkbox"/> Via Facsimile  <input type="checkbox"/> Via U.S. Mail  <input checked="" type="checkbox"/> Via Email</p>

DATED at Seattle, Washington, this 7th day of August, 2012.



Deanna L. Schow