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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  
OPPOSITION TO STERICYCLE'S  
SECOND MOTION TO COMPEL**

1 **I. RELIEF REQUESTED**

2 1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of  
3 Washington (“Waste Management”) requests that the Commission deny the second motion to compel  
4 discovery brought by Protestant Stericycle of Washington, Inc. (“Stericycle”).

5 **II. STATEMENT OF FACTS**

6 2. In its first set of discovery requests to Waste Management, Stericycle propounded 47  
7 data requests, including a request with subparts labeled (A) through (Y), and a request with subparts  
8 labeled (A) through (G).<sup>1</sup> Waste Management responded initially by producing 688 pages of  
9 documents, with an additional 23 pages of documents following the August 8, 2012 hearing on  
10 Stericycle’s First Motion to Compel.<sup>2</sup> Waste Management has provided three sets of written responses  
11 to Stericycle’s first set of data requests.<sup>3</sup> Twenty of these data requests were the subject of Stericycle’s  
12 First Motion to Compel.<sup>4</sup> The only Stericycle request which Judge Kopta granted was that Waste  
13 Management identify the specific data request to which each produced document was responsive.<sup>5</sup>  
14 Waste Management complied with this order on August 10, 2012.<sup>6</sup>

15 3. On August 29, 2012, Stericycle served Waste Management with 34 additional data  
16 requests.<sup>7</sup> Waste Management timely objected to most of these data requests as being overly broad,  
17 unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and  
18 proscribed by Judge Kopta’s ruling on Stericycle’s First Motion to Compel.<sup>8</sup> Stericycle now moves to  
19 compel answers and production of documents in response to 18 of these new data requests.

20  
21 \_\_\_\_\_  
22 <sup>1</sup> Protestant Stericycle of Wash., Inc.’s [First] Mot. to Compel Responses to Data Requests & Production of Docs. (“First  
23 Mot. to Compel”), Ex. A.

24 <sup>2</sup> Decl. of Polly L. McNeill in Supp. of Waste Management’s Opp’n to Stericycle’s [First] Mot. to Compel (“McNeill Decl.”)  
25 ¶ 4; Decl. of Jessica L. Goldman in Opp’n to Stericycle’s 2<sup>nd</sup> Mot. to Compel (“Goldman Decl.”) ¶ 2.

26 <sup>3</sup> Goldman Decl. ¶ 3.

27 <sup>4</sup> First Mot. to Compel ¶ 1.

28 <sup>5</sup> Goldman Decl., Ex. A at 78:5-18.

<sup>6</sup> Goldman Decl. ¶ 5.

<sup>7</sup> Protestant Stericycle of Wash., Inc.’s Mot. to Compel Responses to 2<sup>nd</sup> Data Requests & Production of Docs. (“Second  
Mot. to Compel”), Ex. A.

<sup>8</sup> *Id.*, Ex. B.

1 **III. STATEMENT OF ISSUES**

2 4. Should Stericycle's Second Motion to Compel be denied as being unduly burdensome,  
3 overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and contrary to  
4 Judge Kopta's prior rulings in this matter?

5 **IV. EVIDENCE RELIED UPON**

6 5. Waste Management relies on the McNeill and Goldman Declarations which are further  
7 described in the footnotes and on the record herein.

8 **V. ARGUMENT**

9 **A. Further Response to Data Requests 2-12 Regarding the ecoFinity Services Should Not Be**  
10 **Compelled.**

11 6. Stericycle's motion to compel the production of further information and documents  
12 regarding Waste Management's ecoFinity services seeks, again, discovery which Judge Kopta denied on  
13 August 8. This second bite at the apple should be rejected for all of the same reasons Judge Kopta  
14 rejected the first bite.

15 7. In response to Stericycle's *first* Data Request No. 18, subpart (A), Waste Management  
16 responded:

17 Collection services offered to BD ecoFinity customers are performed in  
18 the same manner as medical waste customers with the exception of the  
19 uniquely labeled tubs filled with sharps containers. Once these tubs are  
20 received at the Seattle processing plant, the tubs are loaded onto trailers  
and transported to Vernon, California for processing. Waste Management  
performs this as a commercial recycling collection service.<sup>9</sup>

21 In response to Stericycle's *first* Data Request No. 18, subpart (E), Waste Management responded:

22 Tubs are transported to Waste Management's facility at Vernon,  
23 California, and processed in a Red Bag Solutions (RBS)  
24 hardware/software system designed to safely, efficiently, and effectively  
25 sterilize and grind medical waste. By exposing infectious medical waste  
26 to superheated water and steam (272°F/133°C) and simultaneously  
27 employing a proprietary cutting system, the RBS renders infectious  
28 medical waste non-infectious, non-hazardous, and non-recognizable.  
Once processed through the RBS, the non-infectious medical waste is sent  
to Talco Plastics in Corona, California where the non-infectious ground

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<sup>9</sup> First Mot. to Compel, Ex. B.

1 sharps are processed and the metals and plastics separated. The recovered  
2 plastics are pelletized at Talco and sent to BD to be manufactured into BD  
3 Recykleen Products.<sup>10</sup>

4 8. In its first supplemental response to Stericycle's data requests, Waste Management  
5 provided additional information in response to Stericycle's *first* Data Request No. 18, subpart (G):

6 BD ecoFinity is a sharps recycling program rolled out to hospitals in 2011  
7 by Waste Management and Becton Dickenson. Waste Management  
8 collects full sharps containers weekly from St. Joseph Medical Center in  
9 Bellingham. The contract with St. Joseph Medical Center is produced  
10 herewith. The sharps containers are delivered to the Seattle processing  
11 facility and are loaded to 1-yard Gaylord's, placed on a 53' trailer and  
12 transported to Vernon, California for processing in a Red Bag Solutions  
13 machine. The sterilized, washed and shredded sharps containers and their  
14 contents are then sent to Talco Corporation where the material is separated  
15 utilizing float/sink technology. The plastics recovered in this process are  
16 pelletized and used in the remanufacturing of sharps containers. In May  
17 and June 2012, recycled sharps and sharps containers yielded between  
18 17% and 28% of the recycled product. Waste Management accepts all  
19 approved sharps and sharps containers under both its BD ecoFinity  
20 program and its regulated biomedical waste program. Waste Management  
21 charges competitive market rates for its BD ecoFinity program and tariff  
22 rates for its regulated biomedical waste program.<sup>11</sup>

23 9. Waste Management produced multiple documents regarding the ecoFinity program. It  
24 produced the documents it prepared for and provided to PeaceHealth, the corporate parent of St.  
25 Joseph's Medical Center and the one Washington entity to which Waste Management provides the  
26 ecoFinity program. That document explained its "Sharps Recycling Program/Partnership with Becton  
27 Dickinson (BD)": "BD has teamed up with WMHS, a market leader for environmental solutions, to  
28 bring an innovative sharps device recycling program to market. This program converts the sharps waste  
stream into a resource stream, creating a source of raw material for use in products such as BD  
Recykleen<sup>TM</sup> container products."<sup>12</sup> This document included photographs of the containers used for  
sharps recycling<sup>13</sup> and a photograph of the container and contents following processing.<sup>14</sup> In addition,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, Ex. C.

<sup>12</sup> Goldman Decl., Ex. B at WM000149.

<sup>13</sup> *Id.* at WM000151.

<sup>14</sup> *Id.* at WM000152.

1 Waste Management produced a flyer describing the ecoFinity program: “The BDecoFinity Life Cycle  
2 Solution can help hospitals achieve their sustainability goals by safely and economically recycling 70%  
3 or more of their sharps waste stream.”<sup>15</sup> In addition to a graphic depiction of the recycling service, it  
4 invited review of additional information at the website “www.bd.com/ecoFinity.”<sup>16</sup> That website  
5 provides further information including a slide show, a white paper entitled “Environmental Life Cycle  
6 Analysis of the BD ecoFinity® Life Cycle Solution,” and a paper entitled “Clinical Considerations  
7 When Selecting a Sharps Disposal Solution.”<sup>17</sup> Waste Management also produced its contract,  
8 including pricing, with the one Washington generator to which Waste Management provides the  
9 ecoFinity services.<sup>18</sup>

10 10. In its First Motion to Compel, Stericycle explained that its first set of “data requests seek  
11 basic background information on the services Waste Management and its affiliates are presently offering  
12 to biomedical waste generators and the services they propose to offer if Waste Management’s  
13 application is granted. This basic background information is relevant to all of the issues in this  
14 proceeding.”<sup>19</sup> At the hearing, Stericycle reiterated that generator need and Waste Management’s  
15 services to satisfy those needs – particularly the ecoFinity program – were front and center:

16 We are also very concerned and interested in what Waste Management  
17 considers sharps recycling under this so called ecoFinity ... program  
18 provided by Waste Management in conjunction with Becton Dickinson, a  
19 medical device manufacturer....

20 \*\*\*

21 We see the issue of gener – generate a need [sic: “generator need”] for  
22 service that we – that is not being currently provided by existing carriers  
23 as a fundamental issue in the satisfactory service calculation....

24 \*\*\*

25 [W]e think [that it] is appropriate in response to this data request to  
26 produce documents that describe all of the relationships involved in the  
27 ecoFinity program, including contracts with customers, contracts with the

28 <sup>15</sup> Second Mot. to Compel, Ex. D at WM000174.

<sup>16</sup> *Id.* at WM000175.

<sup>17</sup> Goldman Decl., Ex. C.

<sup>18</sup> *Id.*, Ex. D.

<sup>19</sup> First Mot. to Compel ¶ 3.

1 folks in California who are engaged in the actual processing of the  
2 containers, the people that are involved in the so-called recycling of these  
3 products. And presumably Waste Management has documentation with  
4 respect to all of that, and it should be produced.<sup>20</sup>

5 11. In response, Waste Management's counsel explained:

6 We have produced quite a few documents. We have produced, to my  
7 understanding, the documents with the only Washington generator that is  
8 currently using this [ecoFinity] service, so the issue regarding contracts  
9 with third parties, I believe is quite far afield. The materials we have  
10 provided describe exactly what it is that Waste Management is offering in  
11 the partnership, and we have provided the documentation that has been  
12 provided to potential generators regarding what it is that Waste  
13 Management offers and where it goes and how it is treated. I believe that  
14 we have provided sufficient information to give Stericycle everything it  
15 needs to know about this process, and anything further is burdensome and  
16 seeks information that is retained by third parties.<sup>21</sup>

17 12. Stericycle's counsel responded:

18 Your Honor, the key point here is that, in Ms. Goldman's opposition to  
19 our motion, she very specifically indicated that this is a feature that Waste  
20 Management will argue makes its services unique and different, something  
21 that Stericycle doesn't offer. We need to be able to understand fully what  
22 that is, and that means to follow this material as it moves down through  
23 the processing in Vernon, California, through the Red Bag Solutions'  
24 machinery down there, on to the recycler, Talco, so that generators that are  
25 potentially interested in this service, or this facet of Waste Management's  
26 program, can know what is actually happening to their material. It's one  
27 thing to have promotional material. It's another thing to show what is  
28 really happening in terms of following the material to its reuse, if that is  
what's happening.<sup>22</sup>

13. Judge Kopta rejected Stericycle's argument, held that "going that far downstream is  
getting farther afield than is necessary," and denied Stericycle's first motion to compel further  
information about the ecoFinity program.<sup>23</sup> For each of these reasons and because the additional  
discovery requested is overly broad, unduly burdensome and not reasonably calculated to lead to the

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<sup>20</sup> Goldman Decl., Ex. A at 73:18-23; 74:14-17; 83:14-23.

<sup>21</sup> *Id.* at 83:25-84:16.

<sup>22</sup> *Id.* at 84:17-85:9.

<sup>23</sup> *Id.* at 85:13-16.

1 discovery of admissible evidence, Waste Management requests that Stericycle's motion to compel its  
2 *second* Data Request Nos. 2-12 be denied.<sup>24</sup>

3 **B. Further Response to Data Requests 13-16, 30, 31 and 34 Regarding Additional Services**  
4 **Should Not Be Compelled.**

5 14. Stericycle's Second Motion to Compel also seeks information and documentation  
6 regarding Waste Management's communications with generators which Judge Kopta denied at the  
7 August 8 hearing and which are unduly burdensome, overly broad and not reasonably calculated to lead  
8 to the discovery of admissible evidence.

9 15. Again, we return to Stericycle's first set of data requests which were the subject of its  
10 First Motion to Compel. Stericycle's *first* Data Request No. 24 stated as follows:

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

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

28 Produce all Documents Relating to any complaint or Communication of  
dissatisfaction described in response to this Data Request No. 24.<sup>25</sup>

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24 In regarding to *second* Data Request No. 2, Waste Management already has produced information regarding the vehicles  
Waste Management uses to transport biomedical waste. First Mot. to Compel, Ex. B at DR No. 14. Waste Management also  
produced the leases for each of these vehicles which describe the vehicles. Goldman Decl. ¶ 9.

25 First Mot. to Compel, Ex. B.

1 In response, Waste Management provided detailed information about Waste Management's  
2 communications with four generators and a response to each of DR No. 24's subparts, including the  
3 generators' stated reasons for dissatisfaction and the fact that, as to each, "dissatisfaction was  
4 communicated orally."<sup>26</sup>

5 16. At the hearing, Judge Kopta considered Stericycle's motion to compel further discovery  
6 regarding *first* Data Request No. 24 "which has to do with public need."<sup>27</sup> Stericycle argued that:

7 And the more specific request that we seek you to address is that they  
8 produce documents, including the internal communications and  
9 communications with generators that reflect this information that's been  
provided to me.<sup>28</sup>

10 17. In response, Waste Management explained:

11 I believe Stericycle is asking Waste Management here for evidence that  
12 Waste Management is aware of, of dissatisfaction in the marketplace with  
13 the incumbent provider. Waste Management has listed all of the  
14 communications it has had with the Washington generators who have  
15 complained to Waste Management and has attested to the fact that those  
16 communications happened orally. There are no documents. No  
17 documents have been exchanged by the generators and Waste  
Management. What I understand Steve is also asking for here are internal  
documents referencing those. As I understand it, his intention would be to  
use those internal documents to show them to the generators and use them  
to hold their feet to the fire regarding comments that they made.

18 Our position, first of all, is, you know, internal documents is a burdensome  
19 request to search for any possible reference to communications from  
20 generators. In any event, these aren't communications that included the  
21 generator. They are not going to be useful in trying to pin down a  
22 generator as to what he or she said based on what some internal Waste  
23 Management document says about it. Frankly, I'm not aware of any such  
documents, and none have come to light in the searches that we did  
perform. We don't think this is remotely relevant or useful, and we do  
think it is burdensome.<sup>29</sup>

24 18. As to this, Stericycle argued that:

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26 <sup>26</sup> *Id.*

27 <sup>27</sup> Goldman Decl., Ex. A at 85:17-19.

28 <sup>28</sup> *Id.* at 85:21-25.

29 <sup>29</sup> *Id.* at 86:10 – 87:12.



1 the key point is that they say the statements made to them by the  
2 generators were oral, but we presume that there is some reference to those  
3 statements and description of those statements in communications internal  
4 to Waste Management that would give us a clearer understanding of what  
5 the oral report was with respect to dissatisfaction. That seems to be  
6 directly relevant and can't be that burdensome to identify particular  
7 communications related to the generators that they have already listed and  
8 identified in their responses.<sup>30</sup>

9 19. Waste Management further explained:

10 That's exactly what we provided in our discovery response. We explained  
11 what the generators said, what their complaint was about the service  
12 specifically. It's my understanding, from the discussion on Waste  
13 Management's motion to compel, that there is little inclination here to  
14 allow this kind of double, triple checking to make sure we are telling the  
15 truth. We have specifically stated what each of these generators  
16 complained about. They've got that.<sup>31</sup>

17 20. Judge Kopta rejected Stericycle's arguments.

18 Ms. Goldman, I agree with you. Just as I said with respect to your motion  
19 to compel customer complaints, I am satisfied that you have provided the  
20 information that is requested to the best of your reasonable ability to do so.  
21 I'm not going to second-guess whether you have made sufficient efforts.  
22 The motion as to these data requests is denied.<sup>32</sup>

23 21. In its *first* Data Request Nos. 20-22, Stericycle also requested detailed information and  
24 documentation of "each offer, solicitation, meeting, negotiation, or other Communication" Waste  
25 Management had regarding, *inter alia*, its biomedical waste services, recycling services, rates, or  
26 solicitation for services.<sup>33</sup> Waste Management provided the following response:

27 Waste Management has offered recycling services to the following  
28 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

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<sup>30</sup> *Id.* at 87:13-23.

<sup>31</sup> *Id.* at 87:25 – 88:8.

<sup>32</sup> *Id.* at 88:10-16.

<sup>33</sup> First Mot. to Compel, Ex. C.

1 very competitive. In the case of Northwest Hospital and Virginia Mason,  
2 the pricing was provided to Waste Management by the hospitals. Waste  
3 Management has a state-of-the art recycling facility in Woodinville and  
4 offers facilities competitive options. Responsive documents are produced  
5 herewith.<sup>34</sup>

6 22. Judge Kopta also denied Stericycle's motion to compel further response to *first* Data  
7 Request Nos. 20-22 because "that's farther afield than we are going here."<sup>35</sup>

8 23. Stericycle's *second* Data Request Nos. 13-16, 30, 31 and 34 seek further information  
9 and documentation of Waste Management's communications with Washington waste generators  
10 regarding the generator's need for "local waste processing facilities," "rail transportation to transport"  
11 treated waste, "recycl[ing] some or all of that generator's sharps waste," and non-regulated Agylix  
12 recycling and PharmEcology services.<sup>36</sup> In response to each of these Data Requests, Waste  
13 Management provided the names of the generators with whom it communicated orally regarding the  
14 various listed subjects.<sup>37</sup>

15 24. Waste Management objects to producing any additional information on these issues  
16 because Waste Management has provided – in addition to the names of generators with whom Waste  
17 Management discussed these issues – detailed and specific information about generator complaints  
18 about Stericycle, a request for further information is an unduly burdensome task and, most importantly,  
19 because Judge Kopta has ruled that the Commission will defer to generators' stated needs for service  
20 without applying any litmus test. In Order 05, Judge Kopta ruled that there will be no  
21 "reasonable[ness]" or "legitima[cy]" standard applied to test generators stated needs "in determining  
22 whether the incumbents' existing service is satisfactory. The Commission does not second-guess the  
23 customers' stated needs but defers to 'persons who have unique knowledge about the requirements of  
24 the service they need, and declines 'to tell a professional in the body of knowledge at issue that a  
25 service does nor does not meet her or his needs.'"<sup>38</sup> If the Commission will not second-guess

26 <sup>34</sup> *Id.* at DR No. 22.

27 <sup>35</sup> Goldman Decl., Ex. A at 92:13-22.

28 <sup>36</sup> Second Mot. to Compel, Ex. B.

<sup>37</sup> *Id.*

<sup>38</sup> Order 05 ¶ 10 (nn. omitted).

1 generators' stated needs, there can be no possible basis to permit incumbent service provider Stericycle  
2 to do the same. Waste Management requests that Stericycle's motion to compel further discovery  
3 regarding this second group of Data Requests also be denied.

4 **VI. CONCLUSION**

5 25. Waste Management requests that Stericycle's Second Motion to Compel be denied and  
6 that Stericycle's punishing approach to discovery should not be countenanced.

7 DATED this 27th day of September, 2012.

8 SUMMIT LAW GROUP PLLC

9  
10 By 

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15 *Attorneys for Waste Management of*  
16 *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.

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 27th day of September, 2012.

Handwritten signature of Deanna L. Schow above a horizontal line.

Deanna L. Schow