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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STERICYCLE OF WASHINGTON, INC.,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC., d/b/a WM
HEALTHCARE SOLUTIONS OF
WASHINGTON,

Respondent.

Docket No. TG-121597

COMPLAINANT STERICYCLE OF
WASHINGTON, INC.'S MOTION FOR
SUMMARY DETERMINATION RE
WASTE MANAGEMENT'S UNLAWFUL
BIOMEDICAL WASTE COLLECTION
OPERATIONS OUTSIDE ITS
CERTIFICATED TERRITORY

MOTION FOR SUMMARY DETERMINATION RE WASTE
MANAGEMENT'S UNLAWFUL BIOMEDICAL WASTE COLLECTION
OPERATION OUTSIDE ITS CERTIFICATED TERRITORY

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1 **I. Introduction and Relief Requested.**

2 1. Stericycle of Washington, Inc. ("Stericycle"), through its undersigned attorneys,
3 respectfully submits this motion for summary determination that Waste Management of
4 Washington, Inc. ("Waste Management") is unlawfully providing biomedical waste collection
5 services beyond the limits of its authorized service territory under certificate G-237. The
6 Commission should grant Stericycle's motion, determine that Waste Management has
7 unlawfully provided the biomedical waste collection services discussed herein beyond the
8 limits of its authorized service territory under certificate G-237, order Waste Management to
9 cease and desist all unlawful operations immediately, and take such further action as the
10 Commission determines is just and reasonable to remedy Waste Management's unlawful
11 conduct.

12 2. Waste Management acknowledges that it is collecting infectious biomedical
13 waste from PeaceHealth St. Joseph Medical Center in Bellingham, Washington that is outside
14 its service territory under G-237, and that it has offered such services to other hospitals beyond
15 its G-237 service territory, but argues that this service is a commercial recycling service not
16 subject to the requirements of RCW 81.77.040, prohibiting solid waste collection services
17 unless authorized by a certificate of public convenience and necessity, and not subject to the
18 Commission's rules in WAC chapter 480-70, including its rate, tariff and biomedical waste
19 safety rules. In flouting the requirements of RCW 81.77.040, providing biomedical waste
20 collection services beyond its certificated territory, and disregarding the requirements of the
21 Commission's rules at WAC chapter 480-70, Waste Management has shown a disregard for the
22 law that must be stopped immediately and fully remedied by the Commission.

23 3. Waste Management openly offers and provides biomedical sharps waste
24 collection services outside its certificated territory and does not charge Commission-approved
25 tariff rates for the service. Waste Management claims that, because a small portion of the
26

1 sharps waste it collects is reclaimed by a third-party after treatment, its sharps waste collection
2 services are commercial recycling exempt from Commission regulation. This claim is contrary
3 to the law and the Commission's precedents.

4 4. By statute, biomedical waste from which a small portion is extracted for
5 recycling after treatment does not qualify as a recyclable material; collection of such waste for
6 transportation and disposal is subject to all statutory and regulatory requirements applicable
7 generally to solid and biomedical waste collection services. The Commission has held, and the
8 superior court agreed, that a biomedical waste collection service in which a similarly small
9 portion of the waste was recycled after treatment is not a recycling service but, rather, a solid
10 waste collection service subject to RCW 81.77.040 and Commission regulation.

11 5. The Commission's obligation and authority to approve and regulate solid and
12 biomedical waste collection services in the public interest would be severely undermined if
13 services with a minimal recycling component could evade regulation as solid waste collection
14 services. In essence, such a conclusion could exempt all solid and biomedical waste collection
15 from Commission regulation since there is no waste stream from which a small portion of
16 material cannot be extracted for recycling. Such a conclusion would effectively deregulate
17 solid and biomedical waste collection, a result never intended by the legislature. Such a
18 conclusion would effectively exempt all biomedical waste collection from the Commission's
19 rate-setting and safety regulations, results clearly not consistent with chapter 81.77 RCW or the
20 public interest.

21 6. Waste Management's sharps waste collection service is being offered and
22 provided unlawfully in violation of chapter 81.77 RCW, the Commission's regulations at WAC
23 chapter 480-70, and clear Commission precedent on this issue. Waste Management must be
24 ordered to immediately cease and desist all unlawful biomedical waste collection services
25 beyond its certificated territory.
26

1 **II. Facts.**

2 7. Waste Management has authority under certificate of public convenience and
3 necessity G-237 to provide solid waste collection services in certain defined portions of
4 Washington. Ex. A.¹ Waste Management has no authority to provide solid waste services in
5 the remainder of the State, including the area of Whatcom County in which Bellingham is
6 located. *Id.*; Ex. B (WUTC map of Waste Management authority in Whatcom County).

7 8. Under its G-237 authority, Waste Management provides biomedical waste
8 collection and transportation services to generators of biomedical waste. These services
9 include collection and transportation of both “sharps” biomedical waste, including hypodermic
10 needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and
11 lancets, and “softs” biomedical waste. *See* WAC 480-70-041 (defining “Sharps waste”).

12 9. Biomedical waste collected under Waste Management’s G-237 authority is
13 transported to its Seattle autoclave facility for treatment. Ex. C, WM Supp. Resp., p.6. At the
14 Seattle facility the infectious waste, including sharps waste, is treated to render it non-
15 infectious (except pathological waste, which is sent to a Brooks, Oregon incineration facility).
16 *Id.* After treatment, the treated waste, including sharps waste, is disposed of in a landfill. *Id.*

17 10. The vast majority of biomedical sharps waste collected by Waste Management
18 is treated and landfilled as described above. *See id.*; Ex. D, Excerpts of Deposition of Jeffery
19 Norton (hereinafter “Norton Dep.”), 117:24-118:13 (agreeing that the “vast majority” of sharps
20 waste collected by Waste Management is processed and disposed of in a landfill). For most of
21 the sharps waste it collects, as for all other biomedical waste collected under its G-237
22 authority, Waste Management purports to charge Commission-approved tariff rates from its
23 biomedical waste tariff on file with the Commission.

24
25
26 ¹ All exhibits referenced in this motion are exhibits to the Declaration of Jared Van Kirk filed
herewith.

1 11. However, Waste Management offers a separate sharps waste collection and
2 transportation service that it claims is not subject to the certificate requirements of
3 RCW 81.77.040 or the Commission's rate and safety rules. Waste Management calls this
4 service the BD ecoFinity Life Cycle Solution service (the "ecoFinity" service). Waste
5 Management offers the ecoFinity service in conjunction with three other companies, its affiliate
6 WM Healthcare Solutions, Inc., Becton Dickinson, Inc. ("BD"), a manufacturer of hypodermic
7 syringes and sharps waste containers, and Talco Plastics, Inc.

8 12. Waste Management has offered its ecoFinity sharps waste collection service to a
9 number of hospitals beyond the territory covered by G-237. Currently, Waste Management
10 provides the ecoFinity sharps service to one generator, PeaceHealth St. Joseph Medical Center
11 in Bellingham. Ex. C, WM Supp. Resp., p.6; Ex. D, Norton Dep., 115:12-15. Waste
12 Management does not have authority under G-237 to provide solid waste collection services in
13 Bellingham. Ex. B; Ex. D, Norton Dep., 127:24-128:7 (stating that St. Joseph's Medical
14 Center is not in Waste Management's biomedical waste service territory). Waste Management
15 does not charge St. Joseph Medical Center its approved tariff rate for biomedical waste
16 services, or any other tariff rate. Instead Waste Management charges what it describes as
17 "competitive market rates" for this service. Ex. C, WM Supp. Resp., p.6; Ex. D, Norton Dep.,
18 137:3-23 (indicating Waste Management charges St. Joseph Medical Center approximately
19 20.9 cents per gallon based on a \$9 charge for a 43 gallon container, instead of the applicable
20 tariff rate of 25 cents per gallon).

21 13. Waste Management has offered to provide its ecoFinity sharps collection service
22 to PeaceHealth medical facilities throughout Washington, including facilities in Bellevue,
23 Chelan, Clarkston, Davenport, Ephrata, Longview, Moses Lake, Newport, Odessa, Othello,
24 Pullman, Republic, Ritzville, San Juan Island, Shelton, Tacoma, Tonasket, and Vancouver,
25 Washington. Ex. E, p.6 (PeaceHealth proposal). Waste Management does not have authority
26 to provide solid waste collection services in any of these locations. *Id.* (indicating that the

1 locations are, supposedly, “sharps only”). Waste Management offered to provide ecoFinity
2 services at all of these locations at “competitive market rates.” Ex. C, WM Supp. Resp., p.6.

3 14. In the ecoFinity program Waste Management collects untreated sharps waste
4 contained in disposable sharps containers manufactured by BD. *See* Ex. C, WM Supp. Resp.,
5 p.6. These collections currently occur weekly from St. Joseph Medical Center. Ex. C, WM
6 Supp. Resp., p.6. Waste Management transports this sharps waste to its Seattle facility. *Id.*
7 However, this ecoFinity sharps waste is not treated at the Seattle facility. *Id.* Instead it is
8 stored at that site, untreated, in a refrigerated trailer. Ex. D, Norton Dep., 156:1-20.

9 15. Approximately once every two months, either Waste Management or its
10 affiliate, WM Healthcare Solutions, Inc., transports the untreated ecoFinity sharps waste in the
11 refrigerated trailer from the Seattle facility to a WM Healthcare Solutions, Inc. treatment
12 facility in Vernon, California. Ex. C, WM Supp. Resp., p.6; Ex. F, Sharps Bill of Lading
13 (stating that the Carrier is WM Healthcare Solutions, Inc.). In Southern California, WM
14 Healthcare Solutions, Inc. treats the ecoFinity sharps waste to render it non-infectious, and also
15 washes and shreds the waste. Ex. C, WM Supp. Resp., p.6.

16 16. WM Healthcare Solutions, Inc. then transports the treated sharps waste to Talco
17 Plastics (also located in Southern California). *Id.* Talco Plastics processes the waste to reclaim
18 certain plastics. Those reclaimed plastics are then allegedly sent to BD, where an unknown
19 volume is used in the manufacture of new disposable sharps containers. *See* Ex. G, WM Supp.
20 Resp. to 2nd Data Requests, p.2 (stating that BD determines recycling yield based on the
21 quantity of plastic pellets received from Talco Plastics). The waste material that is not
22 reclaimed is discarded.

23 17. Since December, 2011, when Waste Management first began providing its
24 ecoFinity sharps services to St. Joseph Medical Center, only 22% on average, and as little as
25 8%, of ecoFinity sharps waste has been reclaimed by Talco Plastics each month. *Id.*, p.2. The
26 amount of this material actually recycled by BD is unknown. The remaining 78% on average

1 of the ecoFinity sharps waste from Washington is discarded, just as Waste Management
2 discards 100% of the vast majority of the sharps waste it collects under its G-237 authority.
3 *See id.* (responding to inquiry regarding the weight of recyclable materials reclaimed and the
4 amount of waste that was discarded with data indicating that only 22% of the sharps waste
5 material by weight was reclaimed as recyclable materials); Ex. C, WM Supp. Resp., p.6.

6 18. Despite this minimal reclamation, Waste Management contends that its
7 ecoFinity program is a commercial recycling service exempt from regulation as a solid waste
8 collection service. Waste Management offers and provides its ecoFinity service in territory that
9 it is not authorized by G-237 to serve and charges rates for the service that are not approved
10 tariff rates. Since December, 2011 Waste Management has collected 90,845 pounds of
11 untreated sharps waste from St. Joseph Medical Center under its ecoFinity program without
12 Commission authority and at unapproved rates. *See* Ex. G, WM Supp. Resp. to 2nd Data
13 Requests, p.2.

14 **III. Statement of Issues.**

15 19. Has Waste Management unlawfully provided biomedical waste collection
16 services beyond the limits of its authorized service territory under certificate G-237 and at non-
17 tariff rates where its ecoFinity sharps waste collection and transportation service results in the
18 reclamation of only a small portion of recyclable materials and the remainder of the waste is
19 discarded?

20 **IV. Evidence Relied Upon.**

21 20. This motion relies on the declaration of Jared Van Kirk, filed herewith, together
22 with the pleadings and materials on file in this application proceeding.

23 **V. Argument and Authority.**

24 **A. Waste Management's EcoFinity Sharps Collection Service Disregards the**
25 **Authority of the Commission Over Biomedical Waste Collection and**
26 **Transportation Services.**

1 21. RCW § 81.77.030 requires the Commission to supervise and regulate every
2 solid waste collection company, including “[b]y fixing and altering its rates, charges,
3 classifications, rules and regulations” and “[b]y regulating the accounts, service, and safety of
4 operations.” RCW § 81.77.030. In addition, every solid waste collection company must obtain
5 a certificate of public convenience and necessity from the Commission and may only advertise,
6 offer, or provide services that are authorized by that certificate. RCW § 81.77.040; WAC 480-
7 70-081. The Commission requires that every regulated solid waste collection company file a
8 tariff identifying its services and the rates and charges for those services for approval by the
9 Commission, and the Commission prohibits solid waste collection companies from charging
10 any rate different from the approved tariff rate. WAC 480-70-236. The Commission has
11 established specific regulations to ensure the safety of biomedical waste collection services
12 including regulating operations, vehicles, employee training, and waste packaging,
13 containerization, and documentation. WAC 480-70-426 – 476. In short, a solid waste
14 collection company must (1) have a certificate from the Commission, (2) may not advertise,
15 offer, or provide any solid waste collection service not authorized by that certificate, (3) must
16 file tariff rates and charges for its authorized solid waste collection services for approval by the
17 Commission, (4) must not levy or accept any rate other than the approved tariff rate, and (5)
18 must comply with the Commission’s biomedical waste safety regulations.

19 22. Waste Management contends that its collection and transportation of infectious
20 sharps waste in its ecoFinity sharps program is a commercial recycling service, and not a solid
21 waste collection service. Thus, Waste Management contends that its ecoFinity sharps program
22 is exempt from every one of the laws and regulations discussed above that apply to solid and
23 biomedical waste collection companies. Waste Management contends that it does not need a
24 certificate of public convenience and necessity to authorize the collection and transportation of
25 untreated sharps waste under the ecoFinity program. Indeed, Waste Management admittedly
26 provides those services to a generator outside its authorized G-237 certificate service territory

1 and offers these services to other generators outside its authorized territory. Waste
2 Management similarly contends that it does not need to file tariff rates and charges for
3 collection and transportation of untreated ecoFinity sharps waste. Indeed, Waste Management
4 admits that it does not charge tariff rates, even though it purports to charge its biomedical waste
5 tariff rates for all other infectious sharps waste it collects in Washington. Waste Management's
6 claim that the collection and transportation of untreated sharps waste under the ecoFinity
7 program is a commercial recycling service is in effect a contention that this service is exempt
8 from all other laws and Commission regulations applicable to solid waste collection services or
9 companies, including every rule that the Commission has adopted to ensure the safety of
10 biomedical waste collection services.

11 23. For these contentions to be correct and for the ecoFinity sharps program to be
12 lawful, the solid waste collection company statute, RCW chapter 81.77, and the Commission's
13 solid and biomedical waste regulations must be interpreted not to apply to an infectious waste
14 readily capable of lacerating or puncturing human skin. Under settled law, however, the
15 ecoFinity sharps program is a solid waste collection service and Waste Management is acting
16 as a solid waste collection company when it provides this service. By providing the ecoFinity
17 sharps collection service beyond the territory covered by G-237, Waste Management is simply
18 disregarding applicable law and the Commission's authority.

19 **B. Waste Management's ecoFinity Sharps Service is a Solid Waste Collection Service**
20 **Subject to the Commission's Regulatory Authority Under Chapter 81.77 RCW**
21 **and Chapter 480-70 WAC.**

22 24. Under RCW § 81.77.010(7) a "Solid waste collection company" includes

23 every person or his or her lessees, receivers, or trustees, owning,
24 controlling, operating, or managing vehicles used in the business
25 of transporting solid waste for collection or disposal, or both, for
26 compensation, except septic tank pumpers, over any public
highway in this state as a "common carrier" or as a "contract
carrier."

RCW § 81.77.010(7). However, "solid waste collection"

1 does not include . . . collecting or transporting recyclable
2 materials by or on behalf of a commercial or industrial generator
of recyclable materials to a recycler for use or reclamation.

3 RCW § 81.77.010(8); *see also* WAC 480-70-011(2)(b) (applying the same limitation to
4 collection and transportation activities that are regulated by the Commission as solid waste).²

5 Using the same language, RCW § 81.80.470 subjects the collection of recyclable materials and
6 their transportation to a commercial recycler to the Commission's regulation of motor freight
7 carriers. However, the motor freight carrier statute states that it does not alter the solid waste
8 collection company statute to allow collection or transportation of "solid waste that may
9 incidentally contain recyclable materials" by any company other than an authorized solid waste
10 collection company. RCW § 81.80.470.

11 25. Thus, to be exempt from Commission regulation of solid waste collection
12 services, a carrier purporting to provide a commercial recycling service must meet three
13 criteria. A carrier is only exempted if (1) it is collecting and transporting "recyclable
14 materials," (2) it is collecting and transporting such materials "to a recycler for use or
15 reclamation," and (3) the material transported must at least include more than "incidental"
16 recyclable content. Waste Management does not meet these criteria. Under RCW
17 chapter 81.77 and RCW § 81.80.470, Commission regulations, and the Commission's
18 precedent, Waste Management's ecoFinity sharps collection service is solid waste collection,
19 not commercial recycling services.

- 20 1. By statute ecoFinity sharps waste is not a recyclable material transported for
21 recycling.

22 26. In the same legislation that added RCW § 81.77.010(8) and (9), the provisions
23 that exclude commercial recycling from the definitions of solid waste collection and solid
24

25 ² RCW § 81.77.010(9) similarly provides that ". . . solid waste does not include recyclable
26 materials except for source separated recyclable materials collected from residences."
RCW § 81.77.010(9).

1 waste, the Washington legislature also adopted a definition of “recyclable materials.” 1989
2 Wash. Legis. Serv. 431 (West). The legislature determined that “recyclable materials” are
3 those solid wastes that are separated for recycling or reuse, such
4 as papers, metals, and glass, that are identified as recyclable
material pursuant to a local comprehensive solid waste plan.

5 *Id.*; codified at RCW § 70.95.030(17).

6 27. There is no dispute that ecoFinity sharps waste is not “separated for recycling or
7 reuse, such as papers, metals, and glass.” The sharps waste materials contain mixed plastics,
8 glass, metals, and other materials that are only sorted by an outside reclamation company after
9 the waste is treated. *See* Ex. C, WM Supp. Resp., p.6. Additionally, the large majority of the
10 waste, approximately 78% each month on average, is not reclaimed for recycling but is instead
11 disposed of and, hence, it cannot be considered to have been separated for recycling or reuse.
12 *See* RCW § 70.95.030(18) (defining “recycling” as “transforming or remanufacturing waste
13 materials into usable or marketable materials for use other than landfill disposal or
14 incineration.”); Ex. G, WM Supp. Resp. to 2nd Data Requests, p.2.

15 28. At present Waste Management provides ecoFinity services only to St. Joseph
16 Medical Center in Bellingham, which is within Whatcom County. Whatcom County’s
17 comprehensive solid waste plan³ defines recyclable materials as:

18 those solid wastes that are separated for composting, recycling, or
19 reuse into usable or marketable materials. . . . Materials disposed
20 of in a landfill or through incineration are not considered
21 recyclable materials, nor are residual material remaining after
22 recyclables have been removed.

23 Ex. H (Excerpts from Whatcom County Comprehensive Solid and Hazardous Waste
24 Management Plan 2008), §2, p.20.⁴ Under this definition, the sharps waste collected and
25 transported in the ecoFinity program cannot be considered recyclable materials. Waste

26 ³ The city of Bellingham participates in the Whatcom County comprehensive solid waste plan.
Ex. H, §1, p.8.

⁴ The full Whatcom County Comprehensive Solid and Hazardous Waste

1 Management concedes that as little as 8%, and on average only 22%, of ecoFinity sharps waste
2 is reclaimed after being treated, and that the rest is disposed of in a landfill. Ex. G, WM Supp.
3 Resp. to 2nd Data Requests, p.2. Waste Management has not indicated what proportion of even
4 the small volume of reclaimed material is actually used in producing new disposable sharps
5 containers, and what is done with the remaining material. The Whatcom County definition
6 explicitly states that most of the ecoFinity waste – 78% of the ecoFinity waste stream – is “not
7 considered recyclable materials.”

8 29. Even if the ecoFinity waste were considered a mixture of both a small minority
9 of materials that can be reclaimed and a large majority of waste that will be disposed of in a
10 landfill, the Whatcom County definition explicitly states that the “residual” material after
11 removing recyclables (here, the “residual” material comprises some 78% of the waste) is not
12 considered recyclable materials. It follows that, to collect and transport the material from this
13 waste stream that is landfilled, Waste Management would need a solid waste certificate from
14 the Commission authorizing the service.⁵

15 30. The ecoFinity sharps waste is not a recyclable material pursuant to the Whatcom
16 County comprehensive solid waste plan or RCW § 70.95.030(17). Indeed, Whatcom County
17 has already reached the same conclusion, taking the position that transportation of infectious
18 waste, including untreated sharps, requires a solid waste certificate from the Commission.
19 Ex. H, §2, p.34.

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21
22 Management Plan 2008 is available at
<http://www.co.whatcom.wa.us/publicworks/pdf/solidwaste/vol1-solidwastereport.pdf>.

23 ⁵ Commission precedent also indicates that a solid waste certificate would be necessary to
24 transport a mixed waste stream that includes a significant portion of solid waste. *In re Ryder*
25 *Distribution Sys., Inc.*, Order M.V.G. No. 1536, App. No. GA-75563, p.6 (suggesting that
26 parallel solid waste and motor carrier authority may be necessary if recycling of waste became
more than an “adjunct” to disposal); *see also In re Fedderly-Marion Freight Lines, Inc.*, Order
M.V.G No. 1201, Hearing No. GA-802, p.4 (June 4, 1985) (finding that a carrier engaged
“extensively” in solid waste transportation “may be required to hold both a [solid waste]
certificate and a [motor carrier] permit.”).

1 2. Under Commission and court precedent ecoFinity sharps waste is not a
2 recyclable material transported for recycling.

3 31. Commission precedent, upheld by the superior court, also conclusively
4 demonstrates that ecoFinity sharps waste is not a recyclable material and is not transported for
5 recycling. In *In re Lowell Haugen d/b/a Medical Waste Management Systems, Inc.* the
6 Commission considered the proper classification of a medical waste collection and disposal
7 service in which the carrier, Haugen, collected untreated sharps and softs waste from generators
8 and delivered that waste to another company, Medical Resource Recycling System (“MRRS”),
9 for treatment by autoclaving. MRRS, in turn, “recycle[d] a small portion, and the remainder
10 [was] either incinerated or disposed of in a landfill.” Order M.V. No. 148521, Hearing No.
11 H-5024, p.3 (Apr. 27, 1995). In a previous proceeding involving MRRS, the Commission
12 determined that MRRS recycled “about a fifth” of the waste it processed, or about 20%, and
13 disposed of the remainder.⁶ *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No.
14 1707, Hearing No. GA-76820 (May 25, 1994). Similar to Waste Management’s ecoFinity
15 program, the collected biomedical waste comprised mixed materials, a nearly identical “small
16 portion” of the waste was reclaimed as recyclables (about 20% for MRRS and 22% on average
17 for ecoFinity), and the large majority of the waste was landfilled or incinerated. Also like
18 Waste Management, Haugen contended that its service involved the collection and
19 transportation of “a recyclable material” and not solid waste. *Haugen*, Order M.V. No. 148521,
20 p.3.

21 32. Haugen’s contention was rejected by the Commission, and the Washington
22 superior court that enforced the Commission’s decision. The Commission concluded “upon a
23 complete examination of the record,” that

24 _____
25 ⁶ In its application proceeding, MRRS applied for and was granted solid waste authority to
26 collect and transport biomedical waste to its processing facility. It did not purport to offer such
services as commercial recycling services, despite recycling approximately 20% of the treated
waste.

1 [t]he transportation conducted by the respondent is not the
2 transportation of recyclable materials. Biohazardous waste is
3 solid waste. Although MRRS may recycle a portion of the waste
4 that it receives from the respondent, the transportation service that
5 the respondent provides is for collection and disposal, not for
6 recycling, and solid waste authority therefore is required for its
7 transportation.

8 *Id.* at 3, 7 (internal citations omitted); *see also re Lowell Haugen d/b/a Medical Waste*
9 *Management Systems, Inc.*, Order M.V. No. 148396, Hearing No. H-5024, p.2 (Dec. 16, 1994)
10 (finding in the initial order that “claimant is not a recycler because any recycling which is
11 performed involves only a very small part of the waste collected.”).⁷ In a subsequent suit by
12 the Commission to enjoin Haugen’s services without a certificate, the Washington superior
13 court also “adopted the WUTC’s findings that Haugen was a transporter of biomedical waste”
14 and “that he was required by state law to have a permit.” *WUTC v. Haugen*, 94 Wn. App. 552,
15 554, 972 P.2d 1280 (1999).

16 33. On another occasion the Commission similarly found that biomedical waste
17 transported for treatment and processing in which “[r]ecycling will be an adjunct to the solid
18 waste disposal” required solid waste authority. *In re Ryder Distribution Sys., Inc.*, Order
19 M.V.G. No. 1536, App. No. GA-75563, p.6 (Jan. 29, 1992). In *Ryder Distribution* the
20 Commission considered an applicant’s proposed transportation of biomedical waste for
21 treatment by Stericycle. At the time, the Commission found that the waste transported to

22 ⁷ The administrative law judge who issued the initial order in *Haugen* further explained that

23 [t]he Commission has previously determined that transportation
24 of recyclables may be governed by either RCW 81.80 or RCW
25 81.77. The purpose of the transportation governs its classification
26 [as solid waste or recycling]. In this case, the transportation
service provided by respondent is for disposal and should be
regulated as carriage of solid waste. Any recycling service
performed by respondent is [sic] affects only a small portion of
the waste disposed of through placement in a landfill or
incineration. Respondent’s service is not governed by the
provisions of RCW Chapter 81.80.

Haugen, Order M.V. No. 148396, p.2.

1 Stericycle's facility "will not be regularly or exclusively recycled" and, therefore, concluded
2 that the applicant needed solid waste authority. *Id.*

3 34. The *Haugen* case controls the proper classification of Waste Management's
4 ecoFinity service. As in *Haugen*, Waste Management collects and transports untreated
5 biomedical waste in Washington. It is not rendered non-infectious until it reaches California.
6 Waste Management transfers the waste to another entity, its affiliate WM Healthcare Solutions,
7 Inc., to treat the waste. Ex. C, WM Supp. Resp., p.6. As in *Haugen*, WM Healthcare
8 Solutions, Inc. then transfers the waste to a third-party processor, Talco Plastics, to reclaim
9 recyclable materials. *Id.* Finally, as in *Haugen*, only approximately 20% of the waste, and as
10 little as 8% in a given month, is reclaimed through Talco Plastics' process and the remainder is
11 discarded. Ex. G, WM Supp. Resp. to 2nd Data Requests, p.2. Under *Haugen*, Waste
12 Management is, therefore, transporting this waste for disposal, not recycling, and must have a
13 certificate from the Commission authorizing it to do so.

14 35. Waste Management's ecoFinity service is a solid waste collection service and is
15 unlawful because G-237 does not authorize service to St. Joseph Medical Center or the other
16 generators outside the G-237 territory to which it has been offered.

17 3. The Commission's rules support the conclusion that ecoFinity sharps waste is
18 not a recyclable material transported for recycling.

19 36. The Commission's rules support the precedent that transporting untreated
20 biomedical waste from which only a small portion of the waste is reclaimed and the rest
21 discarded requires a solid waste certificate and compliance with the Commission's solid and
22 biomedical waste rules. "Chapter 81.77 RCW is intended to cover operations of carriers whose
23 primary business is transporting solid waste for collection and/or disposal." WAC 480-70-016
24 (emphasis added). Carriers whose primary purpose is transporting waste for other purposes,
25 such as recycling, are governed in those activities by RCW § 81.80. *Id.* Transportation for
26 disposal more than occasionally will require a solid waste certificate from the Commission. *Id.*

1 (requiring solid waste certificate to transport solid waste for disposal “on more than an
2 occasional basis”).

3 37. “In determining whether operations require a solid waste certificate or a motor
4 carrier permit, the commission will consider factors including, but not limited to:

- 5 (a) The intent of the shipper;
- 6 (b) The intended destination of the shipment;
- 7 (c) The actual destination of the shipment;
- 8 (d) Special handling or conditions placed on the shipment by the shipper and/or
9 receiver;
- 10 (e) The value of the commodity being transported;
- 11 (f) Whether the carrier is primarily engaged in the business of providing solid waste
12 collection or is primarily engaged in the business of providing a service other than the
13 collection of solid waste; and
- 14 (g) Whether the carrier holds itself out to the public as a transporter of solid waste.”

15 WAC 480-70-016(4).

16 38. Consideration of these factors supports the conclusion that Waste Management’s
17 ecoFinity sharps waste service is solid waste collection. With respect to shipper intent, Waste
18 Management has produced an example of a bill of lading and waste tracking document for
19 ecoFinity sharps material. According to this document, the sharps waste is “biohazardous
20 waste” and “regulated medical waste,” not recyclable materials. Ex. F; Ex. D, Norton Dep.,
21 125:3-9 (identifying manifest as a manifest for ecoFinity sharps waste). The Waste
22 Management labels that customers use to identify sharps containers also indicate that the waste
23 is “Regulated Medical Waste.” Ex. I (Waste Management sharps container labels). In
24 addition, hospitals demand that all individual sharps containers are marked as biohazard waste.
25 Ex. D, Norton Dep., 116:11-117:12. With respect to special handling conditions, the bill of
26 lading also constitutes the shipper’s certification that the sharps are correctly described,
packaged, marked and labeled as regulated medical waste. *See* Ex. F. These descriptions and
handling conditions indicate that the sharps waste was intended to be considered, and was
considered regulated infectious waste, not a recyclable material.

1 39. The intended destination on the sample bill of lading and the actual destination
2 to which Waste Management ships its ecoFinity sharps waste is the same, WM Healthcare
3 Solutions, Inc.'s treatment facility in Vernon, California. Ex. F. Thus, the destination of the
4 ecoFinity sharps material is not a recycler but, rather a treatment facility where the waste is
5 rendered non-infectious. This supports the conclusion that the waste is regulated biomedical
6 waste until it is treated in California. Even if the ultimate destination of the treated waste is
7 considered relevant to the characterization of the untreated waste transported in Washington, as
8 discussed above that destination is a landfill for the great majority of the ecoFinity waste.

9 40. The sharps waste transported by Waste Management to WM Healthcare
10 Solutions, Inc. also has no value, supporting its characterization as solid waste. At all times in
11 Washington and in the custody of Waste Management, the ecoFinity sharps waste is untreated
12 and potentially infectious. Such waste has no value to anyone until it is treated and it must be
13 treated at a cost. Even if the value of the waste after it leaves Washington and Waste
14 Management's control is relevant, it still has little to no value. All of the waste is transported
15 over 1,200 miles in a refrigerated trailer at considerable cost, treated by WM Healthcare
16 solutions at an additional cost and, once again, 78% of the waste is disposed of at a landfill at
17 yet another cost. There is no reason to believe that the small amount of reclaimed materials has
18 a commercial value that off-sets those costs. In *Haugen*, in similar circumstances, the ALJ
19 similarly found that biomedical waste from which a small portion was recycled is not "material
20 which has any significant value." *Haugen*, Order M.V. No. 148396, p.2.

21 41. By statute, Commission precedent, and the Commission's rules, Waste
22 Management's ecoFinity service is a solid waste collection service and is being provided by
23 Waste Management unlawfully. G-237 does not authorize service to St. Joseph Medical Center
24 in Bellingham or to the other hospitals outside the G-237 territory where Waste Management
25 has offered the ecoFinity service.
26

1 **C. Classifying Waste Management's ecoFinity Program as Anything Other Than a**
2 **Solid Waste Collection Service Would Undermine the Commission's Authority to**
3 **Authorize and Regulate Biomedical Waste Collection in the Public Interest.**

4 42. The *Haugen* rule – under which a biomedical waste collection service that
5 involves recycling of a small portion of the waste stream is classified as a solid waste collection
6 service – is important to the Commission's ability to regulate biomedical waste services in the
7 public interest. Put simply, under the Commission's regulations biomedical waste collection is
8 a regulated solid waste collection service, but any service deemed to be commercial recycling
9 is not subject to the Commission's solid waste regulations. Commercial recycling is only
10 regulated as a motor carrier service and authorized by a motor carrier permit. Thus, if
11 biomedical waste collection is deemed to be commercial recycling, the Commission cannot
12 require a certificate of public convenience and necessity, cannot require the carrier to file tariff
13 rates for approval or regulate those rates, and cannot enforce its biomedical waste safety
14 regulations against the carrier. This is not what the legislature intended in RCW § 81.77.030
15 and 040 when it required the Commission to supervise and regulate solid waste collection
16 companies and approve their services through certificates of public convenience and necessity.

17 43. Moreover, if the *Haugen* rule is not enforced the Commission's regulatory
18 authority could be evaded by any solid waste collection service that included some minimal
19 amount of recycling. New entrants or existing carriers could adapt their service offerings to
20 include a minimal recycling component to the extent they perceived it to be advantageous to
21 evade the Commission's authority and rules. Indeed, Stericycle's sharps waste collection
22 service, involving reusable sharps containers and, thus, the "recycling" of over 50% of this
23 waste stream through reuse, would also qualify as commercial recycling. See Philpott Prefiled
24 Testimony, ¶48, Ex. K. Stericycle and Waste Management have also adopted reusable
25 containers for non-sharps biomedical waste, which also results in a significant volume of that
26 waste stream being recycled through reuse.

1 44. Finally, the serious consequences of eliminating the *Haugen* rule are not limited
2 to just losing control of sharps waste services. There is no principled difference between (1) a
3 sharps waste service in which a small portion of the sharps waste is recycled, (2) a full service
4 biomedical waste collection service in which a small portion of the waste is recycled, and (3) a
5 general solid waste service in which a small portion of the waste is recycled. Indeed, the
6 service at issue in *Haugen* was a full service biomedical waste service collecting both sharps
7 and softs. *Haugen*, Order M.V. No. 148521, p.3, 7. If the Commission and the reviewing court
8 had held that it was commercial recycling then the entire biomedical waste collection service
9 would have been exempt from solid waste regulation. Likewise, if the Commission backs away
10 from *Haugen* and determines that the substantially identical ecoFinity service is commercial
11 recycling, then any carrier can arrange for post-treatment reclamation that, even if highly
12 inefficient, would exempt the carrier from Commission solid waste regulation. The
13 Commission could be left with regulations that simply do not apply to biomedical waste
14 collection services and have no effect on the services they were intended to regulate.

15 **VI. Conclusion**

16 45. For the foregoing reasons Stericycle respectfully requests that the Commission
17 determine that Waste Management's ecoFinity sharps waste collection service is a solid waste
18 collection service subject to authorization and regulation by the Commission and that Waste
19 Management's ecoFinity sharps service is unlawful as offered and provided beyond Waste
20 Management's service territory under G-237. The Commission should determine that Waste
21 Management has operated unlawfully by providing the ecoFinity service in Bellingham outside
22 its certificated authority and has unlawfully offered to provide the ecoFinity service in other
23 locations which it is not authorized to serve in violation of RCW chapter 81.77 and the
24 Commission's rules at WAC chapter 480-70.
25
26

1 **CERTIFICATE OF SERVICE**

2 I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of
3 Washington that, on November 7, 2012, I caused to be served on the person(s) listed below in
4 the manner shown a copy of COMPLAINANT STERICYCLE OF WASHINGTON, INC.'S
5 MOTION FOR SUMMARY DETERMINATION RE WASTE MANAGEMENT'S
6 UNLAWFUL BIOMEDICAL WASTE COLLECTION OPERATIONS OUTSIDE ITS
7 CERTIFICATED TERRITORY:

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

- Via Legal Messenger
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- Via FedEx
- Via Email

15 Administrative Law Judge
16 Adam E. Torem
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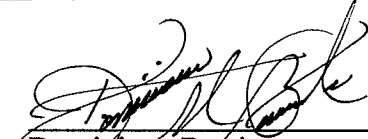
- Via Legal Messenger
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Dated at Seattle, Washington this 7 day of November, 2012.



Dominique Barrientes
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