

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 TG-121597

COMMISSION STAFF'S
RESPONSE TO
STERICYCLE'S MOTION
FOR SUMMARY
DETERMINATION RE
WASTE MANAGEMENT
OPERATIONS OUTSIDE
CERTIFICATED TERRITORY

1 In accordance with WAC 480-07-380, the Staff of the Washington Utilities and Transportation Commission ("Staff") submits this response to Complainant Stericycle of Washington, Inc.'s ("Stericycle's") Motion for Summary Determination re Waste Management's Unlawful Operations Outside its Certificated Territory.

2 Stericycle initiated this docket with a Complaint and Petition for Declaratory Relief that contains two claims. In its motion for summary determination, Stericycle seeks a ruling on the Second Claim. Stericycle has filed a similar motion in Docket TG-120033.

3 Stericycle seeks a ruling that Waste Management of Washington's ("Waste Management's") ecoFinity sharps waste collection service is solid waste collection, not commercial recycling. In part, Stericycle bases its argument on the following description of the ecoFinity program that Waste Management provided in response to a data request in Docket TG-120033: "In May and June 2012, recycled sharps and sharps containers yielded between 17% and 28% of the recycled product." Declaration of Jared Van Kirk, Exhibit C, p. 6; Complaint and Petition for Declaratory Relief, Exhibit E. Stericycle argues, in part,

that these percentages make the ecoFinity program solid waste collection under RCW Chapter 81.77, as a matter of law.

4 Staff takes no position at this time on whether the Waste Management ecoFinity sharps program is solid waste collection or commercial recycling. Staff is concerned that Stericycle's legal arguments may have implications beyond the parties in this case, however.

5 In May 2008, the Commission initiated a rulemaking, in Docket TG-080591, to review the definitions in Chapter 480-70 WAC, "Solid Waste and/or Refuse Collection Companies." Wash. St. Reg. 08-10-094 (preproposal statement of inquiry under RCW 34.05.310). One of the objectives of the rulemaking was "[t]o resolve disagreement among regulated solid waste collection companies, commercial recycling companies, waste/recycling generators, and the department of ecology as to what activities the commission should regulate as solid waste collection under chapter 81.77 RCW and what the commission should regulate as common carriage of property under chapter 81.80 RCW." *Id.* The Commission invited comments and held a workshop in July 2008. In 2009, Staff prepared two draft proposals and invited additional comments. More than two dozen entities submitted comments, but no consensus was achieved.

6 In November 2010, Governor Gregoire issued an executive order that suspended most rule making. Wash. St. Reg. 10-24-006. Soon thereafter, the Commission withdrew the solid waste rulemaking in Docket TG-080591. Wash. St. Reg. 11-01-059. The issues that prompted the rulemaking remain unresolved.

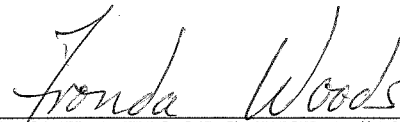
7 Stericycle's argument that the percentage of reclaimed material determines whether the ecoFinity program is solid waste collection implicates the issues that were at stake in the withdrawn rulemaking in Docket TG-080591. Staff urges this tribunal to avoid a ruling that might be perceived as setting a numerical standard for determining whether an activity is

subject to regulation under RCW Chapter 81.77. Staff requests that any ruling on the merits of Stericycle's motion for summary determination be limited to the facts of this case.

Dated this 20th day of November 2012.

Respectfully submitted,

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