

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of  
WASTE MANAGEMENT OF  
WASHINGTON, INC.  
d/b/a WM Healthcare Solutions  
of Washington  
720 4th Ave. Ste 400  
Kirkland, WA 98033-8136

Docket No. TG-120033

PROTESTANT 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

GARVEY SCHUBERT BARER  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS  
*eighteenth floor*  
*1191 second avenue*  
*seattle, washington 98101-2939*  
*206 464-3939*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION AND RELIEF REQUESTED. ....	1
II. FACTS.....	3
III. STATEMENT OF ISSUES.....	6
IV. EVIDENCE RELIED UPON.....	6
V. ARGUMENT AND AUTHORITY. ....	7
A. Waste Management’s EcoFinity Sharps Collection Service Disregards the Authority of the Commission Over Biomedical Waste Collection and Transportation Services.....	7
B. Waste Management’s ecoFinity Sharps Service is a Solid Waste Collection Service Subject to the Commission’s Regulatory Authority Under Chapter 81.77 RCW and Chapter 480-70 WAC. ....	8
1. By statute ecoFinity sharps waste is not a recyclable material transported for recycling.....	10
2. Under Commission and court precedent ecoFinity sharps waste is not a recyclable material transported for recycling. ....	12
3. The Commission’s rules support the conclusion that ecoFinity sharps waste is not a recyclable material transported for recycling. ....	14
C. Classifying Waste Management’s ecoFinity Program as Anything Other Than a Solid Waste Collection Service Would Undermine the Commission’s Authority to Authorize and Regulate Biomedical Waste Collection in the Public Interest. ....	17
VI. CONCLUSION .....	18

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 and at non-tariff rates, and  
9 consider that unlawful conduct in this application proceeding as evidence of Waste  
10 Management's inability or unwillingness to comply with the law and the Commission's  
11 regulations.

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 should be taken into account in evaluating its pending application for additional  
23 certificate authority.

24           3. Waste Management openly offers and provides biomedical sharps waste  
25 collection services outside its certificated territory and does not charge Commission-approved  
26

1 tariff rates for the service. Waste Management claims that, because a small portion of the  
2 sharps waste it collects is reclaimed by a third-party after treatment, its sharps waste collection  
3 services are commercial recycling exempt from Commission regulation. This claim is contrary  
4 to the law and the Commission's precedents.

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

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

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

1 unwillingness to comply with the law that should be considered in evaluating Waste  
2 Management's application for new authority.

3 **II. Facts.**

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

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

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

20 10. The vast majority of biomedical sharps waste collected by Waste Management  
21 is treated and landfilled as described above. *See id.*; Ex. D, Excerpts of Deposition of Jeffery  
22 Norton (hereinafter "Norton Dep."), 117:24-118:13 (agreeing that the "vast majority" of sharps  
23 waste collected by Waste Management is processed and disposed of in a landfill). For most of  
24 the sharps waste it collects, as for all other biomedical waste collected under its G-237

25 \_\_\_\_\_  
26 <sup>1</sup> All exhibits referenced in this motion are exhibits to the Declaration of Jared Van Kirk filed  
herewith.

1 authority, Waste Management purports to charge Commission-approved tariff rates from its  
2 biomedical waste tariff on file with the Commission.

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

10 12. Waste Management has offered its ecoFinity sharps waste collection service to a  
11 number of hospitals beyond the territory covered by G-237. Currently, Waste Management  
12 provides the ecoFinity sharps service to one generator, PeaceHealth St. Joseph Medical Center  
13 in Bellingham. Ex. C, WM Supp. Resp., p.6; Ex. D, Norton Dep., 115:12-15. Waste  
14 Management does not have authority under G-237 to provide solid waste collection services in  
15 Bellingham. Ex. B; Ex. D, Norton Dep., 127:24-128:7 (stating that St. Joseph's Medical  
16 Center is not in Waste Management's biomedical waste service territory). Waste Management  
17 does not charge St. Joseph Medical Center its approved tariff rate for biomedical waste  
18 services, or any other tariff rate. Instead Waste Management charges what it describes as  
19 "competitive market rates" for this service. Ex. C, WM Supp. Resp., p.6; Ex. D, Norton Dep.,  
20 137:3-23 (indicating Waste Management charges St. Joseph Medical Center approximately  
21 20.9 cents per gallon based on a \$9 charge for a 43 gallon container, instead of the applicable  
22 tariff rate of 25 cents per gallon).

23 13. Waste Management has offered to provide its ecoFinity sharps collection service  
24 to PeaceHealth medical facilities throughout Washington, including facilities in Bellevue,  
25 Chelan, Clarkston, Davenport, Ephrata, Longview, Moses Lake, Newport, Odessa, Othello,  
26 Pullman, Republic, Ritzville, San Juan Island, Shelton, Tacoma, Tonasket, and Vancouver,

1 Washington. Ex. E, p.6 (PeaceHealth proposal). Waste Management does not have authority  
2 to provide solid waste collection services in any of these locations. *Id.* (indicating that the  
3 locations are, supposedly, “sharps only”). Waste Management offered to provide ecoFinity  
4 services at all of these locations at “competitive market rates.” Ex. C, WM Supp. Resp., p.6.

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

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

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

25 17. Since December, 2011, when Waste Management first began providing its  
26 ecoFinity sharps services to St. Joseph Medical Center, only 22% on average, and as little as

1 8%, of ecoFinity sharps waste has been reclaimed by Talco Plastics each month. *Id.*, p.2. The  
2 amount of this material actually recycled by BD is unknown. The remaining 78% on average  
3 of the ecoFinity sharps waste from Washington is discarded, just as Waste Management  
4 discards 100% of the vast majority of the sharps waste it collects under its G-237 authority.  
5 *See id.* (responding to inquiry regarding the weight of recyclable materials reclaimed and the  
6 amount of waste that was discarded with data indicating that only 22% of the sharps waste  
7 material by weight was reclaimed as recyclable materials); Ex. C, WM Supp. Resp., p.6.

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

16 **III. Statement of Issues.**

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

22 **IV. Evidence Relied Upon.**

23 20. This motion relies on the declaration of Jared Van Kirk, filed herewith, together  
24 with the pleadings and materials on file in this application proceeding.  
25  
26



1           **V.     Argument and Authority.**

2   **A.     Waste Management’s EcoFinity Sharps Collection Service Disregards the**  
3   **Authority of the Commission Over Biomedical Waste Collection and**  
4   **Transportation Services.**

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

22           22.     Waste Management contends that its collection and transportation of infectious  
23   sharps waste in its ecoFinity sharps program is a commercial recycling service, and not a solid  
24   waste collection service. Thus, Waste Management contends that its ecoFinity sharps program  
25   is exempt from every one of the laws and regulations discussed above that apply to solid and  
26   biomedical waste collection companies. Waste Management contends that it does not need a

1 certificate of public convenience and necessity to authorize the collection and transportation of  
2 untreated sharps waste under the ecoFinity program. Indeed, Waste Management admittedly  
3 provides those services to a generator outside its authorized G-237 certificate service territory  
4 and offers these services to other generators outside its authorized territory. Waste  
5 Management similarly contends that it does not need to file tariff rates and charges for  
6 collection and transportation of untreated ecoFinity sharps waste. Indeed, Waste Management  
7 admits that it does not charge tariff rates, even though it purports to charge its biomedical waste  
8 tariff rates for all other infectious sharps waste it collects in Washington. Waste Management's  
9 claim that the collection and transportation of untreated sharps waste under the ecoFinity  
10 program is a commercial recycling service is in effect a contention that this service is exempt  
11 from all other laws and Commission regulations applicable to solid waste collection services or  
12 companies, including every rule that the Commission has adopted to ensure the safety of  
13 biomedical waste collection services.

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

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

25 24. Under RCW § 81.77.010(7) a "Solid waste collection company" includes  
26 every person or his or her lessees, receivers, or trustees, owning,  
controlling, operating, or managing vehicles used in the business

1 of transporting solid waste for collection or disposal, or both, for  
2 compensation, except septic tank pumpers, over any public  
3 highway in this state as a "common carrier" or as a "contract  
4 carrier."

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

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

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

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

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

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

1           1.     By statute ecoFinity sharps waste is not a recyclable material transported for  
2                     recycling.

3           26.     In the same legislation that added RCW § 81.77.010(8) and (9), the provisions  
4                     that exclude commercial recycling from the definitions of solid waste collection and solid  
5                     waste, the Washington legislature also adopted a definition of “recyclable materials.” 1989  
6                     Wash. Legis. Serv. 431 (West). The legislature determined that “recyclable materials” are

7                             those solid wastes that are separated for recycling or reuse, such  
8                             as papers, metals, and glass, that are identified as recyclable  
9                             material pursuant to a local comprehensive solid waste plan.

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

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

20           28.     At present Waste Management provides ecoFinity services only to St. Joseph  
21                     Medical Center in Bellingham, which is within Whatcom County. Whatcom County’s  
22                     comprehensive solid waste plan<sup>3</sup> defines recyclable materials as:

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

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

1 Ex. H (Excerpts from Whatcom County Comprehensive Solid and Hazardous Waste  
2 Management Plan 2008), §2, p.20.<sup>4</sup> Under this definition, the sharps waste collected and  
3 transported in the ecoFinity program cannot be considered recyclable materials. Waste  
4 Management concedes that as little as 8%, and on average only 22%, of ecoFinity sharps waste  
5 is reclaimed after being treated, and that the rest is disposed of in a landfill. Ex. G, WM Supp.  
6 Resp. to 2<sup>nd</sup> Data Requests, p.2. Waste Management has not indicated what proportion of even  
7 the small volume of reclaimed material is actually used in producing new disposable sharps  
8 containers, and what is done with the remaining material. The Whatcom County definition  
9 explicitly states that most of the ecoFinity waste – 78% of the ecoFinity waste stream – is “not  
10 considered recyclable materials.”

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

18 30. The ecoFinity sharps waste is not a recyclable material pursuant to the Whatcom  
19 County comprehensive solid waste plan or RCW § 70.95.030(17). Indeed, Whatcom County

---

21 <sup>4</sup> The full Whatcom County Comprehensive Solid and Hazardous Waste  
22 Management Plan 2008 is available at  
<http://www.co.whatcom.wa.us/publicworks/pdf/solidwaste/vol1-solidwastereport.pdf>.

23 <sup>5</sup> 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 has already reached the same conclusion, taking the position that transportation of infectious  
2 waste, including untreated sharps, requires a solid waste certificate from the Commission.

3 Ex. H, §2, p.34.

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

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

24  
25 <sup>6</sup> 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           32.     Haugen's contention was rejected by the Commission, and the Washington  
2 superior court that enforced the Commission's decision. The Commission concluded "upon a  
3 complete examination of the record," that

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

11           *Id.* at 3, 7 (internal citations omitted); *see also re Lowell Haugen d/b/a Medical Waste*  
12 *Management Systems, Inc.*, Order M.V. No. 148396, Hearing No. H-5024, p.2 (Dec. 16, 1994)  
13 (finding in the initial order that "claimant is not a recycler because any recycling which is  
14 performed involves only a very small part of the waste collected.").<sup>7</sup> In a subsequent suit by  
15 the Commission to enjoin Haugen's services without a certificate, the Washington superior  
16 court also "adopted the WUTC's findings that Haugen was a transporter of biomedical waste"  
17 and "that he was required by state law to have a permit." *WUTC v. Haugen*, 94 Wn. App. 552,  
18 554, 972 P.2d 1280 (1999).

19           33.     On another occasion the Commission similarly found that biomedical waste  
20 transported for treatment and processing in which "[r]ecycling will be an adjunct to the solid  
21 waste disposal" required solid waste authority. *In re Ryder Distribution Sys., Inc.*, Order

22 <sup>7</sup> 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 M.V.G. No. 1536, App. No. GA-75563, p.6 (Jan. 29, 1992). In *Ryder Distribution* the  
2 Commission considered an applicant's proposed transportation of biomedical waste for  
3 treatment by Stericycle. At the time, the Commission found that the waste transported to  
4 Stericycle's facility "will not be regularly or exclusively recycled" and, therefore, concluded  
5 that the applicant needed solid waste authority. *Id.*

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

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

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

22 36. The Commission's rules support the precedent that transporting untreated  
23 biomedical waste from which only a small portion of the waste is reclaimed and the rest  
24 discarded requires a solid waste certificate and compliance with the Commission's solid and  
25 biomedical waste rules. "Chapter 81.77 RCW is intended to cover operations of carriers whose  
26 primary business is transporting solid waste for collection and/or disposal." WAC 480-70-016



1 (emphasis added). Carriers whose primary purpose is transporting waste for other purposes,  
2 such as recycling, are governed in those activities by RCW § 81.80. *Id.* Transportation for  
3 disposal more than occasionally will require a solid waste certificate from the Commission. *Id.*  
4 (requiring solid waste certificate to transport solid waste for disposal “on more than an  
5 occasional basis”).

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

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

18 WAC 480-70-016(4).

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

1 packaged, marked and labeled as regulated medical waste. *See* Ex. F. These descriptions and  
2 handling conditions indicate that the sharps waste was intended to be considered, and was  
3 considered regulated infectious waste, not a recyclable material.

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

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

24 41. By statute, Commission precedent, and the Commission's rules, Waste  
25 Management's ecoFinity service is a solid waste collection service and is being provided by  
26 Waste Management unlawfully. G-237 does not authorize service to St. Joseph Medical Center

1 in Bellingham or to the other hospitals outside the G-237 territory where Waste Management  
2 has offered the ecoFinity service.

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

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

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

1 containers for non-sharps biomedical waste, which also results in a significant volume of that  
2 waste stream being recycled through reuse.

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

## 17 VI. Conclusion

18 45. For the foregoing reasons Stericycle respectfully requests that the Commission  
19 determine that Waste Management's ecoFinity sharps waste collection service is a solid waste  
20 collection service subject to authorization and regulation by the Commission and that Waste  
21 Management's ecoFinity sharps service is unlawful as offered and provided beyond Waste  
22 Management's service territory under G-237. The Commission should determine that Waste  
23 Management has operated unlawfully by providing the ecoFinity service in Bellingham outside  
24 its certificated authority and has unlawfully offered to provide the ecoFinity service in other  
25  
26

1 locations which it is not authorized to serve in violation of RCW chapter 81.77 and the  
2 Commission's rules at WAC chapter 480-70.<sup>8</sup>

3 46. Waste Management's unlawful conduct in the face of clear precedent classifying  
4 the ecoFinity service as a solid waste collection service can and should be considered evidence  
5 of Waste Management's inability or unwillingness to comply with the law and the  
6 Commission's regulations in evaluating Waste Management's application for state wide  
7 authority to provide biomedical waste services.

8 DATED this \_\_\_\_\_ day of November, 2012.

9 Respectfully submitted,

10 GARVEY SCHUBERT BARER

11  
12 By 

13 Stephen B. Johnson, WSBA #6196  
14 Jared Van Kirk, WSBA #37029  
15 Attorneys for Protestant Stericycle of  
16 Washington, Inc.

17  
18  
19  
20  
21  
22  
23  
24  
25 <sup>8</sup> The ALJ had indicated that discovery related to Waste Management's unlawful conduct is not  
26 within Stericycle's interest in this proceeding. However, the facts of this motion are undisputed  
and no further discovery or even testimony at a hearing in this matter is necessary to reach the  
conclusion dictated by statute and Commission precedent.

**CERTIFICATE OF SERVICE**

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

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](mailto:records@utc.wa.gov)

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,  
Postage Prepaid
- Via Email

Administrative Law Judge  
Gregory Kopta  
[gkopta@utc.wa.gov](mailto:gkopta@utc.wa.gov)

- Via Email

Jessica Goldman  
Polly L. McNeill  
Summit Law Group  
315 - 5<sup>th</sup> Avenue South  
Seattle, WA 98104  
[jessicag@summitlaw.com](mailto:jessicag@summitlaw.com)  
[pollym@summitlaw.com](mailto:pollym@summitlaw.com)  
[kathym@summitlaw.com](mailto:kathym@summitlaw.com)  
[deannas@summitlaw.com](mailto:deannas@summitlaw.com)

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,  
Postage Prepaid
- Via Email

James K. Sells  
Attorney at Law  
PMB 22, 3110 Judson Street  
Gig Harbor, WA 98335  
[jamessells@comcast.net](mailto:jamessells@comcast.net)  
[cheryls@rsulaw.com](mailto:cheryls@rsulaw.com)  
*Attorney for Protestant WRRRA, Rubatino,  
Consolidated, Murrey's and Pullman*

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,  
Postage Prepaid
- Via Email

1 Fronda Woods  
2 Office of the Attorney General  
3 Utilities and Transportation Division  
4 1400 S. Evergreen Park Drive SW  
5 PO Box 40128  
6 Olympia, WA 98504-0128  
7 (360) 664-1225  
8 (360) 586-5522 Fax  
9 fwoods@utc.wa.gov  
10 BDeMarco@utc.wa.gov

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,  
Postage Prepaid
- Via Email

11 Dated at Seattle, Washington this 6<sup>th</sup> day of November, 2012.

12   
13 \_\_\_\_\_  
14 Dominique Barrientes  
15 dbarrientes@gsblaw.com