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7 BEFORE THE WASHINGTON STATE
8 UTILITIES AND TRANSPORTATION COMMISSION

9 STERICYCLE OF WASHINGTON, INC.,

Docket TG-110553

10 Complainant,

11 vs.

12 WASTE MANAGEMENT OF
13 WASHINGTON, INC.

RESPONSE OF WASHINGTON
REFUSE & RECYCLING
ASSOCIATION TO WASTE
MANAGEMENT, INC.'S
MOTION TO DISMISS

14 Respondent.

15 **COMES NOW** Intervenor Washington Refuse and Recycling Association
16 (“WRRRA”) and respectfully submits the following for the Commission’s
17 consideration:

18 **SUMMARY OF WRRRA’S POSITION:** In general, WRRRA supports Waste
19 Management’s Motion to Dismiss, and is of the belief this matter can, and
20 should, be finally resolved based upon that Motion. Of particular interest to
21 WRRRA are arguments concerning “abandonment” of a portion of a
22 “G-Certificate” and the scope of the Certificate. Simply put, we believe it is
23 well established that a G-Certificate carries with it the authority to collect and
24 transport medical waste. Secondly, abandonment of authority is
25 abandonment of the entire authority, not a particular portion of the waste
26

1 stream. Finally, we will address the issue of “cream skimming” as it may
2 apply here.¹

3 **ABANDONMENT**: Although Waste Management apparently has not
4 provided medical waste service within its certificate area for a period of years,
5 it has not abandoned its certificate rights by failure “. . . to operate as a solid
6 waste collection company for a period of at least one year” If it had so
7 failed, then the Commission “may suspend, revoke, alter or amend. . .” the
8 certificate. **RCW 81.77.030**. (emphasis added). The statute does not speak
9 to “portions of a certificate” nor should it. Either a certificate holder is
10 “operating” as a solid waste collection company or it is not. Clearly Waste
Management is, and certainly has been for the past year.

11 Solid waste companies frequently will try new ideas and concepts to
12 meet the needs of the consumer. It is not unusual, for example, to try several
13 different sorts of curbside recycling before arriving at the best solution. Some
14 may be all new programs, some may be abandoned and then reinstated for
15 various reasons. Some may involve different commodities, such as glass.
16 Some may be an entirely new service which has not been in effect previously.²
17 This does not mean a certificate right has been abandoned. It is perhaps too
18 obvious to remind ourselves that just a few years ago there were no certificate
19 holders providing specialized medical waste service. Now there are several.
20 With the exception of Stericycle, they all were existing G-Permit holders who
21 filed a tariff, got it approved and started service; again, within their

22 ¹ As the Commission may be aware, neither primary party to this action is a member of
23 WRRRA, and normally WRRRA does not seek to intervene in actions not involving members.
24 However, the issues here are of vital importance to all G-Certificate holders, and thus WRRRA’s
25 interest and Petition to Intervene. WRRRA members are already in competition with Stericycle
26 for medical waste service and may well find themselves in competition with Waste
Management if, as counsel put it, “Waste Management may well accept Stericycle’s invitation
to seek statewide authority in the future.” *Motion*, p. 20. WRRRA’s support of Waste
Management’s position here should be viewed as support of the G-Certificate and its
application to all holders thereof, not just Waste Management. It should not be interpreted as
a position on any future application for expansion of G-237.

² Waste Management’s “Bagster” program is a prime example.

1 certificated territory.³ There would appear to be no legal or other justification
2 to treat Waste Management any differently.

3 **CREAM SKIMMING**: Stericycle's argument regarding "cream
4 skimming" simply makes no regulatory sense. Every G-Certificate "covers" a
5 particular geographical area; and the holder thereof cannot provide service
6 beyond that area. If the area is largely urban, then there well may be greater
7 efficiencies in collection. But serving one's area is not cream skimming, so
8 long as the entire area is served. Stericycle seems to suggest that if a
9 particular area happens to have large medical facilities, which a different area
10 does not, the holder serving the first area is somehow cream skimming by
11 efficiently following the law by providing service. That theory simply is wrong,
particularly when advanced by the holder of statewide authority.

12 Waste Management may not provide service outside its certificated
13 territory. If it does, the Commission can be certain complaints will be filed,
not only by Stericycle, but the affected WRRRA members as well.

14 Conversely, we are not aware of any precedent, formal or informal, for
15 the Commission somehow "ordering" Waste Management to apply for
16 additional authority, statewide or not. If it does apply for additional authority,
17 there most certainly will be protests, and the appropriate process under **RCW**
18 **81.77.040** and **WAC 480-70-091** would presumably be invoked.

19 If Waste Management, or any other certificated hauler, is cream
20 skimming within its own territory, there could, and should, be Commission
21 investigation and intervention. However, there is no indication of that here, at
22 least in pleadings filed thus far. If any hauler is "lucky" enough to have major
23 medical facilities within its area, those facilities are to receive the same level of
24 service as any other consumer, urban or rural. Medical waste service is no
different than any other service in this respect.

25 _____
26 ³ Presently, Pullman Disposal, Rubatino Refuse, Consolidated Disposal, Murreys/American
(WCI) and perhaps others provide medical waste service.

1 **FRAGMENTATION OF CERTIFICATE RIGHTS:** As Waste

2 Management correctly points out in its Motion, the term “solid waste” includes
3 medical waste. *see In the Matter of American Environmental Corp.* Order
4 M.V.G. 1452. This does not mean the Commission cannot impose different or
5 additional requirements upon the collection and carriage of medical waste,
6 and it has done so.⁴ But that is not the issue here in the view of WRRRA.
7 Rather, Stericycle seems to argue that a G-Certificate consists of a series of
8 fragmented parts, any one of which the Commission can somehow “split off”
9 and deal with in a completely separate manner, at least as to the
10 “abandonment” argument. That simply is not the case, and is not supported
11 by either judicial or administrative precedent. A G-Permit is a property right,
12 a whole property right. *Dahl-Smyth, Inc. v City of Walla Walla*, 148 Wn.2d
13 835, 847, 64 P.3d 15 (2003). It cannot be somehow divided into sections,
14 with each section being dealt with separately. Again, this is not to say the
15 Commission cannot adopt “section specific” rules related to, for example,
16 safety or consumer protection. It can, and should. However, the issue of
17 abandonment applies to the entire certificate, not a particular service which
18 does not change that simple and obvious fact.

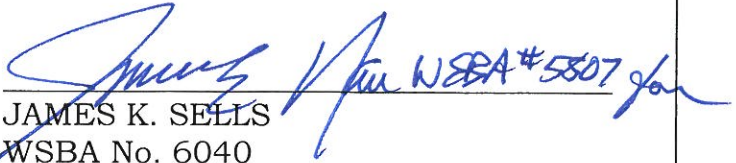
19 **CONCLUSION:** This matter has been exhaustively briefed by the
20 primary parties, and WRRRA does not intend to add to the paperwork by
21 repeating and/or refuting arguments that have already been skillfully and
22 competently made by both counsel. Suffice it to say that Waste
23 Management’s Motion is well taken and should be granted, hopefully ending
24 this battle, although obviously not ending the war. Stericycle’s claims and
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26 ⁴ WAC 480-70-426/476.

1 arguments are unique, even inventive, but they simply do not reflect the state
2 of the law, nor the, admittedly, wide-ranging powers of the Commission.

3 Waste Management's Motion should be granted and we should move on
4 to whatever is next on either party's agenda.

5 DATED this 5th day of May 2011.

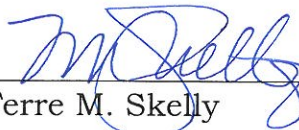
7 
8 JAMES K. SELLS
9 WSBA No. 6040
10 Attorney for Intervenor Washington
11 Refuse & Recycling Association

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this day served this document upon all parties
3 of record in this proceeding, by the method as indicated below, pursuant to WAC
4 480-07-150.

5 Stephen B. Johnson 6 Donald B. Scaramastra 7 Garvey Schubert Barer 8 1191 Second Ave., Suite 1800 9 Seattle, WA 98101 10 (206) 464-3939 11 sjohnson@gsblaw.com	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
12 Washington Utilities and 13 Transportation Commission 14 1300 S. Evergreen Park Dr. SW 15 PO Box 47250 16 Olympia, WA 98504-7250 17 360.664.1160 18 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
19 Hon. Dennis Moss 20 Administrative Law Judge 21 dmoss@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
22 Polly L. McNeill 23 Summit Law Group 24 315 - 5th Avenue S. 25 Seattle, Washington 98104 26 pollym@summitlaw.com	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Fronda Woods 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0218 fwoods@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

24 DATED at Silverdale, Washington, this 5th day of May 2011.

25 
26 Terre M. Skelly

Response of Washington Refuse & Recycling
Association to Waste Management, Inc.'s
Motion to Dismiss - 6

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