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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 PETITION FOR
INTERLOCUTORY REVIEW

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1 **I. Introduction.**

2 1. Stericycle of Washington, Inc. ("Stericycle"), through its undersigned attorneys,
3 respectfully petitions for interlocutory review of Administrative Law Judge Adam Torem's
4 Order 02, denying Stericycle's motion for summary determination with respect to Waste
5 Management's unlawful biomedical waste collection operations outside its certificated service
6 territory. Judge Torem's Order O2 for the most part does an excellent job in laying out the
7 issues presented by the motions addressed by the order; however, on several key points, he
8 comes to the wrong conclusions. The ultimate issue presented by Stericycle's motion for
9 summary determination is whether mixed waste consisting of untreated infectious biomedical
10 "sharps" waste collected by Waste Management beyond its certificated territory should be
11 classified as "recyclable materials" and thus exempt from the certificate requirements of RCW
12 81.77.040 and from Commission regulation as to fitness, rates and the special handling
13 requirements applicable to biomedical waste collection under the Commission's rules at
14 chapter 480-70 WAC. Stericycle respectfully submits that untreated infectious biomedical
15 waste should never be classified as "recyclable materials" under applicable standards. In any
16 event, the Commission's prior medical waste cases clearly establish that mixed biomedical
17 waste from which only a small portion of material is reclaimed for possible recycling does not
18 qualify as "recyclable materials."

19 2. The classification of untreated infectious sharps waste involves a fundamental
20 legal and policy issue that the Commissioners should reach and decide now as a matter of law.
21 Final Commission review and determination of this purely legal and policy issue at this stage in
22 these proceedings will cut short what otherwise promises to be a protracted process of
23 discovery and motion practice with little potential for further clarification of the issues. All of
24 the facts necessary to a determination of this issue are before the Commission on the present
25 record. Interlocutory review will "save the commission and the parties substantial effort or
26

1 expense” and outweigh any costs in terms of time or delay. Accordingly, interlocutory review
2 is appropriate under WAC 480-07-810(2).¹

3 **II. Relief Requested.**

4 3. Stericycle respectfully requests that the Commission grant interlocutory review
5 of Judge Torem’s Order 02 in this proceeding and grant Stericycle’s Motion for Summary
6 Determination Re Waste Management’s Unlawful Biomedical Waste Collection Operations
7 Outside its Certificated Territory.
8

9 **III. Facts.**

10 4. It is undisputed that Waste Management collects untreated infectious biomedical
11 “sharps” waste outside the service territory prescribed by its Certificate G-237 from
12 PeaceHealth St. Joseph Medical Center (“St. Joseph’s”) in Bellingham, Washington. Under its
13 so-called “ecoFinity” sharps waste collection program, Waste Management collects infectious
14 sharps waste from St. Joseph’s and transports the untreated infectious waste to southern
15 California where it is treated in an autoclave operated by a Waste Management affiliate. From
16 there, the waste is transported to a third party, Talco Plastics, where potentially recyclable
17 plastics are separated from the mixed solid waste using float/sink technology and pelletized.
18 According to Waste Management, the reclaimed plastics are then transported to Becton
19 Dickinson, Inc. for incorporation into new sharps containers. Waste Management reports that
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25 ¹ WAC 480-07-810(2) reads in pertinent part as follows: “The commission may accept review of
26 interim or interlocutory orders in adjudicative proceedings if it finds that: . . . (c) A review could save
the commission and the parties substantial effort or expense, or some other factor is present that
outweighs the costs in time and delay of exercising review.”

1 an average of 22% of the infectious sharps waste collected from St. Joseph's (and as little as
2 8% in one month) is reclaimed by Talco Plastics for potential recycling.²

3 5. Stericycle incorporates by this reference the more complete statement of facts
4 set out in its Motion for Summary Determination.

5 **IV. Evidence Relied Upon.**

6 6. Stericycle relies on the Declarations of Jared Van Kirk and Jessica L. Goldman
7 filed in connection with Stericycle's motion for summary determination and the other files and
8 records herein.

9 **V. Statement of Issues.**

10 7. May mixed solid waste consisting of untreated infectious "sharps" waste be
11 classified as "recyclable materials" under RCW 70.95.030(17)?

12 **VI. Arguments and Authorities.**

13 **A. Untreated Infectious Sharps Wastes Do Not Qualify as Recyclable
14 Materials Under RCW 70.95.030(17).**

15 8. Chapter 81.77 RCW excludes "recyclable materials" from "solid waste" subject
16 to Commission regulation under that chapter. RCW 81.77.010(9) ("for purposes of this chapter
17 solid waste does not include recyclable materials"). *See also*, RCW 81.77.010(8) ("Solid
18 waste collection' does not include collecting or transporting recyclable materials . . .").

19 However, the ecoFinity sharps wastes at issue here are not "recyclable materials." The same
20 legislation that added RCW 81.77.010(8) and (9) to chapter 81.77 RCW included a definition
21 of "recyclable materials." *See* 1989 Wash. Legis. Serv. 431 (West), *now codified at* RCW
22 70.95.030(17). RCW 70.95.030(17) defines "recyclable materials" as
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26 ² There is no evidence in the record of the amount the reclaimed plastics actually used by Becton
Dickinson in the manufacture of new sharps containers.

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

4 The ecoFinity sharps waste at issue here fails to meet the requirements of this definition for two
5 reasons.

6 9. First, recyclable materials are not “separated” for recycling or reuse at the time
7 of collection and transportation within this state. Judge Torem erroneously focuses on the issue
8 of the generator’s purpose in segregating its sharps waste from its other biomedical waste³ but
9 that is not the relevant question. RCW 81.80.470 makes clear that the regulation of mixed solid
10 wastes under chapter 81.77 RCW is not affected by the fact that such “solid waste may
11 incidentally contain recyclable materials.” It is clear, therefore, that to qualify as “recyclable
12 materials” for purposes of exemption from chapter 81.77 RCW, the recyclables, “such as
13 papers, metals and glass,” must be separated from the mixed solid waste prior to transportation.
14 It follows that the ecoFinity sharps wastes cannot be classified as “recyclable materials”
15 because the recyclable components of those wastes have not been separated from the sharps
16 waste prior to collection and transportation. Here, it is undisputed that the ecoFinity waste is a
17 mixed solid waste at the point of collection, that an average of 78% of that waste (and as much
18 as 92% in a given month) is ultimately landfilled, demonstrating that the generator has made no
19 attempt to “separate” it into its recyclable and non-recyclable constituents prior to collection.
20 Thus, the ecoFinity sharps wastes are mixed solid wastes and cannot be classified as
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³ Order 02, ¶45.

1 “recyclable materials.” Although these sharps wastes may contain some recyclables, the
2 recyclables have not been “separated” for recycling prior to collection.⁴

3 10. Under chapter 81.77 RCW, the Commission regulates persons engaged in
4 “transporting solid waste for collection or disposal, or both, for compensation” RCW
5 81.77.010(7). The exceptions to this authority set out in RCW 81.77.010(8) and (9) are
6 exceptions for “collecting or transporting” recyclable materials. It follows that the materials in
7 question must be “recyclable materials” at the time of collection and, therefore, per RCW
8 70.95.030(17), must be “separated” for recycling at the point of collection. Since at the time it
9 is collected and transported by Waste Management, the ecoFinity sharps waste at issue here is
10 mixed solid waste that only “incidentally . . . contain[s] recyclable materials,” RCW 81.80.470,
11 the material is solid waste and Waste Management is engaged in unlawful biomedical waste
12 collection services beyond the limits of its certificated territory in violation of RCW 81.77.040.
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15 11. The ecoFinity sharps waste also fails the second prong of the RCW
16 70.95.030(17) definition because infectious sharps wastes are not “identified as recyclable
17 materials pursuant to a local comprehensive solid waste plan” – here, the Whatcom County
18 Comprehensive Solid and Hazardous Waste Management Plan (“Whatcom County Plan”).
19 Judge Torem acknowledges that the Whatcom County Plan identifies recyclables as “those
20 solid wastes that are separated for composting, recycling, or reuse into usable or marketable
21 materials.” Clearly, under this definition, infectious sharps wastes do not qualify as recyclable
22 materials because they have not been “separated . . . into usable or marketable materials.” Not
23 even Waste Management has claimed that the ecoFinity sharps wastes are themselves “usable
24

25 ⁴ Judge Torem argues “That PeaceHealth does not further separate the component materials [between
26 recyclable and non-recyclable constituents] is irrelevant.” Order 02, ¶45. But this is flatly contradicted
by RCW 81.80.470. Separation of recyclables prior to transportation is required by RCW 81.80.470.

1 or marketable materials.” Although Judge Torem acknowledges that infectious sharps wastes
2 do not fall within the category of “recyclable materials” identified in the Whatcom County
3 Plan, he tries to avoid the implications of this fact by arguing that the Plan as “ambiguous” as
4 to whether a specific designation is necessary to consider such wastes as recyclable materials
5 under the Plan. However, this ignores the requirement of RCW 70.95.030(17) that to qualify as
6 “recyclable materials,” the materials in question must be “identified” in the relevant Plan.
7 Since infectious sharps wastes are not “identified as recyclable materials” pursuant to the
8 Whatcom County Plan, the ecoFinity sharps wastes collected by Waste Management do not
9 qualify as “recyclable materials” under RCW 70.95.030(17) and are therefore solid waste
10 subject to the requirements of chapter 81.77 RCW and chapter 480-70 WAC.⁵

11
12 **B. Untreated Infectious Sharps Wastes Are Not “Recyclable Materials”**
13 **Because the Primary Purpose of Collection and Transportation is**
14 **Necessarily Treatment of the Waste.**

15 12. Untreated infectious biomedical waste should not be classified as “property”
16 (i.e., recyclable materials) under any circumstances because they have no value at the point of
17 collection and the primary purpose of collection is necessarily treatment (because of the
18 infection risk associated with the waste), rather than recycling or reuse. Judge Torem’s
19 analysis fails to give proper consideration to the special characteristics of the “commodity” at
20 issue here -- untreated infectious “sharps” waste -- in considering whether as a matter of law
21 the waste should be classified as “property” (i.e., recyclable materials) or regulated solid waste.
22 In concluding that St. Joseph’s “intent” in engaging Waste Management to provide the

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24 ⁵ As noted in Stericycle’s motion for summary determination at ¶30, the Whatcom County Plan
25 explicitly provides that the collection and transportation of infectious biomedical waste requires a solid
26 waste certificate from the Commission. *See Declaration of Jared Van Kirk in Support of Stericycle of
Washington, Inc.’s Motion for Summary Determination, Ex. H, §2, p. 34.* Thus, contrary to Judge
Torem’s assertion, the Whatcom County Plan is not ambiguous; it clearly identifies infectious
biomedical waste as solid waste, not as recyclable materials.

1 ecoFinity sharps collection service was to engage in recycling,⁶ Judge Torem simply disregards
2 the fact that, because of the nature of the waste, the primary purpose of collection and
3 transportation of infectious material is and must be treatment or disposal in a manner that
4 eliminates the risk of infection posed by the waste.⁷ Indeed, biomedical waste is separated
5 from general solid waste for precisely this reason and sharps waste is segregated from other
6 biomedical waste and deposited by generator personnel into puncture proof containers precisely
7 because it poses the greatest risk of transmitting infection. Only by treatment that renders the
8 waste non-infectious can the risk of harm (and liability) associated with such waste be
9 eliminated and the material handled safely for other purposes, including landfill disposal or
10 recycling. Thus, all of the ecoFinity sharps waste handled by Waste Management is treated to
11 render it non-infectious before any subsequent processing to reclaim potentially useful
12 materials. Clearly, because of the infection risk inherent in untreated infectious sharps waste,
13 any recycling of the ecoFinity sharps waste that occurs after treatment is both second in time
14 and secondary in purpose to treatment to eliminate the risk of infection inherent in the untreated
15 waste. In addressing the “purpose” of the collection and transportation in question, Judge
16 Torem misses this very fundamental point.

17 13. In the case of the Waste Management ecoFinity sharps waste program, the
18 sharps waste is handled exactly like all other biomedical waste collected by Waste
19 Management from collection and transportation through treatment.⁸ The “Customer Service
20 Agreement” signed by PeaceHealth St. Joseph’s for services under Waste Management’s
21 ecoFinity sharps collection program is the same form contract used for Waste Management’s
22 other biomedical waste collection services. It provides that Waste Management “will provide

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24 ⁶ Order 02, ¶45.

25 ⁷ Of course, Judge Torem also ignores the possibility that St. Joseph’s may simply be seeking a cheaper,
26 non-tariff treatment/disposal option. As Judge Torem notes, “PeaceHealth pays a lower rate for this
service than the rate approved by the Commission in Waste Management’s solid waste collection tariff.”
Order 02, ¶30.

⁸ See, generally, for the facts in this paragraph, Van Kirk Decl., Ex.D, E, F, I; Goldman Decl., Ex. 2.

1 Customer with collection, management, transportation, disposal, and treatment of all Regulated
2 medical waste (or "Regulated Medical Waste" or "Waste Material") . . . generated by Customer
3 during the term of this Agreement. For the purpose of this Agreement, "Regulated Medical
4 Waste" includes but is not limited to sharps"⁹ The same biomedical waste containers are
5 used. Labels affixed to the containers identify the contents as "Regulated Medical
6 Waste/Sharps." The material is manifested as "Biohazardous Waste - Sharps." Only after the
7 ecoFinity sharps waste has been treated is potentially usable plastics separated from what is
8 before that a mixed waste which only "incidentally contain[s] recyclable materials."¹⁰

9 14. Infectious biomedical waste -- sharps waste in particular -- is not like other solid
10 wastes and the Commission's multi-factor analysis¹¹ for distinguishing solid waste collection
11 from recycling under WAC 480-70-016(4) must take the particular characteristics of untreated
12 infectious waste into account in applying that analysis. Infectious wastes carry pathogens that
13 expose medical personnel, waste workers and the public to health risks that are not involved
14 with other solid wastes. Sharps waste, defined by its capacity to puncture or cut the skin, is the
15 most dangerous form of these infectious wastes.¹²

16 15. The Commission's medical waste cases have emphasized the unique risks posed

17
18 ⁹ Goldman Decl., Ex. 2. By contrast, there is nothing in the ecoFinity contract with St. Joseph's that
19 describes the recycling services that Waste Management is supposed to provide. Nor has Waste
20 Management provided any reports to St. Joseph's concerning those services or the amount of material
21 actually recycled.

22 ¹⁰ See RCW 81.80.470.

23 ¹¹ See Order 02, ¶59.

24 ¹² Infectious biomedical waste is sometimes analogized to hazardous waste but such an analogy is
25 misleading. While both waste streams are in some sense "hazardous," the role of the Commission in
26 addressing the hazards posed are entirely different. The transportation, storage and disposal of
hazardous wastes are overseen by the Washington Department of Ecology and the U.S. Environmental
Protection Agency under a fully developed regime of state and federal statutes and regulations,
including the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"),
the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act and the Model Toxics
Control Act ("MTCA"). There is no comparable regulatory regime for infectious waste and no agency
with authority to supervise infectious waste collection other than the Commission. Likewise, the
collection and transportation of hazardous wastes typically implicate environmental concerns, rather
than the immediate, personal health risks that infectious waste poses to transporters, waste workers and
members of the public who come in contact with infectious waste.

1 by infectious medical wastes and the need for regulatory approaches adapted to those unique
2 risks. In evaluating applications for medical waste authority under RCW 81.77.040, the
3 Commission's early medical waste cases emphasized the importance of segregating infectious
4 medical waste from the general solid waste stream in all phases of collection, transportation
5 and disposal.¹³ The Commission has adopted special safety rules applicable to biomedical
6 waste collection companies at WAC chapter 480-70, Part IX (WAC 480-70-426 through -476).
7 Yet, Judge Torem did not give adequately weight to the infectious character of the ecoFinity
8 sharps waste in his analysis of the factors relevant to determining whether the infectious sharps
9 waste at issue here should be classified as "property," subject to the most minimal regulation
10 under RCW 81.80, or "solid waste," subject to the fitness, health and safety requirements of
11 RCW 81.77.040 and the Commission's regulations at WAC 480-70-427 through -476.

12 16. Consistent with its concern for the risks associated with infectious waste, the
13 Commission in past cases has declined to find that untreated infectious wastes should be
14 classified as recyclable materials. The Commission has rejected the classification of infectious
15 wastes as recyclable materials, even where a portion of the waste is recycled after treatment.
16 The Commission has never held that untreated biomedical waste may be classified as a
17 "recyclable materials." Indeed, on the two occasions that the Commission has considered
18 whether untreated biomedical waste should be considered to be exempt from solid waste
19 regulation as "recyclable material," it has rejected such a claim.¹⁴ In a third case, the
20 Commission recognized that a solid waste certificate was required even though the carrier
21 recycled approximately 20% of the biomedical waste it handled.¹⁵

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24 ¹³ See, e.g., *In re Sure-Way Incineration, Inc.*, Application No. GA-868, Order M.V.G. No. 1451, pp. 4-
5 (Nov. 30, 1990); *In re American Environmental Mgmt. Corp.*, Application GA-874, Order M.V.G.
No. 1452, p. 4 (Nov. 30, 1990).

25 ¹⁴ *In re Lowell Haugen d/b/a Medical Waste Management Systems, Inc.*, Order M.V. No. 148521,
Hearing No. H-5024, p. 3 (Apr. 27, 1995); *In re Ryder Distribution Sys., Inc.*, Order M.V.G. No. 1536,
App. No. GA-75563, p. 6.

26 ¹⁵ *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707 (May 25, 1994).

1 17. Judge Torem misinterprets the Commission's prior cases. Judge Torem
2 suggests that the Commission decision in *Ryder*, cited above, reflects an affirmative
3 determination that untreated biomedical waste may be classified as recyclable materials.¹⁶ In
4 the *Ryder* case, the Commission acknowledged that a portion of the biomedical waste stream to
5 be handled by Ryder would be recycled but concluded that solid waste authority was required
6 in any event because any recycling carried on was merely "an adjunct" to the carrier's solid
7 waste collection and disposal activities.¹⁷ The Commission's further comments in *Ryder* to the
8 effect that other factual circumstances might result in different conclusions are purely *dicta* and
9 by their terms do not purport to be a determination by the Commission concerning
10 circumstances not then before it.¹⁸

11 18. The Commission's decision in *Haugen*, cited above, explicitly addressed
12 whether Mr. Haugen's operations should be classified as the transportation of property for
13 compensation subject to RCW 81.80.070 or the transportation of solid waste for collection and
14 disposal subject to RCW 81.77.040 and WAC 480-70-070.¹⁹ Mr. Haugen collected biomedical
15 waste from 29 customers (mostly small generators) in King, Snohomish and Clark Counties
16 and transported it to Medical Resource Recycling Systems ("MRRS") in Spokane for
17 treatment. "After sterilizing the material, MRRS recycles a small portion, and the remainder is
18 either incinerated or disposed of in a landfill."²⁰ In a case involving MRRS itself
19 contemporaneous with the *Haugen* decision, the Commission noted that after treating the
20 medical waste tendered to it, "MRRSI then recycles about a fifth of material tendered to it."²¹

21 ¹⁶ Order 02 at ¶56, p. 17 (citing *In re Ryder Distribution Sys., Inc.*, Order M.V.G. No. 1536, *supra*, at 6
22 (Jan. 29, 1992).

23 ¹⁷ *Id.*

24 ¹⁸ Thus, to claim that the Commission "held" in *Ryder* that only motor carrier authority "might" be
25 required "if the planned recycling became the dominant activity," Order 02, ¶56, is not accurate.

26 ¹⁹ *Haugen, supra*, at 2.

²⁰ *Id.*

²¹ *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707 at 2 (May 25, 1994). Unlike
the *Haugen* case, the Commission did not explicitly address the classification issue in the *Medical
Resource Recycling System* case, although the Commission implicitly concluded that solid waste
collection authority under RCW 81.77.040 was appropriate by granting MRRS a certificate.

1 Thus, it is clear that the “small portion” of the waste recycled in the *Haugen* case was
2 approximately 20% of the waste collected and tendered for treatment.

3 19. The Commission’s prior cases dealing with the classification of infectious
4 medical waste set the bar high for any effort to establish that such waste should be classified as
5 “recyclable materials” and therefore that the collection of such waste should be exempt from
6 the requirements of RCW 81.77.040 and the Commission’s solid waste regulations. How high,
7 the Commission has never explicitly decided. What is clear, however, is that the Commission
8 has previously concluded that the recycling of “about a fifth” or 20% of the waste is not
9 sufficient to support classification of infectious medical waste as recyclable material. In the
10 case of the ecoFinity sharps waste at issue here, Waste Management claims that only 22% of
11 the waste is recycled on average – and in some months as little as 8%. Thus, the ecoFinity
12 program fails to surmount the bar set by the *Haugen* and *MRRS* cases.²²

13 20. Contrary to Judge Torem’s description of Stericycle’s position, however,
14 Stericycle does not argue that recycling of 22% is “too low”²³ to support classification of the
15 ecoFinity waste as recyclable materials, nor does Stericycle argue that a numerical recycling
16 threshold should be established for such a classification. Stericycle argues, instead, that (1)
17 Waste Management’s ecoFinity sharps waste collection program fails to surmount the bar set
18 by the Commission in the *Haugen* and *MRRS* cases; and, further, that (2) no amount of
19 recycling after treatment is sufficient to convert mixed solid waste consisting of untreated
20 infectious sharps waste at the point of collection into property (i.e., recyclable materials).

21 21. The Commission’s prior cases reflect clear Commission reluctance, based on
22 sound considerations of public policy, to find any infectious biomedical waste collection
23 service to involve the transportation of unregulated recyclables. The Commission’s prior

24 ²² Judge Torem’s assertion that “None of our previous orders fully address the situation of a company
25 seeking to implement a recycling program to divert biomedical waste from the waste stream and reclaim
26 some portion of it for reuse,” Order 02, ¶55, simply ignores the Commission’s decisions in *Ryder*,
Haugen and *MRRS*.

²³ Order 02, ¶36.

1 medical waste cases properly place a heavy burden on a carrier asserting that its biomedical
2 waste collection services are exempt from Commission regulation under chapter 81.77 RCW,
3 given that such a decision would eliminate the Commission's ability to assess the fitness of an
4 applicant for authority to provide such sensitive services or to enforce the Commission's
5 biomedical waste health and safety regulations.²⁴ Although the Commission's cases rejecting
6 the classification of infectious waste as recyclable materials have addressed circumstances
7 where only about 20% of the waste was eventually recycled, those cases cannot be read as a
8 Commission determination that a higher percentage of recycling would support a different
9 conclusion. The Commission has simply never reached the question of whether a higher
10 percentage of recycling would warrant classification of infectious biomedical waste as
11 unregulated recycling. The Commission need not reach this issue now, since the amount of the
12 ecoFinity waste Waste Management claims is recycled is insufficient to satisfy the
13 requirements of *Haugen* and *MRRS*. To the extent the Commission may be concerned about
14 setting numerical standards, however, Stericycle urges the Commission to make a definitive
15 determination now that no amount of post-treatment recycling can convert mixed wastes
16 consisting of untreated infectious sharps waste into recyclable materials at the point of
17 collection.

18 VII. Conclusion.

19 22. It would be irresponsible to deregulate the collection and transportation in this
20 state of untreated infectious sharps wastes by categorizing such wastes as recyclables based on
21 a transporter's colorable claim to recycle some portion of the waste stream -- perhaps, as here,
22 via processors in another state whose "recycling" operations cannot be inspected or verified by
23

24 ²⁴ If this were a classification case initiated by the Commission, Waste Management would have the
25 burden of proof under RCW 81.04.510 to establish that its ecoFinity service was not subject to the
26 certificate requirements of RCW 81.77.040. Can anyone doubt how that case would be decided? Waste
Management should bear that burden here, given the weight of the Commission's prior cases, the risks
inherent in infectious waste collection and the obvious public policy considerations favoring substantive
regulation of such collection services.

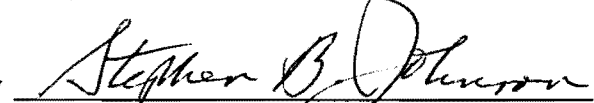
1 the Commission. Deregulation of infectious waste collection on this basis would throw open
2 the collection and transportation of infectious wastes in Washington to any fly-by-night
3 operator with a pickup truck and the ability to obtain auto liability insurance and satisfy the
4 most basic vehicle safety standards. The laws of this state do not require such a result. The
5 Commission has ample authority under RCW chapter 81.77 and WAC chapter 480-70 to
6 determine that the collection and transportation of infectious biomedical waste for treatment or
7 disposal is subject to Commission's regulatory jurisdiction; it can and should do so. No further
8 development of the record of this case is necessary to support such a conclusion.

9 23. The Commission has for good reason maintained comprehensive regulation of
10 biomedical waste collection and transportation services, even where a portion of the waste is
11 ultimately reclaimed after treatment. The unique danger posed by untreated biomedical waste
12 (and sharps waste in particular) and the paramount interest of generators and the public in safe
13 and effective collection, transportation and treatment services require Commission oversight.
14 Due consideration of the Commission's statutory authority, precedent and regulations requires
15 rejection of Waste Management's arguments that its ecoFinity sharps waste collection service
16 should be exempt from the Commission's regulatory oversight.

17 DATED this 14th day of January, 2013.

18 Respectfully submitted,
19 GARVEY SCHUBERT BARER

20 By



21 Stephen B. Johnson, WSBA #6196
22 Jared Van Kirk, WSBA #37029
23 Attorneys for Protestant Stericycle of
24 Washington, Inc.

1 **CERTIFICATE OF SERVICE**

2 I, Vickie Owen, certify under penalty of perjury under the laws of the State of
3 Washington that, on January 14, 2013, I caused to be served on the person(s) listed below in the
4 manner shown a copy of COMPLAINANT STERICYCLE OF WASHINGTON, INC.'S
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9 Dated at Seattle, Washington this 14th day of January, 2013.

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11 _____
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