

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
ANSWER TO COMPLAINANT
STERICYCLE OF
WASHINGTON, INC.'S
PETITION FOR
INTERLOCUTORY REVIEW

1 In Order 02 in this docket, the administrative law judge, among other rulings, denied Stericycle of Washington's (Stericycle) Motion for Summary Determination to have Waste Management's ecoFinity sharps collection service be classified as solid waste collection. Stericycle now seeks interlocutory review by the Commission of that part of Order 02.

2 In accordance with WAC 480-07-810(3), Staff of the Washington Utilities and Transportation Commission (Staff) submits this answer to Stericycle's petition.

3 The grounds for interlocutory review are set forth in WAC 480-07-810(2). The ground relied on by Stericycle is that "review could save the commission and the parties substantial effort and expense." WAC 480-07-810(2)(c). While granting a dispositive motion will usually save effort and expense, interlocutory review of a denial of a dispositive motion is not a matter of right, but rather is subject to the Commission's discretion. WAC 480-07-810(2).

4 If the Commission decides to accept interlocutory review, the standards for considering Stericycle's summary motion are in WAC 480-07-380(2). The burden is on the moving party to show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.

5 The administrative law judge (ALJ) found that the matter was not ripe for summary determination because the record lacked sufficient evidence on some issues and other issues of material fact were in dispute.¹ Consequently, the ALJ denied all of the parties' dispositive motions including Stericycle's.

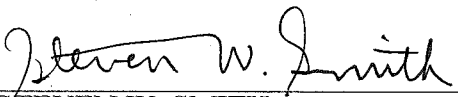
6 In its response to Stericycle's underlying motion, Staff took no position on whether Waste Management's ecoFinity sharps program is solid waste collection or commercial recycling. Staff however, expressed its concern that Stericycle's legal arguments could have implications beyond the parties in this case.² Of specific concern was Stericycle's argument that the percentage of reclaimed material determines whether the ecoFinity program constitutes solid waste collection. That argument implicates unresolved issues involved in the withdrawn rulemaking in Docket TG-080591.³

7 Staff's concern in this regard remains. Consequently, if the Commission accepts interlocutory review of Order 02 and, in turn, grants Stericycle's request for summary determination, Staff renews its request that the decision be narrowly tailored to the facts of this case.

Dated this 24th day of January, 2013.

Respectfully submitted,

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Attorney General


STEVEN W. SMITH
Assistant Attorney General
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¹ Order 02, Paragraphs 24, 48-49, 54, 59, 60.

² Commission Staff's Response to Stericycle's Motion for Summary Determination Re Waste Management's Operations Outside Certificated Territory, Paragraph 4.

³ The background of the rulemaking is explained in greater detail in paragraphs 5 through 7 of that response.