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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. GA-079251 of )  
HAROLD LEMAY ENTERPRISES, INC., ) Docket No.TG-040221  
ET AL ) Volume VI  
For an Extension of Certificate ) Pages 376 to 566  
No. G-98 for a Certificate of )  
Public Convenience and Necessity )  
In re Application No. GA-079254 of )  
KLEEN ENVIRONMENTAL TECHNOLOGIES, ) Docket No.TG-040248  
INC. )  
For a Certificate of Public )  
Convenience and Necessity )

A hearing in the above matter was held on  
September 28, 2004, from 9:30 a.m to 4:45 p.m., at 220  
Fourth Avenue South, Kent, Washington, before  
Administrative Law Judge ANN RENDAHL.

The parties were present as follows:

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1 P R O C E E D I N G S

2 JUDGE RENDAHL: We're here for the second day  
3 of hearing in the Kleen Environmental Technologies  
4 Incorporated application proceeding, Docket Number  
5 TG-040248, before the Washington Utilities and  
6 Transportation Commission, and we're continuing on with  
7 witness Mr. McCloskey for Kleen Environmental.

8 And, Mr. Haffner, please go ahead with your  
9 redirect.

10 MR. HAFFNER: Thank you, Your Honor.

11 THE WITNESS: Do I need to be sworn in?

12 MR. HAFFNER: No, you're still sworn under  
13 oath.

14 JUDGE RENDAHL: Yes, Mr. McCloskey, you're  
15 still under oath from yesterday.

16

17 Whereupon,

18 ALLEN MCCLOSKEY,  
19 having been previously duly sworn, was called as a  
20 witness herein and was examined and testified as  
21 follows:

22

23 R E D I R E C T E X A M I N A T I O N

24 BY MR. HAFFNER:

25 Q. Mr. McCloskey, during Mr. Johnson's

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1 cross-examination yesterday, I believe he was exploring  
2 some of the experience you had managing transportation  
3 of hazardous materials and infectious waste prior to  
4 your contractual agreement with Kleen. Have you  
5 obtained any experience since you have been retained by  
6 Kleen in the areas of regulation of hazardous materials  
7 or infectious waste?

8 A. Well, as I had answered yesterday, yes. In  
9 the process of getting us to where we are today, I have  
10 been exposed to the regulations that govern the  
11 transportation of this particular waste type.

12 Q. And is it your intention to have your company  
13 comply with those regulations that deal with medical  
14 waste?

15 A. We would apply the same disciplines to this  
16 particular endeavor that are applied to the successful  
17 management of hazardous materials.

18 Q. During your cross-examination yesterday,  
19 there was questioning about your status of employment or  
20 retention as an independent contractor with Kleen if  
21 this permit were to be granted. Has that been taken  
22 into account in the proforma financial statements?

23 A. Yes, they have. And if you carefully look at  
24 the proformas, you will see that we have built in there  
25 a direct administrative cost of \$2 per unit.



0384

1 Q. If we could look at Exhibit 44, and maybe we  
2 can just point that out for everybody here.

3 A. So if you look under direct cost of sales.

4 JUDGE RENDAHL: And which page are we on?

5 THE WITNESS: Oh, I'm sorry.

6 MR. HAFFNER: Exhibit 44, I believe it's on  
7 all of the first pages of the different regions.

8 JUDGE RENDAHL: Underneath sales, direct cost  
9 of sales?

10 THE WITNESS: Yeah.

11 A. If you look at the line item labeled disposal  
12 admin at \$2 per box.

13 BY MR. HAFFNER:

14 Q. That's your expense?

15 A. That would be the expense of a person that  
16 would be managing this endeavor.

17 Q. And that's --

18 A. Directly related to the moving the box.

19 Q. And it's your understanding that that -- it's  
20 your anticipation that that person will be you?

21 A. Yes.

22 Q. In your preparation for this hearing, have  
23 you visited medical waste generator sites?

24 A. Yes.

25 Q. Have you observed the medical waste

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1 containers on those sites being filled or in a state of  
2 having materials in them?

3 A. Yes.

4 Q. In the sites that you visited, what is your  
5 understanding of when those boxes are typically filled;  
6 is it filled because of weight or filled because of  
7 volume?

8 A. Well, it's been my observation and confirmed  
9 through conversation with various facilities and their  
10 representatives that the units don't become filled  
11 because of the weight, you know, they're never really  
12 reaching their weight capacity, but they are filled  
13 based on volume.

14 Q. Why is that?

15 A. Well, I mean there's several reasons, but the  
16 first that comes to mind is if you look at the  
17 dimensions of some of the things that get put into these  
18 tubs, or units if you will, don't necessarily match up  
19 with the dimensions of what's being put in there.

20 Q. Can you explain that again, I'm not quite  
21 sure I follow you?

22 A. What I'm saying is the dimensions of things  
23 that are going into the units don't necessarily match up  
24 with the dimensions of the unit itself. So what happens  
25 is, as I said, it fills up based on its capacity based

0386

1 on volume as opposed to the actual maximum weight for  
2 that unit.

3 Q. So will you have gaps of empty space in  
4 those --

5 A. Sure.

6 Q. -- in those boxes?

7 A. Sure.

8 Q. If you could look at Exhibit 56, I was  
9 looking in this exhibit for the repacking information, I  
10 may be in the wrong exhibit. Do you recall where the  
11 information was about Kleen providing repacking service?

12 MR. JOHNSON: Mr. Haffner, that's in an  
13 attachment to Mr. Perrollaz's testimony.

14 JUDGE RENDAHL: It would be Exhibit 36, the  
15 standard operating procedures.

16 MR. HAFFNER: 36, okay, thank you.

17 MR. JOHNSON: It's at the top of page 8.

18 MR. HAFFNER: 8, page 8.

19 BY MR. HAFFNER:

20 Q. I believe you were cross examined on this  
21 area yesterday; could you explain what repacking is?

22 A. Well, as I explained to Mr. Johnson  
23 yesterday, the spirit of what is written here is  
24 repackaging in essence to or in relation to the  
25 implementation of a cleanup or some kind of incident

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1 that would require repackaging for transport.

2 Q. Now is that a cleanup prior to the waste  
3 being taken onto a vehicle which might be part of your  
4 hazardous materials type service, or is this a cleanup  
5 that would occur after the materials have been brought  
6 onto your vehicle?

7 A. A cleanup that would occur after a unit has  
8 been taken onto the vehicle.

9 Q. So are you saying here that you're  
10 responsible for repacking it if it -- once it's been  
11 taken into --

12 A. Once it's in our care, yes.

13 Q. And again, if you can wait until I finish the  
14 question, that would be helpful.

15 And how does this differ then from the  
16 packaging service that you are proposing as a supplement  
17 to your tariff?

18 A. Well, the difference is if you look at the  
19 supplement and what service is being proposed, there is,  
20 you know, in that sense a client would opt to use or  
21 have a service with Kleen Environmental that we would  
22 package that waste for them prior to transport.

23 Q. Okay. Yesterday there was quite a bit of  
24 testimony or cross-examination about your ability to use  
25 tubs in your service. We have now had an evening break

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1 during yesterday's examinations and your examinations  
2 today, has your company reevaluated whether it intends  
3 -- well, I guess I should back up. I think you did say  
4 yesterday that you had decided, determined that you  
5 would not be using tubs in your service; is that  
6 correct?

7 A. Yes.

8 Q. And has your company now reevaluated the  
9 tariff that it submitted with its application?

10 A. Yes, we have.

11 Q. Was the tariff that you submitted with the  
12 application the tariff that you intended to use for  
13 providing service at the time that you submitted the  
14 application?

15 A. At the time it was prepared, yes.

16 Q. Okay. Why have you now chosen not to provide  
17 tub service?

18 A. Well, I mean as you -- we were all here  
19 yesterday, and we saw the inconsistency in what is  
20 actually going to be offered and what was reflected in  
21 the tariff, and so we have made those changes to  
22 correspond with one another, that what's actually being  
23 offered is what's actually being proposed in the tariff.

24 MR. JOHNSON: Your Honor, may I object just  
25 here to the whole line of redirect insofar as it relates

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1 to Kleen changing the fundamental basis for its  
2 application. What they are attempting to do at this  
3 point in time is to change entirely the service that  
4 they propose to offer through their tariff, the tariff  
5 that was filed back in February, the tariff that was  
6 then filed again as an exhibit to the prefiled testimony  
7 that was filed pursuant to the filing requirements of  
8 your prehearing orders on August 13, and now here in the  
9 middle of the hearing after the total inadequacy of that  
10 tariff was pointed out in cross-examination yesterday of  
11 Mr. McCloskey, Mr. Haffner is attempting to change the  
12 entire basis for the application that is before the  
13 Commission.

14           This is a -- this is not within the scope of  
15 redirect, this is a completely new application that is  
16 now being put on the table, and it is not fair to  
17 protestants, it is not fair to the Commission to have  
18 this applicant, to permit this applicant to change the  
19 basis on which its application was presented for hearing  
20 during the middle of the proceeding, and we strenuously  
21 object to admission of any evidence with respect to this  
22 so-called new tariff.

23           JUDGE RENDAHL: At this point I'm going to in  
24 a sense deny your objection to the redirect, because I  
25 understand there will be a motion following

0390

1 Mr. McCloskey to address this issue of the change in the  
2 tariff, the inadequacy of the tariff and the change in  
3 the tariff, and I think it's more properly addressed in  
4 that format. I do note your objection to this  
5 testimony, but I think at this point let's proceed with  
6 the redirect, you'll have an opportunity for recross,  
7 and then you will have an opportunity to address this  
8 issue in the motion that we will be arguing following  
9 Mr. McCloskey.

10 MR. JOHNSON: May I also suggest, Your Honor,  
11 I'm not sure that the motion would necessarily encompass  
12 the core of my objection. I would suggest that if  
13 you're going to allow Mr. Haffner and the witness to  
14 pursue this line that you allow it on a conditional  
15 basis that would allow you to at the conclusion of the  
16 proceedings, either through the vehicle of the proposed  
17 motion or at a subsequent point in the proceeding, to  
18 decide that this is an inappropriate change in the  
19 application in the middle of the hearing.

20 It seems to me whether -- we're talking about  
21 a sort of a threshold issue of whether there is a  
22 proposed application that was properly filed with the  
23 application, I'm sorry, a proposed tariff properly filed  
24 with the application, that's sort of a threshold  
25 question. But there's another question of whether the

0391

1 applicant should be able to change its application in a  
2 fundamental way in the middle of the proceedings after  
3 it has presented its direct case. So it's just a  
4 suggestion on my part as to how you might want to manage  
5 it.

6 JUDGE RENDAHL: I understood we were going to  
7 address both issues in the motion, so maybe it's my  
8 misunderstanding of what we're addressing in the motion.

9 MR. SELLS: Based upon what I'm hearing in  
10 today's testimony, my motion will have two parts.

11 JUDGE RENDAHL: That was my understanding.

12 MR. JOHNSON: Okay, Your Honor.

13 JUDGE RENDAHL: So that's why I'm at this  
14 point denying the motion is because the issue may get  
15 resolved differently in the motion.

16 MR. JOHNSON: Thank you.

17 JUDGE RENDAHL: Please go ahead, Mr. Haffner.

18 MR. HAFFNER: Okay.

19 BY MR. HAFFNER:

20 Q. Mr. McCloskey, I want to hand you a document,  
21 if you could please look at that and tell me if you are  
22 familiar with it.

23 A. Yes, I am.

24 MR. HAFFNER: And can we have this marked for  
25 identification.



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1                   JUDGE RENDAHL: The document is titled Tariff  
2 Number 1 of Kleen Environmental Technologies. Is there  
3 a reference to a modification date?

4                   MR. HAFFNER: I don't believe there is, Your  
5 Honor. I think in that regard I think it still shows an  
6 issue date, I don't think it shows a modification date.

7                   JUDGE RENDAHL: All right, for now I will  
8 mark it as Exhibit 32, but to avoid confusion I will  
9 need you to resubmit the exhibit with a note on it that  
10 it's been revised and a revision date.

11                   MR. HAFFNER: Okay.

12                   JUDGE RENDAHL: Because I understand this is  
13 already an exhibit in the case, Number 45, so to  
14 distinguish this from Exhibit 45 we will need a notation  
15 on the top.

16                   MR. HAFFNER: Title page that has a revision  
17 date?

18                   JUDGE RENDAHL: Correct, or even just a label  
19 or something on the top that indicates revision.

20                   MR. HAFFNER: All right.

21                   MR. JOHNSON: I think the date would be  
22 helpful to distinguish it.

23                   JUDGE RENDAHL: So it's the Tariff Number 1  
24 of Kleen Environmental revised today or yesterday, what  
25 was the date?

0393

1 THE WITNESS: Yesterday, Your Honor.

2 JUDGE RENDAHL: So revised September 27,  
3 2004, and that will be marked as Exhibit 32.

4 MR. HAFFNER: Thank you, Your Honor.

5 BY MR. HAFFNER:

6 Q. Mr. McCloskey, were you responsible for  
7 preparing this document marked as Exhibit 32 for  
8 identification?

9 A. Yes.

10 Q. And can you tell us, I believe you also  
11 prepared the document which I believe is Exhibit 45?

12 A. Yes.

13 Q. Can you tell us what changes there are in the  
14 two documents?

15 A. Well, basically what I have done is I have  
16 made changes, you know, revised the tariff to reflect  
17 the actual proposed service.

18 Q. And what do you mean by the actual proposed  
19 service?

20 A. As I had stated yesterday, we would be  
21 offering the use of a single unit of specific dimensions  
22 as opposed to the numerous units that were listed in the  
23 first tariff.

24 Q. And specifically eliminated all tubs; is that  
25 correct?

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1 A. That's true.

2 Q. So you are now offering a service that offers  
3 only one cardboard box?

4 A. Yes.

5 Q. There are a number of areas where tubs were  
6 referenced in the old tariff, can you identify where you  
7 have deleted the references to tubs in the new tariff?

8 A. Specifically on page 3 you will see that tubs  
9 were, under container sizes item 15, tubs were  
10 referenced several times in the original document, and  
11 you will see in the revised that it no longer reflects  
12 those other units.

13 Q. Now you also reduced the options for the  
14 types and sizes of boxes that you made available; why  
15 was that?

16 A. Well, in our conversations with the Marion  
17 County disposal facility, it was identified that they  
18 prefer to take a certain size unit.

19 Q. Which size unit is that?

20 A. I believe it's an 18 1/2 by 18 1/2 by 25 1/2  
21 corrugated box.

22 Q. Does that correspond with your medium box 33  
23 gallons?

24 A. Yes.

25 Q. Have you added anything to the tariff that

0395

1 you offered previously which was Exhibit 45?

2 A. No.

3 MR. JOHNSON: Excuse me, there was a question  
4 whether you had added anything?

5 MR. HAFFNER: Correct.

6 BY MR. HAFFNER:

7 Q. You have also I believe deleted an item, item  
8 85, the reinstatement charge; can you explain why that  
9 was done?

10 A. Well, as a group, you know, we discussed item  
11 85 last night in a joint planning meeting, and it is our  
12 opinion that that is not a charge that we would  
13 anticipate implementing.

14 Q. Okay.

15 MR. HAFFNER: Your Honor, I have no other  
16 questions for the witness. At this time I would like to  
17 offer Exhibit 32 for admission and again to restate my  
18 request for the other exhibits that I offered earlier  
19 for admission.

20 JUDGE RENDAHL: All right, so Mr. McCloskey's  
21 Exhibit 27 was already admitted yesterday, so we're  
22 looking at Exhibit 25-T, 26, and then 28 through 31 from  
23 yesterday. What other exhibits did you intend from  
24 yesterday? I'm not getting to 32 at this point. We  
25 talked about 45.

0396

1 MR. HAFFNER: Let me see, 44,

2 JUDGE RENDAHL: 44 and 45 and Mr. Perrollaz's  
3 standard operating procedures, Number 36.

4 MR. HAFFNER: Number 36.

5 MR. JOHNSON: Your Honor, do you want  
6 objections here?

7 JUDGE RENDAHL: Well, after we get the list I  
8 will take objections.

9 MR. JOHNSON: Okay, I'm having a little  
10 trouble keeping track though.

11 JUDGE RENDAHL: I will recite it.

12 MR. HAFFNER: I think that is it, yes.

13 JUDGE RENDAHL: All right, so the proposal is  
14 to offer exhibits 25-T, 26, 28, 29, 30, and 31, 44, 45,  
15 and 36. At this point I'm not -- there is an offer for  
16 32 as well, but I would like to take that separately.  
17 Are there any objections to the exhibits?

18 MR. JOHNSON: Your Honor, I have no  
19 objections to 25 through 31. I have no objection to 36.  
20 I do think we should defer on 44, because it is a profit  
21 and loss analysis that I believe Mr. Lee has been  
22 indicated as the primary author. Although Mr. McCloskey  
23 had input, I don't think it's appropriate to admit it on  
24 the basis of Mr. McCloskey's testimony. I just think we  
25 should defer that. 45 I believe should be admitted as

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1 the original tariff filed with their application, and  
2 again 46.

3 JUDGE RENDAHL: 36.

4 MR. JOHNSON: Oh, I'm sorry, we're not on 46,  
5 that's not part of the group?

6 JUDGE RENDAHL: No, 36 is the standard  
7 operating procedures.

8 MR. JOHNSON: Yeah, 36 is okay, and of course  
9 I object to admission of 32.

10 JUDGE RENDAHL: Mr. Sells.

11 MR. SELLS: No comment.

12 JUDGE RENDAHL: And Mr. Trautman.

13 MR. TRAUTMAN: No.

14 JUDGE RENDAHL: All right, at this point we  
15 will admit 25-T, 26, 28, 29, 30, 31, 36. I tend to  
16 agree with Mr. Johnson as to 44, I think we just  
17 discussed one particular item on the profit and loss  
18 analysis in that exhibit, and so I will defer at this  
19 point consideration until after we hear from Mr. Lee. I  
20 will admit Exhibit 45. And as to 32, I'm going to defer  
21 ruling on that until after the motion, which we will  
22 have following Mr. McCloskey's testimony. Did I cover  
23 all of the exhibits?

24 MR. HAFFNER: Yes.

25 JUDGE RENDAHL: All right.

0398

1                   MR. HAFFNER: Can I get a clarification for  
2 exhibits that were admitted yesterday, were 41, 47, and  
3 48 admitted yesterday?

4                   JUDGE RENDAHL: Yes, 41, 47, and 48.

5                   All right, is there any recross for  
6 Mr. McCloskey?

7                   MR. JOHNSON: Your Honor, yes, I would like  
8 to take a few minutes.

9

10                   R E C R O S S - E X A M I N A T I O N

11 BY MR. JOHNSON:

12           Q.     Mr. McCloskey, you testified on redirect with  
13 respect to expenses that Kleen Environmental would incur  
14 for a person managing this endeavor, and I believe you  
15 referred to the \$2 per container disposal administration  
16 fee that's shown on the proformas that we referred to;  
17 is that correct?

18           A.     Yes.

19           Q.     This is not necessarily going to be you, is  
20 it?

21           A.     At this point it is anticipated that it would  
22 be me. I think we determined that yesterday.

23           Q.     That you anticipated, right?

24           A.     Yes.

25           Q.     Would this be a full-time job?

0399

1 A. Yes.

2 Q. I believe the proforma, which we haven't  
3 admitted yet but we have referred to a couple times,  
4 Exhibit 44, look at that line of the disposal  
5 administration fee on page 1 of Exhibit 44, the total  
6 for the year is \$25,526, if I'm reading this correctly,  
7 and 68 cents; does that represent full-time compensation  
8 for your services?

9 MR. HAFFNER: Mr. Johnson, are you talking  
10 about the first document of Exhibit 44 for region 1?

11 MR. JOHNSON: Oh, I'm sorry, that's region 1,  
12 isn't it, so I should be looking at the total at the  
13 end.

14 THE WITNESS: Yep.

15 MR. JOHNSON: I'm using the wrong number, I'm  
16 sorry.

17 BY MR. JOHNSON:

18 Q. Referring to the sum on the last page, which  
19 is a combined, I'm sorry, it's the second to the last  
20 page, combined regions 1 through 4, the total amount is  
21 \$42,840, let me ask you that question, does that  
22 represent full-time compensation --

23 A. Yes.

24 Q. -- for a person managing the new or the  
25 proposed medical waste service of Kleen?



0400

1 A. Yes.

2 Q. And is that calculated based on \$18.50 an  
3 hour or some other basis?

4 A. It's, well, for the time being we have, we  
5 have based the proforma on that too, what we anticipated  
6 it would take a person based on I believe it was \$20 an  
7 hour to manage this. So as we looked at managing a box,  
8 moving a unit, we anticipate that cost to be no greater  
9 than \$2 per unit.

10 Q. But you're not going to be -- we're talking  
11 -- if we're assuming you are going to hold this position  
12 for the moment, you're not going to be paid on a per box  
13 basis, are you?

14 A. No. Well, that -- no.

15 Q. And if you look down on the proforma to --  
16 perhaps we need to find another one that shows the  
17 assumptions, because this one is a little bit difficult  
18 to follow, but I think the, yeah, if you look on, for  
19 the moment, if you can refer to Exhibit 46, which was I  
20 believe a later filed document, the assumptions at the  
21 back on assumption number 18 show wages for  
22 administrative hour times at \$30 an hour, so is it --

23 A. What are you --

24 Q. -- your testimony that the person managing  
25 the medical waste operations whose costs are shown in

0401

1 Exhibit 44 at \$2 per container, is that person going to  
2 earn \$20 an hour or \$30 an hour?

3 MR. HAFFNER: Mr. Johnson, can you point out  
4 where the \$30 per hour is referenced in that exhibit?  
5 I'm having a hard time --

6 MR. JOHNSON: I will do my best. It's  
7 Exhibit 46, and there is a list of proforma assumptions  
8 at the back.

9 JUDGE RENDAHL: On page 4.

10 MR. JOHNSON: Yeah, page 4. Actually, yes,  
11 it is page 4, and if you go down to number 18 among the  
12 assumptions.

13 THE WITNESS: Okay, I see it.

14 MR. JOHNSON: Comes up with \$30 an hour.

15 BY MR. JOHNSON:

16 Q. So is the number that you used to calculate  
17 \$2 a container based on a person earning \$20 an hour or  
18 \$30 an hour?

19 A. It's not based on \$30 an hour.

20 Q. It's based on what?

21 A. \$20. The \$30 an hour would be administrative  
22 time based on I believe Mr. Olson's pay rate.

23 Q. Okay. And so with respect to the function  
24 that you're anticipating to perform, that would be  
25 calculated on the basis of \$20 an hour?

0402

1 A. Yes.

2 Q. Now I obviously can't work this machine.

3 MR. SELLS: Trust me, it's the simplest one  
4 available.

5 THE WITNESS: You know, in all honesty,  
6 Mr. Johnson, I think these questions would be better  
7 directed to Mr. Lee as he is better familiar, more  
8 familiar with how it is you build up to that hourly rate  
9 all inclusive of FICA, SUTA, and other issues related to  
10 building that number.

11 JUDGE RENDAHL: Can you spell out SUTA.

12 THE WITNESS: It's identified here on line  
13 19, there's FICA, SUTA, S-U-T-A, and FUTA, F-U-T-A.

14 JUDGE RENDAHL: And these are taxes that have  
15 to be calculated?

16 THE WITNESS: On top of the base wage, yes.

17 JUDGE RENDAHL: Thank you.

18 BY MR. JOHNSON:

19 Q. Mr. McCloskey, you have indicated that this,  
20 if you hold the position you anticipate if the  
21 application is granted that you would be working full  
22 time for Kleen; is that right?

23 A. Yes.

24 Q. And are you currently working full time for  
25 Kleen?

0403

1 A. Full time capacity, yes.

2 Q. You're not working for other clients  
3 currently?

4 A. I do bill out to other clients.

5 Q. Well, I would assume since you're billing out  
6 to other clients that you're working for other clients  
7 also; is that correct?

8 A. I do, yes.

9 Q. But you would terminate those relationships  
10 under the new arrangement?

11 A. Yes.

12 Q. Are you unsure about that?

13 A. I just said yes, I'm not unsure.

14 Q. Okay.

15 A. I guess I should clarify on that. I have  
16 existing residual income, as you call it, from tribal  
17 relations. My mother is the chairperson of her tribe in  
18 California and the former president of the National  
19 Congress of American Indians, and we get a monthly  
20 stipend every month, no less than \$3,000 a month, from  
21 that, those gaming revenues, sharing dollars.

22 Q. So this is payment for services performed  
23 historically?

24 A. Mm-hm.

25 Q. All right, thank you.

0404

1                    You have never worked for a medical waste  
2 generator, have you?

3            A.     No.

4            Q.     You have never worked in medical waste  
5 collection or been involved in the housekeeping side of  
6 medical waste facility operations, have you?

7            A.     No, I have not.

8            Q.     So when you talked about observing the way  
9 medical waste containers are filled, that was based on  
10 rather casual observation; is that correct?

11           A.     Casual, yes, but nonetheless attentive.

12           Q.     Thank you.

13                    Referring to the operations plan, which I  
14 believe is Exhibit 36, at page 8 the reference to  
15 repackaging. You said, and I believe this is a correct  
16 quote, that the spirit of what is written here is that  
17 repackaging was intended to cover what the transporter's  
18 obligation would be or what Kleen's obligation would be  
19 if a spill occurred after acceptance of the waste; is  
20 that right?

21           A.     Yes.

22           Q.     That's not actually what's said here, is it?

23           A.     Well, I think I have already told you how I  
24 interpret that and what the spirit of what we had  
25 written there is.

0405

1 Q. But don't you agree, Mr. McCloskey, that an  
2 operations plan if it's intended to be a guidance  
3 document should say what it means?

4 MR. HAFFNER: Objection, argumentative.

5 JUDGE RENDAHL: Sustained.

6 BY MR. JOHNSON:

7 Q. Mr. McCloskey, don't you think that an  
8 operations plan that's intended to be a guidance  
9 document should clearly state what it is intended to  
10 communicate?

11 A. Yes.

12 Q. Do you think this clearly states what is  
13 intended?

14 A. It does to me. It may not to you, or it may  
15 not to someone else, but it does to me.

16 Q. But isn't it important in an operations plan  
17 that it be clear enough to communicate to people besides  
18 the author?

19 A. Well, and I think at the point of  
20 implementation of such a plan, that's where that  
21 communication takes place, between the person  
22 implementing it and those that need to abide by it.

23 Q. So it is not necessary for the plan itself to  
24 be clear, it would be explained to people who would be  
25 expected to follow its guidance; is that correct?

0406

1 A. That's not what I said, Mr. Johnson.

2 Q. I thought that was what you said; could you  
3 clarify it?

4 A. Well, we could go round and round on what you  
5 think I said and what I think I said, but I'm telling  
6 you the spirit of what was written here and my  
7 interpretation. To me it's clear.

8 Q. Okay, thank you.

9 Referring to what we have marked as Exhibit  
10 32, which is the proposed new tariff of September 27,  
11 2004, I don't believe you mentioned the rate change that  
12 shows on item 30. Isn't there a change in the rate for  
13 this --

14 A. On 30?

15 Q. -- medium 33 gallon?

16 MR. HAFFNER: Can you point out what rate  
17 change you're alleging?

18 MR. JOHNSON: Well, when I look at the  
19 previously filed tariff, which is, let's see --

20 MR. HAFFNER: Exhibit 45.

21 MR. JOHNSON: Exhibit 45, thank you, I see a  
22 medium large 32 gallon container rated at \$18.44 per  
23 container for a 15 container pickup, but what we're  
24 talking about here is now a 33 gallon container or box.

25 JUDGE RENDAHL: Mr. Johnson, where are you

0407

1 looking?

2 THE WITNESS: I see where he's looking, at  
3 item 30 on page 5.

4 JUDGE RENDAHL: All right.

5 BY MR. JOHNSON:

6 Q. The prior rate for that 33 gallon medium  
7 large box in your item 30 in the original tariff was  
8 \$18.48; is that correct?

9 A. No, I see --

10 JUDGE RENDAHL: I'm not seeing that number.

11 MR. JOHNSON: I'm sorry.

12 JUDGE RENDAHL: So that's what why I'm --

13 MR. JOHNSON: Well, let me try to explain  
14 what I'm getting at here. If you look at the tariff,  
15 the original tariff filed, which is Exhibit 45, and you  
16 look at if you turn a few pages in item 30 until you  
17 find the heading where it has the medium large box.

18 JUDGE RENDAHL: Oh.

19 MR. JOHNSON: You will see that a 15 gallon  
20 pickup, the charge is \$18.48 per box, I'm sorry, a 15  
21 container pickup the charge is \$18.48 per box.

22 JUDGE RENDAHL: So you're comparing page 7 of  
23 Exhibit 45 with --

24 MR. JOHNSON: Page 4 of new exhibit for  
25 identification number 32.



0408

1                   JUDGE RENDAHL: All right, I see where you  
2 are, I just want to make sure the record is clear as to  
3 what we're looking at, so please go ahead with your  
4 question.

5 BY MR. JOHNSON:

6           Q.     Mr. McCloskey, aren't the rates different in  
7 your new revised tariff for a 33 gallon medium large box  
8 from what they were in the original tariff filed in  
9 Exhibit 45?

10          A.     Well, I apologize, the new one, the one that  
11 we have revised, should be labeled 32 gallons, not 33  
12 gallons.

13          Q.     But, Mr. McCloskey, there is no 32 gallon box  
14 in the list that's shown on your original tariff,  
15 Exhibit 45. If you look at item 15, there is no 32  
16 gallon box, cardboard box. So what you have intended to  
17 specify I believe is the medium large box, which is a 33  
18 gallon box as you have shown it on your revised tariff;  
19 isn't that right?

20          A.     No, what we are proposing to use is a 32  
21 gallon 40 pound corrugated box.

22          Q.     So that's something, that's a whole new  
23 container that's not -- was not previously described in  
24 your previously filed tariff, because it doesn't appear  
25 under item 15. The 32 gallon container shown on item

0409

1 15, as we went over yesterday, is a reusable tub with a  
2 maximum weight of 60 pounds, and what you have proposed  
3 now is something different. So what I assumed you were  
4 showing in your new item 15, revised item 15 in Exhibit  
5 32, it says medium box 33 gallon, maximum weight 40  
6 pounds.

7 A. Well, I think -- I think -- okay.

8 Q. So that's the --

9 A. Well, I think what I have done, Mr. Johnson,  
10 is I have crossed, in my haste to prepare this for this  
11 morning's proceedings, I have crossed unit prices with  
12 unit size or volume, if you will.

13 Q. Well, I guess my question is you proposed a  
14 new tariff here which has rates for a 33 gallon  
15 cardboard box, right?

16 A. Yes.

17 Q. And the rates that are shown in the new  
18 tariff are not the same rates that you showed on the  
19 prior tariff for the same 33 gallon cardboard box,  
20 right?

21 A. Yes.

22 Q. So in addition to those items that  
23 Mr. Haffner went through with you, you have changed the  
24 rates for the 33 gallon box?

25 A. I didn't intentionally change the rate.

0410

1 Q. So did you --

2 A. I'm not afraid to say it, I made a mistake,  
3 Mr. Johnson.

4 Q. Everyone makes mistakes.

5 A. That's right.

6 Q. It's not my intent to belabor you about it,  
7 I'm just trying to understand what we've got in front of  
8 us. Is it your intent to use the prior rates stated for  
9 the medium large box 33 gallons that is shown in the  
10 original tariff this is in the record as Exhibit 45?

11 A. No, it is our intent to use the unit prices  
12 for the actual 33 gallon box.

13 Q. So it's your intent to change the rates for  
14 that 33 gallon box; is that correct?

15 A. No, not to change it but to use the price for  
16 the 33 gallon box, what is called a medium box.

17 Q. But that's the rates shown for the 33 gallon  
18 box in your proposed tariff, new proposed tariff,  
19 Exhibit 32, are different from what is shown in Exhibit  
20 45.

21 A. I understand that, and that's what I just  
22 said, I made a mistake. It should be labeled a 33  
23 gallon box, and the prices for that box should  
24 correspond with that unit.

25 Q. Okay.

0411

1           A.     I have crossed them, I have the 33 gallon  
2 container prices relating to a 33 gallon box.

3           Q.     So are the rates shown on your new proposed  
4 tariff the rates you intend to charge for the box, for  
5 the 33 gallon cardboard box?

6           A.     No, that needs to be changed to reflect the  
7 medium box, the 33 gallon box.

8           Q.     Okay, so the rates that should be on your new  
9 proposed tariff would be the rates that we see in the  
10 old tariff --

11          A.     Under --

12          Q.     -- in item 30 under the medium large box 33  
13 gallon column; is that right?

14          A.     Yes.

15          Q.     Okay. So these rates are not correct on the  
16 new tariff?

17          A.     No, they need to be revised.

18          Q.     Okay. Now with respect to the proforma  
19 financial statements that have been presented, isn't it  
20 true that all of the proforma revenue estimates are  
21 based on a 32 gallon reusable tub?

22                 JUDGE RENDAHL: Mr. Johnson, can you give the  
23 witness which exhibits you're looking at.

24                 MR. JOHNSON: Oh, I'm sorry, I believe it's  
25 Exhibit 44.

0412

1                   THE WITNESS: I'm not sure which document  
2 he's looking at.

3                   JUDGE RENDAHL: Let's be off the record.

4                   (Discussion off the record.)

5 BY MR. JOHNSON:

6           Q.     Mr. McCloskey, I'm referring to Exhibit 44,  
7 and you can really look at any one of the pages because  
8 they all are based on the same assumptions. If you look  
9 over on the left-hand column about the third line down,  
10 it says sales at \$18.44 per unit times number of units.  
11 If you look at your original tariff, which is Exhibit  
12 45, you will see that for a 15, on the 15 container line  
13 on the first page of item 30 that \$18.44 is the rate  
14 shown per container for a 15 container pickup of the 32  
15 gallon container.

16           A.     Mm-hm.

17           Q.     Right?

18           A.     Yes.

19           Q.     So you originally used \$18.44 per container  
20 for a 15 gallon pickup as the assumption on which your  
21 revenue numbers were based, right, I'm sorry, 15  
22 container pickup?

23           A.     Yes.

24           Q.     Okay. So now we should change all those to  
25 show \$18.48, should we not, because that's what the rate

0413

1 is for a 15 container pickup of the medium large 33  
2 gallon box?

3 A. Yes.

4 Q. So none of the proformas are based on the  
5 accurate rate per container for a 15 container pickup,  
6 are they?

7 A. No.

8 Q. You mentioned in your -- in the redirect that  
9 you had deleted item 85, which was the reinstatement  
10 charge.

11 A. Which exhibit was that again?

12 Q. I'm sorry, in the prior tariff.

13 A. Oh, 45, 45 was it?

14 Q. Which I believe is Exhibit 45, there is an  
15 item 85, which is a reinstatement charge of \$160, and  
16 you testified on redirect that you had decided to take  
17 that out because you didn't anticipate imposing that  
18 charge; is that correct?

19 A. Well, we took it out for several reasons.  
20 One, it wasn't reflected in the proformas, and we didn't  
21 anticipate implementing this charge. Based on the  
22 proformas, the business would operate fine without  
23 imposing this charge on shippers, generators.

24 Q. I understand, but why did you put it in then  
25 if you didn't anticipate charging it?

0414

1           A.     Well, at the time that it was submitted we  
2 anticipated implementing this charge.

3           Q.     And then you have changed your mind, you  
4 changed your mind yesterday?

5           A.     After our discussion late evening, yes.

6           Q.     Okay, thank you.

7                     Now you or I should -- I guess I will  
8 rephrase that.

9                     Do you anticipate that generators would be  
10 required to segregate their waste going to the Covanta  
11 incinerator?

12          A.     No.

13          Q.     So basically all types of waste could be put  
14 into the same container for the service proposed?

15          A.     That's my understanding.  However, packaging  
16 I think would be better addressed by Mr. Perrollaz.

17          Q.     Okay.  In your redirect you mentioned that  
18 there's only one container size identified in item 15  
19 and that now you are only going to offer one container  
20 size, one type of container to your customers; is that  
21 correct?

22                     I'm referring --

23          A.     Yes, yes.

24          Q.     Okay.  However, in item 90 you identify two  
25 container sizes, the small box, the 15 gallons, and the

0415

1 medium large box at 33 gallons.

2 JUDGE RENDAHL: Mr. Johnson, are you  
3 referring to --

4 MR. JOHNSON: I'm sorry, yeah, Exhibit 32  
5 marked for identification.

6 A. We would provide a smaller box for non-RCRA,  
7 non-state, chemotherapy waste, pathological waste, and  
8 pharmaceutical.

9 Q. But there would be no maximum weight limit or  
10 -- I guess item 15 is wrong also, it needs to be  
11 corrected, does it not, to include that box, that small  
12 box?

13 A. I didn't personally think that it was  
14 required to be listed under item 15. If, in fact, it  
15 does, then yes, item 15 should reflect that other small  
16 unit. It was my understanding that the flat rates and  
17 the per pickup rates were two different things.

18 Q. If the generators are not required to  
19 segregate their wastes, how will you know whether an  
20 item is pathological chemotherapy or pharmaceutical  
21 waste?

22 A. Again, you're asking me a packaging question,  
23 which I stated would be better addressed by  
24 Mr. Perrollaz.

25 Q. I think I just have one more question,



0416

1 Mr. McCloskey.

2 A. Okay.

3 Q. In your prefiled testimony, which is Exhibit  
4 25, well, maybe there are two questions, at the bottom  
5 of page 3 you describe the types of waste that Kleen  
6 Environmental would handle if its application is granted  
7 I believe.

8 A. Yes.

9 Q. And at the last few lines you indicate that I  
10 guess it's anatomical parts would not be accepted if  
11 they were from surgery, obstetrics, autopsy, and  
12 laboratories; is that correct?

13 A. No, that's not how I read that.

14 Q. Okay, please clarify.

15 A. As I read that, we would take waste that  
16 comes from those procedures. Anything outside of those  
17 procedures would not be taken.

18 Q. I see. I don't think that's what it says.

19 A. It says, and anatomical parts that emanate  
20 from procedures other than.

21 Q. I'm sorry, maybe we shouldn't quibble over  
22 the exact wording, but if you read the preamble it says:

23 If granted the application sought, Kleen  
24 will accept all types of biomedical  
25 waste including without limitation.

0417

1 And then it goes on:

2 And anatomical parts that emanate from  
3 procedures other than surgery,  
4 obstetrics, autopsy, and laboratories.

5 A. And as I read that, to me that means  
6 procedures that do not come from surgery, obstetrics,  
7 autopsy, or laboratories.

8 Q. Okay, thank you.

9 On page 5 of your prefiled testimony below  
10 the list of counties in the different regions, you  
11 indicate that you would -- something about how you plan  
12 to proceed if the application is granted, and then you  
13 indicate that with, and I will quote:

14 For region 1 with 4 clients, each  
15 generating 15 units per week, by the end  
16 of the month we would have a truckload  
17 ready for disposal.

18 Does that suggest that you would be storing  
19 medical waste for up to a month?

20 A. No, I think what it's saying is at the end of  
21 that month we would have enough clientele that would be  
22 generating those 15 units per week, and if we went  
23 around and picked them all up on that scheduled route,  
24 we would then have a full truck to go directly to  
25 Covanta.

0418

1 Q. Don't you --

2 A. We could transport that at a profit if we had  
3 that full truck.

4 Q. But after -- you're assuming 15 units per  
5 week per client, that's 60 units per month per client,  
6 and you're assuming 4 clients.

7 A. Mm-hm.

8 Q. 4 times 60 is 240?

9 A. Mm-hm.

10 Q. And I believe elsewhere in your prefiled  
11 testimony, in fact in the next paragraph, you say that  
12 there's 260 units per load.

13 A. That's the maximum capacity for the vehicles  
14 we propose to use, yes.

15 Q. Right. So isn't it the case that to get a  
16 full truckload to take to the disposal facility you  
17 would have to accumulate waste for a month at 15  
18 containers per customer per week --

19 A. Well, it's --

20 Q. -- with 4 customers?

21 A. Well, first off it's not unfeasible to think  
22 that you can't store medical waste.

23 Q. I'm just trying to understand what your  
24 testimony is. Doesn't it suggest that you would be  
25 storing medical waste for up to a month while you

0419

1 accumulate a full truckload; isn't that correct?

2 A. We would store it for a reasonable period of  
3 time so as to get the maximum capacity out of making  
4 that trip to the disposal facility.

5 Q. And according to this projection and the  
6 discussion here in your prefiled testimony, that could  
7 be up to a month, could it not?

8 A. If it were allowable, and again I wouldn't be  
9 one to speak on this issue, but if it were allowed to be  
10 stored for that period of time, I don't think -- I don't  
11 see why not.

12 Q. So but your testimony was that it could be  
13 stored up to a month?

14 A. Could be.

15 Q. And you have gained some familiarity with the  
16 rules and regulations applying to the transportation of  
17 biomedical waste in the course of your work with Kleen  
18 Environmental; is that correct?

19 A. Vaguely, yes.

20 Q. So your experience and your familiarity with  
21 these regulations is very limited, is it not?

22 A. In perspective to someone of Mr. Perrollaz's  
23 caliber, yes.

24 Q. For example, you don't know what King  
25 County's rules are with respect to the storage of

0420

1 medical waste, do you?

2 A. I have perused them, and I have spoken with  
3 Jill Trohimovich of King County Health, and she has  
4 forwarded to our office the regulations and procedures  
5 that are imposed by the County for the storage of  
6 medical waste and the permitting that is required with  
7 such storage.

8 Q. So you are aware that King County does not  
9 permit storage for longer than 15 days?

10 A. I am. However, we have never said that we  
11 would, you know, it was mandatory that we have our  
12 storage in King County.

13 Q. So you're not sure where your storage would  
14 be located?

15 A. It would be located at a site that would be  
16 chosen by the partners of Kleen Environmental; that is  
17 not up to me.

18 Q. But you're going to run it, I'm just --  
19 according to your testimony, you anticipate that you  
20 would be managing the operation, you don't know where  
21 the storage facility would be located?

22 A. Not at this time, no.

23 I mean basically what I have recommended to  
24 Kleen Environmental is --

25 Q. Thank you.

0421

1                   JUDGE RENDAHL: Mr. Johnson, he's entitled to  
2 explain his answer.

3                   MR. JOHNSON: I don't think he was explaining  
4 his answer, Your Honor, but I defer, of course, to  
5 your --

6           A.       Basically what I have recommended to Kleen  
7 Environmental, and I think it was brought up by not only  
8 you yesterday but Mr. Sells as well, is that, you know,  
9 well, you're going to propose to do a service in a  
10 mythical building. It's always been my experience that  
11 you don't go out and purchase something unless you have  
12 created a demand for it, and that has been my  
13 recommendation to Kleen Environmental, do not go out and  
14 purchase a building until you are more sure that you're  
15 going to actually be able to pursue this endeavor.  
16 Create a demand for putting out that cost.

17          Q.       I think then there's just one last question.  
18 I believe the proformas that were filed with the  
19 application or filed by the applicant shown at Exhibit  
20 44 show a variety of costs related to transportation.  
21 Doesn't transportation involve evaluation or isn't it  
22 true that the projections in the proformas for  
23 transportation cost including mileage and so forth are  
24 calculated based on a Seattle based operation?

25          A.       The proformas are based on what we know.

0422

1 They're based on the existing location of Kleen  
2 Environmental. However, we don't anticipate the  
3 facility being any more north than where it is now. If  
4 anything, it would be more south, which would be closer  
5 to the facility, which would in essence cut down on the  
6 mileage figure that we have figured into the proforma.

7 Q. Essentially though, what you're saying is  
8 that the proforma mileage data and transportation costs  
9 are calculated based on the service operating from 754  
10 Garfield Street, Seattle, Washington; is that right?

11 A. It's based on what we know, yes.

12 Q. That's not the question. Isn't it based on  
13 operations based at 754 Garfield Street in Seattle?

14 A. It's based on transporting from King County,  
15 yes.

16 Q. Did you have a point within King County in  
17 mind when you built those proformas?

18 A. It was based on transporting from the  
19 existing location of Kleen Environmental.

20 Q. So if the --

21 A. Now keep in mind these are simply proformas,  
22 Mr. Johnson.

23 Q. So if the facility is not in King County or  
24 is not at 754 Garfield Street, the -- let me strike that  
25 and start over.

0423

1                   If the service is not based at 754 Garfield  
2 Street or perhaps not even within King County, the  
3 proformas would not accurately reflect the cost of  
4 service, would they?

5           A.     Well, yes and no.

6           Q.     Well, start with the no, and then we'll try  
7 yes.

8           A.     Okay.

9           Q.     Explain please.

10          A.     No in that the numbers, as I said, in the  
11 mileage are based on transporting from the current  
12 location. However, if anything we would anticipate that  
13 transportation -- I mean regardless of where you locate  
14 yourself, whether you're in King County or you're in the  
15 neighboring county, you're still close enough to your  
16 generators to be able to operate feasibly with your  
17 proformas that you have here.

18          Q.     But we really don't know that, we can't --  
19 just wait one second. We really can't know that until  
20 we have a location, can we? I mean it's okay to sort of  
21 assume that, assume that issue away, but with no  
22 location how do we know?

23          A.     Well, for example, have you ever seen a  
24 feasibility study done? That's everything you really  
25 don't know. You base it on what's available. You base



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1 it on what you know.

2 Q. But don't you --

3 A. Excuse me. That's what we have done here  
4 with these proformas. The proforma is simply a  
5 proforma.

6 Q. But don't you know that your operation will  
7 not be based at 754 Garfield Street; didn't Mr. Olson  
8 testify to that yesterday?

9 A. I think we're just pulling hairs here,  
10 Mr. Johnson. As I have said, we based the proformas on  
11 what we know.

12 Q. But you know you will not use that facility  
13 as a base, do you not?

14 A. Yes.

15 MR. JOHNSON: I have no further questions.

16 JUDGE RENDAHL: Mr. Sells.

17 MR. SELLS: None, Your Honor.

18 JUDGE RENDAHL: Mr. Trautman.

19 MR. TRAUTMAN: None for us.

20 JUDGE RENDAHL: I just have one question.

21

22 E X A M I N A T I O N

23 BY JUDGE RENDAHL:

24 Q. In response to the questions from your  
25 counsel, you discussed the fact that you learned that

0425

1 the Marion County facility prefers to take 33 gallon  
2 containers. When did you become aware of that?

3 A. Well, not necessarily 33 gallon containers  
4 but containers of a particular dimension.

5 Q. All right. And so when did you become aware  
6 of that restriction?

7 A. We were aware of that restriction upon  
8 Mr. Olson's and I's last visit to that facility. But  
9 keep in mind at the time that the proformas were, the  
10 originals were developed, we had anticipated not only  
11 taking waste to Covanta but also taking waste to the  
12 hydroclave as an option.

13 Q. And when did you visit the facility?

14 A. Covanta?

15 Q. Yes.

16 A. Specific date I don't recall, but I would say  
17 it was somewhere around four or five, maybe five and a  
18 half months ago.

19 JUDGE RENDAHL: Okay, thank you, that's all I  
20 have.

21 All right, I think it's a good time --  
22 Mr. Haffner.

23 MR. HAFFNER: Your Honor, could I have some  
24 redirect, and I'm wondering if we should take a break  
25 before I start that.

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1                   JUDGE RENDAHL: We should take a break, so  
2 let's be on a break, and I will consider your suggestion  
3 for reredirect.

4                   MR. HAFFNER: Thank you.

5                   JUDGE RENDAHL: We will be off the record  
6 until 10:45.

7                   (Recess taken.)

8                   JUDGE RENDAHL: Mr. Haffner, how much  
9 additional redirect do you propose?

10                  MR. HAFFNER: Probably five minutes. It may  
11 expose some additional recross I imagine though.

12                  JUDGE RENDAHL: Well, I'm not going to let  
13 this go beyond this round. Usually one round of  
14 redirect and recross is sufficient, so let's see what  
15 happens, and I may cut it off if it appears to be  
16 unnecessary.

17                  MR. HAFFNER: Thank you, Your Honor.

18

19                  R E D I R E C T   E X A M I N A T I O N

20 BY MR. HAFFNER:

21                  Q.     Mr. McCloskey, can you pull out exhibits I  
22 guess or look at Exhibits 32 and 45, the tariffs that  
23 you were examined by Mr. Johnson. Can you explain again  
24 where you obtained the pricing column for item 30 in  
25 Exhibit 32?

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1           A.     It was under what was labeled as a 32 gallon  
2 container.

3           Q.     When you say it was under, are you referring  
4 back to Exhibit 45, the original filed tariff?

5           A.     Yes.

6           Q.     And are the prices in that column the same,  
7 that column that's in Exhibit 45, are the prices that  
8 are in that column in Exhibit 45 the same that are in  
9 the newly proposed tariff in Exhibit 32?

10          A.     Yes.

11          Q.     And is that a corrugated box that is being  
12 offered in Exhibit 32?

13          A.     Yes.

14          Q.     I believe you testified to Mr. Johnson that  
15 you would need to be changing the price of the tariff  
16 that is proposed as Exhibit 32 to match that of the  
17 pricing for the medium large box 33 gallon which shows a  
18 15 unit price of \$18.48 on Exhibit 45. Is that still  
19 your testimony?

20          A.     No. In my answering his questions and my  
21 frustration with his line of questioning, no.

22          Q.     With respect to the biohazard operating plan  
23 and, well, with respect to the biohazard operating plan,  
24 who in your company has the most knowledge about how  
25 that plan is to be implemented?

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1 A. Mr. Perrollaz.

2 Q. With respect to the company's obligations of  
3 segregating waste and the need for the company to offer  
4 segregation, who in the company has the most information  
5 or most knowledge about that --

6 A. Mr. Perrollaz.

7 Q. Let me finish the question, please.

8 Who in your company has the most knowledge  
9 about the need to segregate waste?

10 A. Mr. Perrollaz does.

11 MR. HAFFNER: That's all I have, Your Honor.

12 JUDGE RENDAHL: Thank you.

13 Any recross, Mr. Johnson?

14

15 R E C R O S S - E X A M I N A T I O N

16 BY MR. JOHNSON:

17 Q. Mr. McCloskey, did you discuss with your  
18 counsel during the break that preceded this redirect the  
19 testimony that you provided immediately following the  
20 redirect?

21 MR. HAFFNER: Objection.

22 JUDGE RENDAHL: On what basis?

23 MR. HAFFNER: Attorney-client privilege.

24 He's asking for the nature of our conversation.

25 MR. JOHNSON: No, I asked if he had consulted

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1 with counsel.

2 MR. HAFFNER: About a particular topic.

3 JUDGE RENDAHL: Can you rephrase your  
4 question in such a way that it doesn't implicate the  
5 attorney-client privilege.

6 BY MR. JOHNSON:

7 Q. Mr. McCloskey, did you have a discussion with  
8 anybody during the break with respect to the testimony  
9 you have just given concerning the rates stated in  
10 Exhibit 32?

11 A. Yes.

12 Q. And in that discussion, were you encouraged  
13 to change your testimony that you gave to me prior to  
14 the break?

15 A. I was not encouraged. It was brought to my  
16 attention that I made a mistake.

17 Q. What was your mistake?

18 A. My mistake is that I misspoke in that I said  
19 we would be changing the pricing, which is not in fact  
20 true. We would be maintaining the pricing that I put in  
21 submitted with the revised tariff.

22 MR. JOHNSON: No further questions.

23 JUDGE RENDAHL: Mr. Sells.

24 MR. SELLS: No questions, Your Honor.

25 JUDGE RENDAHL: Mr. Trautman.

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1 MR. TRAUTMAN: No.

2

3 E X A M I N A T I O N

4 BY JUDGE RENDAHL:

5 Q. Just one point of clarification along that  
6 same line, Mr. McCloskey. So in the revised tariff,  
7 what's been marked as Exhibit 32, you're proposing a 33  
8 gallon medium box container under item 15, and the rates  
9 for that container in item 30 reflect a 33 gallon  
10 container, but those rates reflect what was proposed in  
11 Exhibit 45 for the medium large 32 gallon container; is  
12 that correct?

13 A. Yes.

14 Q. And those are the rates that you are  
15 proposing for the 33 gallon container as opposed to what  
16 was listed in Exhibit 45 as the 32 gallon container,  
17 correct?

18 MR. JOHNSON: I think you just misspoke, Your  
19 Honor, as opposed to what was listed in Exhibit 45 for  
20 the 33 gallon cardboard box.

21 JUDGE RENDAHL: Let me rephrase the question.

22 BY JUDGE RENDAHL:

23 Q. So the prices in marked Exhibit 32 in item 30  
24 for a 33 gallon container reflect the rates that are  
25 currently listed in item 30 of Exhibit 45, and I think I

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1 do believe that I mean this, under the medium large 32  
2 gallon container?

3 A. Yes.

4 Q. Okay. Instead of using the rates in Exhibit  
5 45 for the 33 gallon medium large box listed on page 7  
6 of Exhibit 45?

7 A. Yes.

8 JUDGE RENDAHL: All right, thank you.

9 All right, with that, Mr. McCloskey, thank  
10 you for appearing yesterday and today. For now you can  
11 sit down, and I understand we may have further  
12 discussions about rebuttal depending on what happens  
13 this morning. So you remain under oath in the  
14 proceeding, but you may be excused.

15 Let's be off the record for a moment.

16 (Discussion off the record.)

17 JUDGE RENDAHL: Mr. Sells, I think you have a  
18 motion you want to make.

19 MR. SELLS: I do, if Your Honor please, the  
20 regulation that I'm going to be looking at primarily  
21 here is 480-70-091, and in looking at that you see the  
22 word must all the time. Sub 1, a company must submit  
23 its application for certified authority on forms  
24 provided by the Commission. Sub 2, applications must  
25 include all requested information, attachments, et



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1 cetera. Sub 3, a certificate application must include,  
2 and you go down a ways (e) a proposed tariff. The  
3 regulation does not say can, may, might, should try to  
4 do it, it says it must include it.

5 Now depending upon which days' testimony you  
6 want to accept, our motion is going to have two parts.  
7 Let's look at yesterday's testimony first. If you will  
8 recall, I asked Mr. McCloskey if the tariff, Exhibit  
9 Number 45 I believe.

10 MR. HAFFNER: Yes.

11 MR. SELLS: Was the proposed tariff, and the  
12 answer was no. So based upon that, the application did  
13 not include sub (e)(3)(e) a proposed tariff. The rule  
14 says it must include a proposed tariff. Therefore, this  
15 application it was void ab initio. The fact that we  
16 only found out in hearing that it did not contain and  
17 did not contain until this morning apparently a proposed  
18 tariff doesn't make any difference. That was not the  
19 proposed tariff, the application was not and is not in  
20 conformance with the rule, therefore should be  
21 dismissed.

22 Now if you go on to today's testimony and you  
23 want to accept today's testimony instead of yesterday's  
24 testimony, we've got a brand new tariff, and that's  
25 Exhibit 32 I believe.

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1 MR. JOHNSON: Yes.

2 MR. SELLS: Now this new tariff which is now  
3 offered to us as the proposed tariff is not a  
4 modification of the previous nonproposed tariff, it's a  
5 brand new document. It bears virtually no relationship  
6 whatsoever to the nonproposed tariff, which was simply a  
7 copy of an old Stericycle tariff pretty clearly. So  
8 what we have based upon today's testimony is a new  
9 application. Because if this is, in fact, the proposed  
10 tariff, which 091 requires to be attached to the  
11 application, we have a brand new application. And if we  
12 have a brand new application, it has to be redocketed,  
13 because the public and the Commission has to have the  
14 ability and Commission Staff to look at it to decide  
15 whether it's to be protested, to decide whether it  
16 should be submitted for the public, and so on.

17 If you look at 091 sub (2)(c) the Commission  
18 may reject or dismiss an application if it includes  
19 false, misleading, or incomplete information. Again,  
20 depending on which day you're looking at, yesterday or  
21 today, the original application in this docket included  
22 false and misleading and incomplete information. Now  
23 unfortunately we only found out about that upon  
24 cross-examination. The applicant didn't say when it  
25 filed its application, this isn't really the tariff that

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1 we're proposing, this is just one we went down to  
2 Kinko's and copied when we found the old Stericycle.  
3 Now had they said that, the Commission probably would  
4 have rejected it, but now is the opportunity for the  
5 Commission through Your Honor to reject or dismiss this  
6 application, because it included from the beginning  
7 false, misleading, and incomplete information. It did  
8 not contain a proposed tariff.

9           Now the next application here the Commission  
10 is going to have to look at and go through this same set  
11 of thinking, and that's why it has to be, if in fact  
12 this 32 is the new tariff, today's tariff we'll call it,  
13 if this is the new tariff, then the Commission has to  
14 look at that and reject or dismiss or docket it. That's  
15 what the rule says. And frankly, this entire proceeding  
16 so far has been based upon a falsehood, and that is that  
17 there was no tariff, proposed tariff, filed with the  
18 application. The remedy is either to dismiss it or to  
19 order it because it doesn't have a -- didn't have a  
20 proposed tariff, or redocket it because now apparently  
21 it does have a proposed tariff.

22           JUDGE RENDAHL: Mr. Sells.

23           Is anybody else joining the motion?

24           MR. JOHNSON: Your Honor, Stericycle will  
25 join that motion, and I would like to speak briefly if I

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1 may.

2 JUDGE RENDAHL: Yes, go ahead.

3 MR. JOHNSON: I support everything Mr. Sells  
4 has said about the tariff. We don't have a proposed  
5 tariff, we didn't have a proposed tariff apparently  
6 until today. It is entirely different, it proposes  
7 different containers, different rates for containers  
8 previously identified, it deletes various items from the  
9 tariff. What had been proposed as a service that would  
10 eventually involve the use of reusable tubs has now been  
11 completely altered to reflect only the use of cardboard  
12 containers and only a very limited set of sizes.

13 It's not just the carriers that are involved  
14 in this business that are affected by this. The tariff  
15 is something that generators are allowed to review and  
16 presumably have reviewed in terms of determining what  
17 positions they would take with respect to this  
18 application. And the fact that they didn't have a  
19 tariff on file that the public could review that would  
20 honestly represent the service that is being proposed is  
21 a tremendous defect. It's a substantive defect, not  
22 merely a procedural matter that can be corrected by, you  
23 know, redoing the tariff each day of the hearing.

24 So I think that Mr. Sells is quite right,  
25 that either -- in my view this application must be

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1 dismissed, because it did not or was not accompanied by  
2 a proposed tariff as required by WAC 480-70-091.

3 But there's another important reason it seems  
4 to me based on the evidence we have in front of us that  
5 this application proceeding should be terminated before  
6 any more of the very substantial expense that all of us  
7 have incurred continues, and that is that the applicant  
8 doesn't have the facilities necessary to provide the  
9 service.

10 MR. HAFFNER: Your Honor, I'm going to  
11 object, this sounds like a new motion, this is not  
12 joining Mr. Sells' motion.

13 MR. JOHNSON: Well, I am proposing that this  
14 application be dismissed for the reasons stated by  
15 Mr. Sells with respect to the tariff and because the  
16 applicant clearly can't provide the service that it has  
17 proposed.

18 JUDGE RENDAHL: I will agree that that's a  
19 new motion. I think that kind of motion is more  
20 appropriately made at the close of the applicant's case.  
21 Essentially it's a motion based on the case to dismiss  
22 based on the evidence provided, and I don't think that  
23 we have all of the applicant's evidence in place to make  
24 that motion.

25 MR. JOHNSON: I will defer to Your Honor on

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1 that point and just let it rest for now with the problem  
2 with the tariff.

3 JUDGE RENDAHL: Mr. Trautman.

4 MR. TRAUTMAN: Yes, thank you, Your Honor.

5 In reviewing the tariff that was submitted with the  
6 application and then reviewing the new tariff and the  
7 rule that Mr. Sells cited, which was 480-70-091(3)(c),  
8 that requires a proposed tariff be submitted with the  
9 application. And my understanding was that the tariff  
10 proposed at the time was what the company believed, this  
11 was the service that they thought that they might be  
12 able to provide, and that included both the boxes and  
13 the tubs and the various weights. Following the  
14 cross-examination, the question was asked, is this the  
15 proposed tariff, and as to now, I believe Mr. McCloskey  
16 said no. When I asked for further clarification, I  
17 asked whether if changes were made to take the tub rates  
18 out, would that otherwise be the proposed tariff, and I  
19 believe he said yes.

20 My understanding is that the Commission rules  
21 do not require that the tariff that is filed at the  
22 outset of an application can never be changed. I don't  
23 believe that's what the Commission's rules require. The  
24 Commission has allowed changes to the tariff through the  
25 proceeding before as a procedural matter. We found a

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1 docket, a recent docket, it was an airporter case, it's  
2 TC-030489, and it was --

3 JUDGE RENDAHL: Would you repeat that number.

4 MR. TRAUTMAN: Yeah, TC-030489, and it was  
5 regarding the application of Seatac Shuttle, it was  
6 heard last year. And there was a -- in part there was a  
7 hearing before Judge Caille, and Seatac Shuttle had  
8 changed -- had amended their tariff and the schedule of  
9 services they were going to file, that they were going  
10 to provide. They amended that I believe during the  
11 hearing, and a similar objection was made that that  
12 could not be done, and the judge ruled that the tariff  
13 could be proposed, could be -- the proposed tariff could  
14 be amended. It was not absolutely set in stone, and now  
15 in part the judge, and I'm reading from the hearing  
16 transcript from July 2nd, 2003, in that case, and in  
17 part the judge ruled that the schedule wasn't that far  
18 off of the other schedule.

19 And so I think -- I think it's true that if  
20 the new tariff were totally different, completely  
21 different, then it might be a different case. I think  
22 it's the -- I don't think it's accurate to say that the  
23 new tariff is totally changes the nature of what was  
24 filed. What it does is it now provides for boxes, and  
25 that's consistent with providing the service to the

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1 Covanta incinerator. I don't think the company has said  
2 that they won't provide service to the hydroclave, but  
3 that hasn't been fully established. In any event, there  
4 was an amendment, there was an amendment to item 30, and  
5 I believe there was also an amendment to item 85, and I  
6 believe other than that I believe the two tariffs are  
7 essentially the same.

8           And so as a procedural matter, and I'm not  
9 addressing the substantive merits, as a procedural  
10 matter, I believe under the Commission's rules that the  
11 tariff could be amended and that the case could be  
12 allowed to proceed, again as a procedural matter.

13           JUDGE RENDAHL: Okay.

14           Mr. Haffner.

15           MR. HAFFNER: Thank you, Your Honor. We  
16 obviously disagree with the motion made and would ask  
17 Your Honor not grant it. We think we are in compliance  
18 with the regulations cited by Mr. Sells. At the time  
19 that this application was submitted, that was the  
20 proposed service that was intended. That was the  
21 testimony from Mr. McCloskey. I think the testimony  
22 yesterday was that that was no longer the proposed  
23 tariff because it was determined through yesterday's  
24 testimony that the tub service would no longer be  
25 feasible.



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1                   In terms of the substantive change in the  
2 tariff, I think this is similar to a restrictive  
3 amendment in that we are not asking for anything, any  
4 additional, any additional service or any additional  
5 services to be provided that would need to be  
6 redocketed. All we have done is remove and restricted  
7 the type of service that we are proposing to provide by  
8 removing tub service and also service of options of  
9 additional containers. But the container that the  
10 original proformas were based on is the same container  
11 that is -- the same pricing that is used for that  
12 container with the newly proposed tariff, and it's  
13 consistent with all of the operations that we have  
14 proposed through today's hearing so far.

15                   Again, I see this as equivalent to a  
16 restrictive amendment where we're not seeking anything  
17 new. And again, we're not in violation of that  
18 regulation, because at the time that the application was  
19 proposed, that was the service that was considered.  
20 Thank you.

21                   JUDGE RENDAHL: Mr. Sells.

22                   MR. SELLS: Briefly, if Your Honor please,  
23 there is a reason these applications are docketed, and  
24 other carriers and generators in particular now can go  
25 on line and take a look at the application and take a

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1 look at the tariff. If I'm a generator and I prefer to  
2 use tubs because I don't trust the cardboard for some  
3 reason or another and I went and read this application  
4 as docketed, I would have said, well, here, here's some  
5 people other than Stericycle that are going to use tubs,  
6 this is something I might be interested in, I may even  
7 be willing to send my very well paid infection control  
8 person down there to testify as a generator, as a  
9 shipper in favor of this. Now when that person arrives  
10 that person is going to find out that there's no longer  
11 any tubs, they're now cardboard, and the whole docketing  
12 process has gone down the drain.

13           When you change -- this is not a change in  
14 schedule for an airporter, this is a change in type of  
15 shipment containers for medical infectious biohazardous  
16 waste. It's not we're stopping at Bremerton instead of  
17 Silverdale. The public has got the right to see a  
18 docket that is at least halfways related to what these  
19 folks really want. That's why we have dockets.

20           JUDGE RENDAHL: Mr. Johnson, anything  
21 further?

22           MR. JOHNSON: Yes, I have one thing further,  
23 and that is I believe Mr. Haffner either misspoke or  
24 otherwise misstated the change that is reflected on  
25 Exhibit 32. I believe he stated that the same rates

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1 were being proposed for the same containers, and that's  
2 just not true. So it's both eliminated 80% of the  
3 containers that were identified in Exhibit 45. It used  
4 to be 9 containers identified in item 15 in Exhibit 45,  
5 now there is 1. Where there were rates stated for those  
6 9 containers, now there is a rate stated for 1 container  
7 size, the 33 gallon box, and not even the rates are the  
8 same for that 33 gallon box as was previously stated in  
9 item 30 in Exhibit 45. So they have changed the  
10 containers, they have changed the rates, they have  
11 changed the nature of the service being proposed.  
12 Further, I think Mr. Trautman overlooked a couple of  
13 things, they not only changed item 15, they not only  
14 changed item 30 to take 9 containers and now substitute  
15 1 container, they also changed item 85, I think he did  
16 mention that one, they deleted item 85. And they  
17 changed item 90. Item 90 was completely changed. I  
18 think Mr. Trautman overlooked that.

19           So there's not very much left of this tariff  
20 that wasn't changed, different rates, different  
21 containers, a different service. It's not as if the  
22 information about what Covanta, what kind of containers  
23 Covanta would accept was not available to the applicant  
24 at the outset. This is not something that's sort of a  
25 change that's forced by sort of new circumstances. I

0443

1 don't know about Mr. Trautman's case with the airporter,  
2 but this is simply neglect. This is simply negligence  
3 in the creation of the tariff that was filed with the  
4 application. They filed an application with tariff  
5 rates that were inconsistent with the disposal option  
6 that they have. And in the context -- in that context  
7 where notice to the public and to other carriers is  
8 involved, it seems to me that this is too big a change  
9 to be permitted. Thank you.

10 JUDGE RENDAHL: Mr. Trautman, I have a  
11 question about the case that you cited, was that just  
12 relating to a schedule, or was that also referring to a  
13 tariff change?

14 MR. TRAUTMAN: It was a tariff change as  
15 well, it was the schedule and the tariff. I have to say  
16 I don't -- I don't know all of the details of the  
17 schedule, we located this case last night, but it was  
18 both the schedule and the tariff.

19 JUDGE RENDAHL: All right. I'm going to take  
20 a five minute recess, and if I may I would like to  
21 review the transcript that you have in front of you of  
22 that proceeding, and then I will give a ruling. So we  
23 will be off the record, we'll take a five minute recess.

24 MR. HAFFNER: May I address the points that  
25 they raised?

0444

1 JUDGE RENDAHL: I think I have enough.

2 MR. HAFFNER: Okay.

3 (Recess taken.)

4 JUDGE RENDAHL: I have had an opportunity to  
5 review the transcript that Mr. Trautman cited. It is a,  
6 as he stated, it's a docket, it's a transcript in docket  
7 Number TC-030489, it's volume III, for a hearing held on  
8 July 2nd, 2003, in application number D-079145 of Seatac  
9 Shuttle d/b/a Seatac Shuttle. It appears from reviewing  
10 it, while there may have been tariff changes, the focus  
11 of the discussion was on the schedule, which is required  
12 in airporter service. There are other distinctions  
13 between that proceeding and this one, which I need not  
14 go into.

15 But with that said, having heard the  
16 testimony of Mr. McCloskey yesterday and today, I don't  
17 believe that the proposed tariff that's in Exhibit 45  
18 was false, misleading, or incomplete at the time that it  
19 was filed with the application as required under  
20 480-70-091, so I don't believe it's appropriate to  
21 reject the application or dismiss it on that basis. It  
22 was what the company intended at the time.

23 And as Mr. Haffner said and as Mr. Trautman  
24 said in a different way, in a sense what the tariff  
25 modification in proposed Exhibit 32 does is it is

0445

1 similar to a restrictive amendment, which in other cases  
2 parties have suggested they want to serve a certain --  
3 applicants have stated in their application that they  
4 want to serve certain territories, but during the course  
5 of hearings it has been common for carriers to restrict  
6 that service to a lesser territory, and that kind of a  
7 change has been made in the context of hearings without  
8 dismissing the application. Similar to this, I don't  
9 see the changes to item 15, item 30, item 85, and item  
10 90 as expanding the service proposed by Kleen, but in  
11 fact limiting the service proposed by Kleen to a 32 or  
12 33 gallon box depending on what rates you consider.

13 We haven't yet heard from shipper witnesses,  
14 and we'll do that next week, and I expect Kleen or its  
15 counsel will advise those shipper witnesses as to the  
16 changes in the tariff to avoid any confusion or  
17 embarrassment on their part at the hearing if their  
18 expectations are not what Kleen is now proposing.

19 And while the applicant did know apparently  
20 five and a half months ago what Covanta's requirements  
21 were for containers or for preferences for containers,  
22 the change appears to reflect more the option of using  
23 the hydroclave facility in British Columbia as an option  
24 that may not be available as it was originally proposed,  
25 which again is more of a limitation on what the

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1 applicant was intending to provide.

2           So at this point I'm planning to allow  
3 Exhibit 32 as we discussed to be revised to reflect the  
4 revision date, because counsel have had an opportunity  
5 to cross examine Mr. McCloskey on that exhibit and test  
6 its value and its contents, and if additional rebuttal  
7 testimony is required for protestants or to bring  
8 Mr. McCloskey back to address any other issues, we'll  
9 address that and allow for it.

10           I understand that there is a burden to the  
11 protestants to address this change, but I also  
12 understand that it's the burden of the applicant to show  
13 that the Commission should grant the application under  
14 the requirements of RCW 81.77.040, and I'm going to  
15 allow the applicant to present its case, and I don't  
16 believe that the change in the tariff meets the  
17 requirements, meets the statements in WAC 480-70-091 to  
18 rise to the level of false, misleading, or incomplete  
19 information so that the Commission may, and also the  
20 Commission may reject or dismiss, it's not a mandatory  
21 must, and so I don't believe that what we have here  
22 meets what is in 480-70-091(2)(c).

23           As to Mr. Sells' arguments about the public  
24 has a right to inspect the documents, well, yes, they  
25 do, and the tariff is what was proposed at the time it

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1 was filed, and again the shipper witnesses who will  
2 appear next week should be advised in advance so that  
3 they're not confused at the time that they come. So I  
4 don't think the change at this point, since we haven't  
5 heard from the shipper witnesses, materially prejudices  
6 the protestants' case, because they will still have an  
7 opportunity to test that change with the shipper  
8 witnesses, so at this point I'm going to allow Exhibit  
9 32, I'm going to allow the testimony of Mr. McCloskey,  
10 and I suggest that we move on.

11 MR. JOHNSON: Your Honor, I have one question  
12 about your ruling. One of the problems with this change  
13 at this late point is the ability of protestants to  
14 approach their own shipper witnesses with respect to the  
15 service that's being provided is substantially  
16 prejudiced. I am quite sure that presenting a  
17 incineration only service with cardboard boxes as the  
18 only -- one cardboard box as the only option is going to  
19 strike the world of potential shippers, generators,  
20 quite differently from the proposal that was originally  
21 presented going into this hearing. So now we have I  
22 guess less than a week or about a week to approach  
23 shippers that may have a different perspective on the  
24 service now that we know exactly what it is than we had  
25 before.



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1                   So the point being, the protestants were  
2 substantially hampered in their ability to bring shipper  
3 witnesses in, so I would like to ask your indulgence if  
4 it is necessary to defer -- for us to have an additional  
5 opportunity to bring shipper witnesses in at a later  
6 point in time than the period we have set aside for  
7 October 6th, 7th, and 8th. We now have an entirely  
8 different application, and protestants should be able to  
9 approach potential shipper witnesses with respect to the  
10 application as it exists now and have an opportunity to  
11 present those witnesses if they wish to participate.

12                   JUDGE RENDAHL: Mr. Haffner.

13                   MR. HAFFNER: Well, what I'm anticipating  
14 that will be is a parade of witnesses that will say, we  
15 would not be interested in a service that doesn't offer  
16 tubs, and we know that there are a majority of shippers  
17 out there that probably may want tubs. Now I may be  
18 incorrect on that, I'm just giving Stericycle the  
19 benefit of the doubt. I don't know whether it's  
20 necessary to parade all those people in front of us if  
21 all they're going to say is, because you deleted tubs,  
22 we aren't going to use your service. I think the  
23 determination of whether we should be -- whether this  
24 application should be granted is based on the strength  
25 of the testimony of our own shippers as to whether they

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1 can convince the Commission that they see a need for  
2 this service and this application to be granted.

3 I'm toying with the idea of saying, you know,  
4 maybe we can allow them to submit written testimony so  
5 long as it only says that they wouldn't use our service  
6 because it doesn't offer tubs, because I don't see what  
7 the relevance is of anything else they would say. And  
8 at that point, I'm not opposed to there being evidence  
9 entered that lists a bunch of shippers out there that  
10 say that. I just don't know if we want to schedule a  
11 whole nother day of hearings, or I'm not exactly sure  
12 what he's asking for in terms of scheduling, but I don't  
13 want to get us bogged down just in having a parade of  
14 witnesses say that they wouldn't use us because we don't  
15 offer tubs.

16 JUDGE RENDAHL: Mr. Johnson.

17 MR. JOHNSON: Your Honor, I think the  
18 standard under the statute is sentiment in the  
19 community. Mr. Haffner and his client, Mr. Haffner's  
20 clients are not proposing just to serve the number of  
21 generators that they bring in to the hearing, they're  
22 proposing to serve every generator in the state with  
23 that authority. They could modify their tariff any time  
24 they want to tinker with the service.

25 The question is, on the basis of the service

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1 proposed, what is the sentiment in the community with  
2 respect to the need for that service and the adequacy of  
3 the existing service, and that requires that there be  
4 testimony potentially on both sides, and it is -- it  
5 would require a certain amount of weighing of the  
6 sentiment in the community to determine whether Kleen  
7 has met its burden of to establish that it should -- its  
8 application should be granted.

9           So it is -- it's not just a matter of whether  
10 -- I agree with Mr. Haffner, I think the majority of the  
11 generators in this state want to use reusable  
12 containers, probably a very substantial majority, but  
13 the question is what kind of record will you have before  
14 you when you make your decisions with respect to the  
15 sentiment in the community and shipper need.

16           JUDGE RENDAHL: All right, the standard under  
17 81.77.040 is for all applications, there's a whole list  
18 of factors, and at the end:

19           And sentiment in the community  
20           contemplated to be served as to the  
21           necessity for such a service.

22           So obviously that includes both your shipper  
23 witnesses and whatever protestants would have to say.  
24 But there is the additional issue of the Commission can  
25 not issue a certificate if:

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1           The existing solid waste collection  
2           company or companies serving the  
3           territory will not provide service to  
4           the satisfaction of the Commission.

5           So there's a lot of issues, but in my mind  
6           two of the primary ones are sentiment in the community  
7           and service to the satisfaction of the Commission, which  
8           mostly that information is presented through the shipper  
9           generator witnesses.

10           And so at this point we do have three days  
11           set aside for next week. We set a date of I believe  
12           Monday for identifying shipper witnesses in part --

13           MR. JOHNSON: Actually, I --

14           JUDGE RENDAHL: I believe it was Monday.

15           MR. JOHNSON: I think it's tomorrow.

16           JUDGE RENDAHL: Right, tomorrow, so that does  
17           create a problem. And I'm not -- given what's happening  
18           in the hearing yesterday and today, I don't think it's  
19           going to be prejudicial to have others show up that are  
20           not on your list tomorrow, particularly for protestants  
21           given the change. So I'm going to allow others, but I  
22           expect you to provide the list by the start of the  
23           hearing on Wednesday. And if it looks like we need to  
24           add a day of hearing to address those shipper witnesses,  
25           or I would ask that you consider Mr. Haffner's

0452

1 suggestion to avoid the repetitive testimony that we  
2 might get on the issue of the preference of the tubs  
3 versus the boxes. If there's some way to present that  
4 in a written format that Mr. Haffner doesn't object to,  
5 then we may avoid an additional day of hearing. So I  
6 would ask you and Mr. Sells to explore that issue  
7 instead of using up another day of hearing for the same  
8 testimony over and over again.

9 MR. JOHNSON: We could certainly explore  
10 what's possible. But again, just so that Your Honor is  
11 aware of the difficulty that is posed by such a  
12 substantial change in the applicant's proposal at this  
13 late stage, we will do our best to bring our shipper  
14 witnesses forward for the scheduled hearings on October  
15 6th, 7th, and 8th, and if possible we can look at some  
16 type of written testimony in lieu of personal  
17 appearance, but I will reserve at least the right to  
18 return to you and ask for a further indulgence depending  
19 on what we're able to do between now and next Wednesday  
20 the 6th, because this is a very short period of time,  
21 and at least I am very much occupied with this hearing  
22 during this week.

23 JUDGE RENDAHL: I understand.

24 MR. JOHNSON: Okay.

25 JUDGE RENDAHL: And as I said, I will

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1 evaluate the need for additional hearing dates next week  
2 based on where we are on Wednesday and will reiterate  
3 that again it's the burden of the applicant in this  
4 proceeding to show all the requirements under the  
5 statute, not the burden of the protestants, although the  
6 interest to the protestants is to indicate the lack of  
7 those issues.

8           So with that said, we need to go forward, but  
9 at this point I guess what I would suggest is that we  
10 break now for lunch and come back at 1:15 and then start  
11 up. And I don't know that we will get to Mr. Meany or  
12 Ms. Goulet based on the schedule that we have now.

13           MR. SELLS: Well, that's what I was just  
14 thinking.

15           JUDGE RENDAHL: But I'm wondering if we just  
16 take them up first.

17           MR. SELLS: That would be my suggestion.  
18 They're not going to take very long, particularly  
19 Ms. Goulet.

20           JUDGE RENDAHL: So if we take them up first  
21 and then move to Mr. Perrollaz, that may run in a bit to  
22 the morning tomorrow, we may end up bumping into Friday  
23 morning, but that's just the risk that we take. Is that  
24 going to work?

25           MR. HAFFNER: Darin, are you available

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1 tomorrow?

2 JUDGE RENDAHL: Let's be off the record.

3 (Discussion off the record.)

4 JUDGE RENDAHL: While we were off the record,  
5 we determined we would take a break now, come back about  
6 1:15, 1:20, say 1:20, and start with Mr. Meany, then  
7 Ms. Goulet, and then move on to Mr. Perrollaz, who may  
8 be required to attend again tomorrow morning. So with  
9 that, we will be off the record and come back at 1:20.

10 (Luncheon recess taken at 11:55 a.m.)

11

12 A F T E R N O O N S E S S I O N

13 (1:25 p.m.)

14

15 JUDGE RENDAHL: We are going to take,  
16 Mr. Sells, your witness Ms. Goulet at this time.

17 MR. SELLS: Yes.

18 Do you want to come forward, please.

19 JUDGE RENDAHL: Good afternoon, Ms. Goulet.

20 MS. GOULET: Good afternoon.

21 JUDGE RENDAHL: And could you state your  
22 name, your full name and address for the record, please.

23 MS. GOULET: Rose Ann Goulet.

24 Home address or business?

25 JUDGE RENDAHL: Business address, please.

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1 MS. GOULET: P.O. Box 1029, Everett,  
2 Washington 98206.

3 JUDGE RENDAHL: And could you raise your  
4 hand, please.

5 (Witness Rose Goulet was sworn.)

6 JUDGE RENDAHL: Please go ahead, Mr. Sells.

7 MR. SELLS: Thank you.

8

9 Whereupon,

10 ROSE GOULET,  
11 having been first duly sworn, was called as a witness  
12 herein and was examined and testified as follows:

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. SELLS:

16 Q. Ms. Goulet, somebody has beat me to it and  
17 placed a file with your prefiled testimony, would you  
18 take a moment and look through the testimony and the  
19 exhibits, please.

20 A. Okay.

21 Q. And is this, in fact, your prefiled testimony  
22 in this matter?

23 A. Yes, it is.

24 Q. Is there anything you need to change or want  
25 to add to it at this point?



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1 A. No.

2 MR. SELLS: Thank you.

3 Ready for Cross, Your Honor.

4 JUDGE RENDAHL: All right. So, Mr. Sells,  
5 you were referring with Ms. Goulet to what's been marked  
6 as Exhibit 150-T.

7 MR. SELLS: 150-T.

8 JUDGE RENDAHL: Through 154?

9 MR. SELLS: Through 154, correct.

10 JUDGE RENDAHL: Mr. Haffner.

11 MR. HAFFNER: Thank you, Your Honor.

12

13 C R O S S - E X A M I N A T I O N

14 BY MR. HAFFNER:

15 Q. I just wanted to go through the exhibits  
16 since I thought he might go through them a little bit  
17 more, but we're okay there.

18 Ms. Goulet, my name is Greg Haffner, I'm the  
19 attorney for the applicant Kleen Environmental.

20 A. Hello.

21 Q. Thank you for coming. Just a few questions  
22 about your company's business. How many trucks are in  
23 the entire fleet of your company?

24 A. Off the top of my head I don't have that. I  
25 know that the vehicle was submitted in the testimony. I

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1 would guess that we run about 20 vehicles.

2 Q. Okay.

3 A. A day, but --

4 Q. And I think there was testimony in your,  
5 either in your prefiled testimony or maybe in some  
6 discovery about the number of medical -- number of  
7 vehicles that you use for medical waste?

8 A. We operate one 1986 International van truck  
9 for medical waste truck.

10 Q. And what's the size of that van?

11 A. It's a 24 foot van.

12 Q. How many employees are there in your company?

13 A. We have with Rubatino's I would say the  
14 employee count is probably right about 65.

15 Q. Now when you say with Rubatino's, is there a  
16 distinction between Rubatino and another company?

17 A. Well, we have our shop is Truck Care, and we  
18 operate mechanics that does all of our maintenance, and  
19 so the mechanics -- we operate with -- and we also have  
20 some welders, so I would say about six employees at the  
21 Truck Care.

22 Q. You said 25 employees before that for the  
23 other Rubatino employees?

24 A. No, I said about 60.

25 Q. I'm sorry.

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1           A.     A total of 60 employees, so some would be,  
2 I'm just trying to do my count real quick in my head, so  
3 some are with Truck Care and some are with Rubatino.

4           Q.     Okay. Truck Care, is that a separate entity  
5 from Rubatino, or is Truck Care a division of Rubatino?

6           A.     It's a subsidiary.

7                   JUDGE RENDAHL: And, Ms. Goulet, if you can,  
8 and I have given this instruction to other witnesses as  
9 well, if you can wait until counsel has asked his  
10 question, just pause for a minute, and then give your  
11 answer, then we have a cleaner record. It's also easier  
12 for the court reporter to take down everything that  
13 you're saying.

14                   THE WITNESS: Certainly, no problem.

15 BY MR. HAFFNER:

16           Q.     Of the employees that Rubatino have, how many  
17 of those work with medical waste?

18           A.     We have one driver that does medical waste.

19           Q.     Does he perform his duties for medical waste  
20 on a full-time basis?

21           A.     No.

22           Q.     How much of his time does he devote to  
23 medical waste?

24           A.     One day a week.

25           Q.     What would be the average annual revenue for

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1 medical waste for your company?

2 A. You know, I don't have that figure on the top  
3 of my head. I know a financial sheet was submitted in  
4 the exhibit, but I don't -- I couldn't tell you off the  
5 top of my head.

6 Q. Okay. Do you know how many medical waste  
7 customers you have?

8 A. We have 84.

9 Q. Do you know if any of those customers  
10 generate more than \$1,000 per month in revenue?

11 A. I would say we have one to two that generate  
12 that level.

13 Q. Do you know what the revenue was for your  
14 company last year from medical waste?

15 A. I don't, off the top of my head I don't. I  
16 would have to -- I know it's in the record as a -- under  
17 the exhibit.

18 MR. HAFFNER: Okay, those are all the  
19 questions I have of Ms. Goulet.

20 JUDGE RENDAHL: All right.

21 Mr. Trautman.

22 MR. TRAUTMAN: Thank you.

23

24

25

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1 C R O S S - E X A M I N A T I O N

2 BY MR. TRAUTMAN:

3 Q. I'm Greg Trautman, Assistant Attorney General  
4 for the Commission Staff.

5 You indicated you had 84 medical waste  
6 customers, about how many solid waste customers, do you  
7 know?

8 A. Well, we do both residential and commercial,  
9 and again I apologize, I don't know that off the top of  
10 my head. I know that, well, I know our residential is  
11 divided into two billing cycles, and so I'm guessing  
12 that we send out approximately maybe 20,000 to 25,000  
13 bills a cycle, but I'm just -- I don't know off the top  
14 of my head.

15 Q. You don't know, okay.

16 And do you know how much revenue is generated  
17 from solid waste?

18 A. No, I do not off the top of my head.

19 Q. On page 3 of your testimony, which is Exhibit  
20 150-T, as you indicated you have one 24 foot van  
21 dedicated to medical waste collection, and then at the  
22 bottom of the page you say that you collect the medical  
23 waste, and I assume that's in your certificate area?

24 A. Correct.

25 Q. And then you transport it to a LeMay trailer

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1 in the Rubatino lot, and LeMay transports the waste to  
2 an incinerator in Oregon. Is there a reason why  
3 Rubatino doesn't transport the medical waste itself?

4 A. I think it's just a procedural. We have done  
5 it both ways. Currently LeMay is transporting it. Six  
6 months ago we were transporting it to LeMay.

7 Q. Do you know why that changed?

8 A. I think just a convenience on both of our  
9 parts that that way LeMay had the trailer for their  
10 timing to go to the incinerator. Worked best for both  
11 companies.

12 Q. And does Rubatino have a contract, a service  
13 agreement, or other arrangement with LeMay to transport  
14 the medical waste that Rubatino collects?

15 A. Yes.

16 Q. And is that contract or agreement filed with  
17 the Commission?

18 A. To my knowledge, it is.

19 Q. And on page 4 of your testimony 150-T, you  
20 say that you serve 84 customers, nearly all of whom are  
21 smaller providers. What would Rubatino consider to be a  
22 large provider or large generator of medical waste?

23 A. Large I would consider to be a hospital, a  
24 large -- also would be a clinic. Our largest account  
25 currently is the Everett Clinic, and we have one

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1 surgical center that's the orthopedic surgical center  
2 that I would say would be our second largest. Small  
3 providers would be a dental office, individual  
4 veterinary office.

5 Q. Do you distinguish the small versus the large  
6 in terms of revenue generated or any particular  
7 criteria?

8 A. The distinction would be based on our tariff,  
9 which is filed as an exhibit, that the larger the volume  
10 per generator, their tariff price is affected. So if  
11 you're zero to ten gallons, you're paying \$20. If  
12 you're beyond X number of gallons, then your price per  
13 gallon goes down based upon collection.

14 Q. Okay. But there's no specific revenue cutoff  
15 that you -- I guess part of what I'm getting at is when  
16 you say you have 84 customers, nearly all of whom are  
17 small providers, how many would be large providers in  
18 your estimation?

19 A. Currently?

20 Q. Yes.

21 A. Those two, the Everett -- we have two.

22 Q. And again, they were the?

23 A. Everett Clinic.

24 Q. Mm-hm.

25 A. And we have Everett Orthopedic Surgery

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1 Center. Those would be our highest volume.

2 Q. Are there any other large generators in  
3 Rubatino's service area?

4 A. There's a hospital.

5 Q. And you do not serve them?

6 A. Correct.

7 Q. Do you know how they manage their medical  
8 waste disposal needs?

9 A. Stericycle provides service to the hospital.

10 Q. Do any of them self haul, any of the large  
11 generators?

12 A. Not to my knowledge.

13 Q. And do any of them use a provider other than  
14 Stericycle or Rubatino?

15 A. Other than those two?

16 Q. Other than those two.

17 A. No.

18 MR. TRAUTMAN: Thank you.

19 JUDGE RENDAHL: I'm assuming, Mr. Johnson,  
20 you don't have any cross, although maybe you do, as a  
21 fellow protestant.

22 MR. JOHNSON: Yes, I believe I reserved that  
23 right in any event.

24

25



1 C R O S S - E X A M I N A T I O N

2 BY MR. JOHNSON:

3 Q. Ms. Goulet, my name is Steve Johnson, I'm  
4 representing Stericycle, I just have a couple of small  
5 points.

6 You mentioned that your residential and  
7 commercial business involved sending out 20,000 to  
8 25,000 bills per cycle with two cycles; is that correct?

9 A. Correct, and that is, I apologize, I don't do  
10 that on a day-to-day basis, so that is just a guess on  
11 my part.

12 Q. Is it a rough approximation, a guess meaning  
13 that you could be off, it could be 500 or it could be  
14 100,000 or --

15 A. I believe it's a fair representation, but  
16 it's not, you know, it's not documented as if that's  
17 what we billed last month.

18 Q. It's not precise?

19 A. Correct.

20 Q. Okay. Just so I understand, does a bill  
21 indicate one customer, so you would be billing roughly  
22 20,000 to 25,000 customers each billing cycle?

23 A. Correct.

24 Q. And then two billing cycles, that's means  
25 you're billing 40,000 to 50,000 customers per month?

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1 A. Correct.

2 MR. JOHNSON: I have no further questions,  
3 thank you.

4 THE WITNESS: Thank you.

5 JUDGE RENDAHL: And, Ms. Goulet, I just have  
6 a few for you.

7

8 E X A M I N A T I O N

9 BY JUDGE RENDAHL:

10 Q. First, I don't know that it's in your  
11 testimony, but how long has Rubatino been providing  
12 medical waste service in its territory?

13 A. Again, I apologize, I don't have the exact  
14 date, I would, I'm just trying to get a time frame in my  
15 mind, I would say about ten years.

16 Q. Okay. And what is, I know that Rubatino's  
17 certificate that includes a very detailed description of  
18 its territory is in Exhibit 151 or what's been marked as  
19 Exhibit 151, but can you give just a general description  
20 on the record of what the service area is for Rubatino?

21 A. The service area for our company is the  
22 greater Everett area, the City of Everett and  
23 surrounding area.

24 Q. And at this point, if the application, if  
25 Kleen's application is granted, how many providers of --

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1 how many carriers offering medical waste collection and  
2 disposal service would there be in your service area?

3 A. With the granting would make three.

4 Q. And are you responsible for conducting  
5 marketing and sales at all or for medical waste  
6 generators in the service area for Rubatino?

7 A. Yes.

8 Q. Do you have any estimate of what the market  
9 is out there in terms of how many total generators there  
10 would be in your service area?

11 A. We haven't done any analysis. We have,  
12 obviously as my testimony indicated earlier, we have  
13 numerous small generators, and our concern is providing  
14 service for smaller generators, that if a third  
15 applicant was granted that it would reduce our volume  
16 for our larger accounts, the surgery centers and the  
17 clinic, and just leave the smaller applicants, excuse  
18 me, the smaller generators to be served by us and the  
19 other companies. And obviously an individual dental  
20 office doesn't generate a large amount of medical waste,  
21 so you have the need to have a lot more accounts to be  
22 financially viable.

23 Q. Well, I guess what I was asking was if you  
24 have a sense of what the, you say you're serving right  
25 now 84 medical waste customers, do you have a sense in

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1 terms of numbers of how many potential customers there  
2 are in your service area?

3 A. No.

4 Q. And has Rubatino to your knowledge conducted  
5 any discussions with its current generators about  
6 service options and what they would like to see?

7 A. With our current customers?

8 Q. Yes.

9 A. No.

10 JUDGE RENDAHL: Okay, that's all I have.

11 Mr. Sells, do you have any redirect?

12 MR. SELLS: Just one.

13

14 R E D I R E C T E X A M I N A T I O N

15 BY MR. SELLS:

16 Q. Ms. Goulet, maybe I'm asking the obvious, but  
17 the small generators that you serve, the dental office,  
18 the veterinarian, Rubatino Refuse would also supply  
19 their regular garbage solid waste service as well; is  
20 that correct?

21 A. That's correct.

22 MR. SELLS: Nothing further.

23 JUDGE RENDAHL: Any recross, Mr. Haffner?

24 MR. HAFFNER: Two questions, Your Honor.

25

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1 R E C R O S S - E X A M I N A T I O N

2 BY MR. HAFFNER:

3 Q. Along the line that Judge Rendahl was asking  
4 about existing generators in your marketplace, do you  
5 have any evidence that any of your existing carriers or  
6 your existing generators would actually leave your  
7 service if this application were granted?

8 A. We certainly have a concern of the concept  
9 and of the thought of skimming and of losing big  
10 accounts and only leaving small accounts, so that is  
11 certainly a concern of ours, yes.

12 Q. Have any of your large customers indicated to  
13 you that they would leave you as a provider of their  
14 service if this application were granted?

15 A. I have -- I don't know how to answer that  
16 because I haven't had an opportunity where that they  
17 could indicate that.

18 Q. Okay. So you have not heard any direct  
19 statement from them, it's just a concern you have?

20 A. Correct.

21 Q. Okay. And then a line of question along  
22 marketing, what type of marketing do you do for your  
23 business for medical waste?

24 A. We don't have any direct marketing other than  
25 being a service provider in Everett since the turn of

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1 the century, and then we started in medical waste  
2 businesses, in the medical waste business just being  
3 available for customers that call in through a normal  
4 startup service to ask questions through our office.

5 MR. HAFFNER: Okay, thank you, no questions.

6

7 R E D I R E C T E X A M I N A T I O N

8 BY MR. SELLS:

9 Q. Clarify that was the previous century?

10 A. Yes, since 1907 for the record.

11 JUDGE RENDAHL: Okay, is there anything  
12 further for this witness?

13 MR. SELLS: No, Your Honor.

14 JUDGE RENDAHL: Thank you, Ms. Goulet, for  
15 appearing today, and you are excused, you may step down,  
16 we will be off the record while we change witnesses.

17 THE WITNESS: Thank you.

18 (Recess taken.)

19 JUDGE RENDAHL: Mr. Meany is here at the  
20 table, but, Mr. Sells, you have an administrative  
21 matter.

22 MR. SELLS: Yes, I do indeed, if Your Honor  
23 please, move the admission of Exhibits 150-T, 151, 152,  
24 153, and 154.

25 JUDGE RENDAHL: Is there any objection to

0470

1 admitting what's been marked as Exhibits 150-T through  
2 154?

3 MR. HAFFNER: No.

4 MR. JOHNSON: No, Your Honor.

5 JUDGE RENDAHL: All right, those exhibits  
6 will be admitted.

7 And now we move on to the testimony of  
8 Mr. Meany.

9 Mr. Meany, if you could state your full name  
10 and address, work address, for the record, please.

11 MR. MEANY: Sure, it's Lawrence Meany, 13502  
12 Pacific Avenue, that's Tacoma, Washington.

13 JUDGE RENDAHL: And if you could raise your  
14 right hand, please.

15 (Witness Lawrence Meany was sworn.)

16 JUDGE RENDAHL: Please go ahead, Mr. Sells.

17 MR. SELLS: Thank you.

18

19 Whereupon,

20 LAWRENCE MEANY,

21 having been first duly sworn, was called as a witness

22 herein and was examined and testified as follows:

23

24

25

0471

1                   D I R E C T   E X A M I N A T I O N

2   BY MR. SELLS:

3           Q.     Mr. Meany, I'm going to hand you a copy of  
4   exhibit something.

5                   MR. HAFFNER:  130-T.

6           Q.     130-T, which is your prefiled testimony, and  
7   attached to that are the various exhibits.  Would you  
8   take a moment and look through that and see if that is  
9   in fact, your prefiled testimony and the exhibits.  And  
10  actually, we're probably going to give you, yeah, why  
11  don't you use that one, that's better.

12          A.     Thank you.

13          Q.     How far are you going there?

14          A.     I think I'm going too far.

15          Q.     Okay.

16          A.     Is that mine?

17                   JUDGE RENDAHL:  Let's be off the record for a  
18  moment.

19                   (Discussion off the record.)

20  BY MR. SELLS:

21          Q.     Mr. Meany, did you have a chance to look at  
22  your prefiled testimony?

23          A.     Yes, I did.

24          Q.     And is that, in fact, the prefiled testimony  
25  we have submitted previously, you submitted?



0472

1 A. Yes, it is.

2 Q. And just by brief introduction, you are  
3 manager of the commercial division of Harold LeMay  
4 Enterprises?

5 A. That's correct.

6 Q. And part of your duties are to oversee the  
7 medical waste division; is that correct?

8 A. That's correct.

9 Q. And you are authorized by Harold LeMay  
10 Enterprises to be here and testify on their behalf?

11 A. That's correct.

12 MR. SELLS: Tender the witness, Your Honor.

13 JUDGE RENDAHL: Mr. Haffner.

14 MR. HAFFNER: Thank you, Your Honor.

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. HAFFNER:

18 Q. Mr. Meany, my name is Greg Haffner, I'm the  
19 attorney for the applicant, Kleen Technologies.

20 Do you recall what the revenue for your  
21 company was last year?

22 A. Not off the top of my head, no, I don't.

23 Q. Are you familiar with your company's annual  
24 report to the Utilities and Transportation Commission?

25 A. No, I am not.

0473

1 Q. You're not the person responsible for filing  
2 that?

3 A. No, sir.

4 Q. Okay. Do you have any idea what percentage  
5 of revenue medical waste accounts for in your company's  
6 revenue stream?

7 A. No.

8 Q. Do you know how many employees your company  
9 has?

10 A. Several hundred, but I don't have an exact  
11 number, no.

12 Q. Any idea how many vehicles your company  
13 operates?

14 A. Again no, I don't have an exact number, no.

15 Q. Is it also several hundred?

16 A. I would have to guess yeah, but that would be  
17 a guess.

18 Q. Do you know how many medical waste customers  
19 your company serves?

20 A. Approximately 110 give or take. There's  
21 several very small accounts.

22 Q. Do you know what counties those customers are  
23 located in?

24 A. Yes, I do.

25 Q. Can you tell us what counties they're located

0474

1 in?

2 A. Pierce County, Thurston County, Grays Harbor  
3 County, greater Centralia area.

4 Q. Is that Lewis county?

5 A. Lewis County, I'm sorry. I believe that's  
6 it.

7 Q. Are there any other counties that you're  
8 authorized to serve under your authority with the UTC?

9 A. Not to my knowledge.

10 Q. Just those four counties?

11 A. For medical waste, is that --

12 Q. For medical waste.

13 A. Not to my knowledge.

14 JUDGE RENDAHL: And I will advise both of you  
15 if you can try to avoid speaking over one another, that  
16 would be helpful.

17 THE WITNESS: I apologize.

18 JUDGE RENDAHL: Thank you.

19 BY MR. HAFFNER:

20 Q. Of the approximately 110 medical waste  
21 customers that you have, do you know how many of those  
22 would generate revenue of more than \$1,000 per month?

23 A. There would be several, but I don't have an  
24 exact number, no.

25 Q. Do you know what types of facilities those

0475

1 are that generate more than \$1,000 per month?

2 A. Hospitals, research laboratories. That would  
3 be the two classifications I would imagine.

4 Q. Do you know what counties those facilities  
5 would be located in?

6 A. I believe those would be Pierce County.

7 Q. Can you describe what type of marketing you  
8 do for your medical waste business?

9 A. We have sent out some mailers, some mass  
10 mailers, we advertise in the Yellow Pages, we advertise  
11 in the local business Examiner, it's the title of the  
12 newspaper, the local business newspaper.

13 Q. How often have you sent out mass mailing?

14 A. Once in the past 22 months.

15 Q. How often have you advertised in the local  
16 newspaper?

17 A. Twice in the last 22 months.

18 Q. Why is 22 months a particular number that  
19 keeps coming up?

20 A. That's how long I have been with LeMay  
21 Enterprises.

22 Q. Okay. Do you have any particular experience  
23 or education in handling of medical waste?

24 A. Not prior to LeMay, no.

25 Q. How long has LeMay been involved in providing

0476

1 medical waste transportation services?

2 A. I believe since 1991, but I'm not 100% sure  
3 of that, but I believe it's 1991.

4 Q. You have previously looked through exhibits I  
5 believe 130 through 139. Could you now take a look at  
6 what's been marked as Exhibit 140 or behind tab number  
7 140, and if you could take a look at that and tell me if  
8 you recall seeing that document before?

9 A. Yes, I do.

10 Q. And behind that is now tab 141, can you tell  
11 me if you recall seeing that document before?

12 A. Yes, I do.

13 Q. Is it accurate to say that those two  
14 documents represent some discovery requests that were  
15 submitted to your company that you provided answers to  
16 your attorney for?

17 A. That's correct.

18 Q. Can you look at the documents behind tab 142,  
19 Exhibit 142, do those appear to be documents that you  
20 provided in response to Data Requests 34 and 35?

21 A. Yes, that does look familiar.

22 Q. And then can you take a look at the documents  
23 marked as Exhibit 143 and then 144, are those documents  
24 you're familiar with?

25 A. Yes.

0477

1 Q. And are they documents you recall as data  
2 requests that were submitted to you through your  
3 attorney and that you answered back to your attorney?

4 A. Yes.

5 MR. HAFFNER: Those are all the questions I  
6 have of the witness, Your Honor. I would ask to have  
7 Exhibits 140 through 144 admitted.

8 JUDGE RENDAHL: Is there any objection?

9 MR. SELLS: Well, if Your Honor please, my  
10 recollection of those data requests is that they were  
11 given -- they were served when Harold LeMay Enterprises  
12 was an applicant in this matter. They are no longer an  
13 applicant, they are merely a protestant. There's not  
14 necessarily anything in there we think we ought to hide,  
15 but equally the case that there's nothing in there that  
16 is necessarily a part of this record. We're no longer  
17 an applicant.

18 JUDGE RENDAHL: Mr. Haffner.

19 MR. HAFFNER: I don't think the basis for why  
20 they were submitted is the issue. The issue is this was  
21 -- these are facts that were revealed during this  
22 proceeding, they are statements that were submitted by  
23 Mr. Meany's company and that he participated in  
24 creating, and they create statements of fact regarding  
25 his company's operation of medical waste transportation

0478

1 services.

2 JUDGE RENDAHL: Mr. Sells.

3 MR. SELLS: Well, I think they're superfluous  
4 to the record, Your Honor, which is voluminous enough to  
5 start with.

6 JUDGE RENDAHL: Well, due to the nature of  
7 this proceeding, LeMay being both an applicant at one  
8 point and a protestant, I think it's fair at this point  
9 to allow the exhibits in to the extent that the current  
10 applicant believes them relevant. The weight will be  
11 evaluated at the end of the hearing. So at this point  
12 I'm going to allow them in. So that will be I will  
13 admit Exhibits 140 through 144.

14 And, Mr. Sells, did you intend to offer  
15 Mr. Meany's testimony and exhibits?

16 MR. SELLS: I do, if Your Honor please, we'll  
17 move the admission of 130-T, 131, 132, 133, 134, 135,  
18 136, 137, 138, and 139.

19 JUDGE RENDAHL: Okay, and just to clarify,  
20 the exhibit marked as 139, which is the bill of lading,  
21 described as the bill of lading, had also included in  
22 many of our copies a copy of the Covanta delivery  
23 receipt, which yesterday we removed as part of that  
24 exhibit.

25 MR. SELLS: Correct.

0479

1 JUDGE RENDAHL: So just to clarify the record  
2 on that point.

3 Are there any objections to Exhibit 130-T  
4 through Exhibit 139?

5 MR. JOHNSON: No objections, Your Honor, I  
6 assume I'm still going to have a brief period to cross.

7 JUDGE RENDAHL: Yes, you are.

8 MR. JOHNSON: Thank you.

9 JUDGE RENDAHL: I will take Mr. Trautman's  
10 questions and then your questions.

11 So I will admit Exhibits 130-T through 139  
12 and Exhibits 140 through Exhibit 144.

13 Go ahead, Mr. Trautman.

14 MR. TRAUTMAN: Thank you.

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. TRAUTMAN:

18 Q. I'm Greg Trautman, Assistant Attorney General  
19 for the Commission Staff.

20 I believe you indicated there were 110  
21 medical waste customers for LeMay.

22 A. That's right.

23 Q. Do you know how many solid waste customers --

24 A. No.

25 Q. -- Rubatino has or how much revenue solid



0480

1 waste --

2 A. No, I don't.

3 Q. -- customers generate?

4 Rubatino's testimony, I believe you were here

5 for that cross or for the testimony and the cross,

6 Rubatino indicated that LeMay transports medical waste

7 for Rubatino; do you recall that?

8 A. That's correct.

9 Q. Does LeMay provide that service to any other  
10 solid waste collection company?

11 A. No, we do not.

12 Q. And does LeMay have tariff rates for the  
13 trailers that are loaded with the medical waste that's  
14 collected by Rubatino?

15 A. No, we don't.

16 Q. Do you have a contract or service arrangement  
17 with Rubatino?

18 A. We have a verbal service arrangement but not  
19 a contract.

20 Q. Okay, just a verbal arrangement?

21 A. Correct.

22 Q. So nothing on file with the Commission?

23 A. Not that I'm aware of, no.

24 Q. And I believe you referred to in response to  
25 a question by Mr. Haffner about how many generators of

0481

1 solid waste generated more than \$1,000 of revenue is it  
2 per month?

3 MR. HAFFNER: Per month.

4 Q. Per month, did you indicate, did you know how  
5 many there were?

6 A. I recall doing some research on one of the  
7 data requests, but I don't recall now, you know, how  
8 many we have. I'm sure it's on one of the data requests  
9 that we submitted earlier.

10 Q. And are the -- would those types of  
11 generators be limited to the hospitals and research  
12 labs?

13 A. I believe so. I can't think of anybody else  
14 off the top of my head at this point, no.

15 Q. There wouldn't be any other generators of  
16 that type in the LeMay service area?

17 A. Not of the large quantity that you're  
18 describing that I can recall.

19 Q. So do you know whether there are any other  
20 large generators who would use some service other than  
21 LeMay for medical waste?

22 A. Yes, there are other large generators that  
23 use other providers except for us.

24 Q. And what do they use?

25 A. Stericycle.

0482

1 Q. Do any of them self haul?

2 A. I'm sorry?

3 Q. Do any of them self haul their waste?

4 A. Not to my knowledge.

5 Q. So to your knowledge they either use LeMay or  
6 Stericycle?

7 A. That's what I believe, yes, sir.

8 MR. TRAUTMAN: Thank you.

9 JUDGE RENDAHL: Mr. Johnson.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. JOHNSON:

13 Q. Mr. Meany, I'm looking through your responses  
14 to the data requests, or I should say LeMay's responses  
15 to the data requests, for the information that we --  
16 that you referred to about large quantity generators.  
17 Actually, in this copy I'm looking at Exhibit 41, Data  
18 Request Number 24 appears to be blank, and I'm trying to  
19 remember what the -- maybe we didn't get a number.

20 JUDGE RENDAHL: Which question are you?

21 MR. JOHNSON: I'm looking at Exhibit 41,  
22 which is a response of Harold LeMay Enterprises to  
23 Stericycle's first data request, item number, I'm sorry,  
24 24, Data Request Number 24, appears to be blank spots  
25 where the numbers might have gone. I'm not sure whether

0483

1 there were answers to those questions.

2 MR. HAFFNER: I believe that's the way it was  
3 delivered only because it's in my documents have the  
4 same blanks.

5 MR. JOHNSON: We may have received a  
6 supplemental to that, I'm not sure.

7 BY MR. JOHNSON:

8 Q. But in any event, Mr. Meany, perhaps I think  
9 when you -- when Mr. Haffner originally asked you the  
10 question about the number of large quantity generators  
11 that would produce revenues of \$1,000 per month or  
12 greater, you said several. These are probably fairly  
13 well known to you.

14 A. Correct.

15 Q. Can you kind of count them off for us on one  
16 hand or two hands, whatever you need, who are the large  
17 quantity generators that might fit into that category?

18 A. You want me to name them, is that --

19 Q. Well, that would be appropriate.

20 A. Okay. Good Samaritan Hospital, the Veterans  
21 Administration Hospital American Lake, Cardinal Nuclear  
22 Health.

23 Q. What was that?

24 A. Cardinal Nuclear Health.

25 JUDGE RENDAHL: Can you spell that?

0484

1 THE WITNESS: Cardinal, C-A-R-D-I-N-A-L.

2 JUDGE RENDAHL: Nuclear Health?

3 THE WITNESS: Mm-hm.

4 BY MR. JOHNSON:

5 Q. Would that be all of them?

6 A. No, there's a couple others, but the names  
7 are evading me at this point.

8 Q. Are you thinking of specific facilities that  
9 you just can't think of the name?

10 A. Correct.

11 Q. And how many are there?

12 A. Over \$1,000, I mean again I'm guessing, I  
13 would have to say there's probably another six or eight  
14 more. But again, that's strictly a guess. If I can  
15 make a comment, I do recall doing that research at a  
16 later point, but I don't -- I'm at a loss as to why  
17 they're -- I don't recall, you know, submitting it to be  
18 honest with you, so. But we don't -- our records don't  
19 track our business in that manner.

20 Q. So that was something you had to investigate  
21 to respond?

22 A. Absolutely.

23 Q. Okay. Mr. Meany, in your prefiled testimony,  
24 Exhibit 130, I believe you identify the backup  
25 processing facilities that are used by LeMay in case the

0485

1 Oregon incinerator is unavailable. I'm looking at page  
2 5 of your prefiled testimony, Exhibit 30.

3 JUDGE RENDAHL: 130.

4 Q. I'm sorry, 130. And on page 5 at the bottom  
5 of the page there is a question, do you have a backup  
6 facility, and the answer is, an autoclave located at  
7 Land Recovery Inc. in Puyallup.

8 A. That's correct.

9 Q. Are you familiar with the autoclave at Land  
10 Recovery, Inc.?

11 A. I'm familiar with its location but not its  
12 operations. We have never had to use it since I have  
13 been employed at LeMay.

14 Q. Okay. Is Land Recovery, Inc. a company  
15 related to LeMay?

16 A. LeMay has a share in that company, yes.

17 Q. Do you know what their percentage interest  
18 is --

19 A. I believe it's 49%.

20 Sorry, apologize again.

21 Q. Are you familiar with how that autoclave  
22 facility is currently used in the sense of which  
23 haulers' medical waste is processed there?

24 A. Yes, currently to my knowledge Murry's  
25 Disposal is the only one that processes infectious waste

0486

1 at that facility.

2 Q. And do they offer their processing services  
3 to waste haulers unrelated?

4 A. I do not believe they do, no.

5 Q. And Murry's is related to LeMay, is it not?

6 A. They're related, they're part of Waste  
7 Connections, which is the majority owner of Land  
8 Recovery.

9 Q. Okay, so they're related to Land Recovery --

10 A. Correct.

11 Q. -- itself?

12 A. Correct.

13 Q. Okay. Mr. Meany, I would like you to refer  
14 to Exhibit 138, which is an attachment to your  
15 testimony. It's kind of hard to read, but I think you  
16 will recognize it for what it is. Would you just tell  
17 me what that document is?

18 A. Well, that's the delivery receipt and weight  
19 slip that we receive from Covanta Marion, which is our  
20 incinerator in Brooks, Oregon.

21 Q. And have you ever discussed with them the  
22 possibility of getting some other kind of record of what  
23 you deliver to them perhaps in more detail like manifest  
24 numbers, container identification numbers, that kind of  
25 thing?

0487

1 A. No, I have not discussed that with them.

2 Q. So do you know whether they are willing to  
3 provide any other kind of documentation with respect to  
4 their receipt and processing of waste other than what's  
5 provided here?

6 A. To my knowledge, I don't believe they have  
7 that capacity at this point. We load the incinerator, I  
8 don't believe they have any way of knowing by number,  
9 you know, what containers are put in there. So no, I  
10 don't -- I don't know if they have that capacity or not.

11 Q. And based on what you know, you don't think  
12 they do; is that correct?

13 A. That's correct.

14 Q. Do you -- when LeMay delivers waste to the  
15 Covanta facility, do you provide copies of the transport  
16 bill of lading or waste manifest to the Covanta  
17 facility?

18 A. No, we do not.

19 Q. And does the -- do the Covanta personnel  
20 participate in any way in the offloading of the truck?

21 A. Not the particular offloading of the truck,  
22 no. They do the incineration and operate the conveyer,  
23 but they do not assist us in unloading the truck.

24 Q. So they don't even look at your containers?

25 A. They look at -- they look at the containers



0488

1 as they're going up the conveyer but not while they're  
2 in the truck.

3 Q. They're not recording the box numbers that go  
4 up the conveyer?

5 A. No, they record the number of boxes but not  
6 the number that's on the boxes.

7 Q. Do they give you any information besides the  
8 weight ticket?

9 A. No. The new weight ticket that's just recent  
10 is computerized, it's in a computerized format, but it's  
11 the same basic information with our rates on there, and  
12 that's all they give us. They still give us this plus a  
13 computerized version of it.

14 MR. JOHNSON: I have no further questions,  
15 thank you, sir.

16 JUDGE RENDAHL: And, Mr. Meany, I just have I  
17 think one or two questions for you.

18

19 E X A M I N A T I O N

20 BY JUDGE RENDAHL:

21 Q. The arrangement that LeMay has with Rubatino,  
22 is the arrangement that Rubatino loads a trailer that  
23 belongs to LeMay that is placed on Rubatino's premises?

24 A. That's correct.

25 Q. And then when that trailer is full, LeMay

0489

1 will transport it to Covanta?

2 A. That's correct.

3 Q. Does LeMay consolidate any of its medical  
4 waste loads with Rubatino's medical waste loads?

5 A. Not currently, no.

6 Q. Were you present for Ms. Goulet's testimony?

7 A. Yes.

8 Q. Did you hear her testimony that there was a  
9 different practice before this one?

10 A. Yes, I did.

11 Q. And was that a practice in which Rubatino  
12 medical waste was consolidated with LeMay waste?

13 A. That's correct.

14 Q. So the process is different now?

15 A. Absolutely.

16 Q. Has LeMay received any complaints concerning  
17 its medical waste transportation --

18 A. Not in the --

19 Q. -- collection?

20 A. Not in the last 22 months.

21 Q. So not since you have been with the company?

22 A. That's correct.

23 I apologize, there was one.

24 Q. Can you explain the nature of that?

25 A. Tacoma, it was right after I began, Tacoma

0490

1 Radiology was -- I don't recall the reason why they  
2 changed, but they had a complaint that there was an  
3 issue about some boxes, and I don't -- it was right when  
4 I first started, I don't recall all the particulars over  
5 it. I know it was some kind of an issue there, but not  
6 to my knowledge.

7 Q. But since that complaint and since you have  
8 been there, you're not aware of any other complaints by  
9 generators?

10 A. No, none whatsoever.

11 JUDGE RENDAHL: Okay, that's all I have.

12 MR. HAFFNER: One more, Your Honor.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. HAFFNER:

16 Q. Does LeMay have a contract for use of the  
17 Land Recovery facility at Waste, is it owned by Waste  
18 Connections? Let me rephrase the question.

19 Does LeMay have a contract for use of the  
20 Land Recovery autoclave?

21 A. We do not have a contract, no.

22 MR. HAFFNER: No other questions, Your Honor.

23 JUDGE RENDAHL: Anything else?

24 MR. SELLS: Other than to clarify what

25 Mr. Haffner may have just clarified, that is not a Waste

0491

1 Connections autoclave, the autoclave belongs to Land  
2 Recovery, Incorporated.

3 JUDGE RENDAHL: Okay, I think with that,  
4 thank you, Mr. Meany, for appearing this afternoon,  
5 you're excused, and we'll be off the record for a moment  
6 while we take stock. Thank you very much, we will be  
7 off the record.

8 (Discussion off the record.)

9 (Recess taken.)

10 JUDGE RENDAHL: While we were off the record,  
11 there was some discussion about the testimony, the  
12 witnesses Mr. Graves who will be adopting  
13 Mr. Vanderwal's testimony and Mr. Shiner for Stericycle  
14 and the need for them to appear, so we determined that  
15 Mr. Graves will appear tomorrow and that Mr. Shiner will  
16 appear if necessary in the hearings next week.

17 So now we are prepared to hear from Kleen's  
18 witness Mr. Perrollaz. If you could state your full  
19 name and work address on the record, please.

20 MR. PERROLLAZ: My full name is Darin  
21 Perrollaz, middle names Charles, I work at Kleen  
22 Environmental Technologies, street address is 754  
23 Garfield Street, Seattle, Washington 98109.

24 JUDGE RENDAHL: Thank you, would you raise  
25 your right hand, please.

0492

1 (Witness Darin Perrollaz was sworn.)

2 JUDGE RENDAHL: Okay, please go ahead,

3 Mr. Haffner.

4 MR. HAFFNER: Thank you, Your Honor.

5

6 Whereupon,

7 DARIN PERROLLAZ,

8 having been first duly sworn, was called as a witness

9 herein and was examined and testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. HAFFNER:

13 Q. Mr. Perrollaz, can you please take a look at  
14 the document behind tab number 35, which is marked as  
15 Exhibit 35-T in this proceeding, and tell me if you're  
16 familiar with that document?

17 A. I am familiar with this document.

18 Q. Can you state what that document is?

19 A. It is my prefiled testimony.

20 Q. And is that your signature on page 3?

21 A. Yes, it is.

22 Q. Do you recall when and where you signed that  
23 document?

24 A. I recall signing it somewhere on or near the  
25 11th or 12th of August, 2004.

0493

1 Q. And where did you sign that?

2 A. In my office in Seattle, Washington.

3 Q. Are there any changes that you believe need  
4 to be made to this document?

5 A. There are two minor changes that I would like  
6 to see made.

7 Q. Can you point those out to us, please.

8 A. On page 2, line item 7, I do have a  
9 Bachelor's Degree, Bachelor's of Science Degree in  
10 Fisheries and Wildlife Biology, as well I have a minor  
11 in Chemistry.

12 And also on that same page, line item 9 and  
13 10, I am a registered pharmacy technician, not a  
14 registered pharmacist technician.

15 Q. Thank you.

16 MR. HAFFNER: Does everybody have those?

17 JUDGE RENDAHL: Mm-hm.

18 BY MR. HAFFNER:

19 Q. As a part of your testimony, you submitted an  
20 exhibit identified as DCP-2, or for this proceeding it's  
21 now Exhibit 36, can you look through that document and  
22 tell me if you're familiar with it.

23 A. Yes, I'm familiar with this document as well.

24 Q. And did you assist in the preparation of that  
25 document?

0494

1           A.     I did.

2                   MR. HAFFNER:  At this time I would like to  
3 offer the exhibits and tender the witness.

4                   JUDGE RENDAHL:  All right, well, I believe  
5 Exhibit 36 has already been admitted I believe through  
6 Mr. McCloskey.

7                   MR. HAFFNER:  Correct.

8                   JUDGE RENDAHL:  So are there any objections  
9 to admitting Exhibit 35-T?

10                  MR. JOHNSON:  I have no objection, Your  
11 Honor.

12                  MR. SELLS:  No, Your Honor.

13                  MR. TRAUTMAN:  No.

14                  JUDGE RENDAHL:  All right, Exhibit 35-T is  
15 admitted.

16                  Anything further, Mr. Haffner?

17                  MR. HAFFNER:  No, Your Honor.

18                  JUDGE RENDAHL:  Mr. Johnson.

19                  MR. JOHNSON:  Thank you.

20

21                           C R O S S - E X A M I N A T I O N

22 BY MR. JOHNSON:

23           Q.     Mr. Perrollaz, my name is Steve Johnson, I am  
24 an attorney representing Stericycle of Washington, a  
25 protestant in this proceeding.  I'm going to ask you a

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1 series of questions. If you don't understand any of my  
2 questions, please stop me, and I will try to clarify,  
3 and hopefully we can make a record that's clear as to  
4 what your testimony is.

5 Mr. Perrollaz, I believe according to your  
6 prefiled testimony that you have been employed with  
7 Kleen since its founding about 12 years ago.

8 A. That's correct.

9 Q. And I believe Mr. Olson indicated that you  
10 are also a shareholder?

11 A. Yes, I am.

12 Q. And what is your percentage interest?

13 A. Approximately 7%.

14 Q. And your current duties with the company are  
15 what?

16 A. I basically manage our employee health and  
17 safety program, employee training program, I operate the  
18 -- our field chemistry and our hazardous waste site  
19 operations program as well as some environmental field  
20 work. I also run the company's clandestine drug lab  
21 decontamination program.

22 Q. So how many employees do you supervise  
23 currently?

24 A. I currently supervise four employees.

25 Q. And what are their names?



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1           A.     Alan Swift, Mark Volkert, V-O-L-K-E-R-T, Ray  
2 Castillo, and Don Spruill, S-P-R-U-I-L-L.

3           Q.     And is your current employment basically full  
4 time with Kleen?

5           A.     Yes, it is.

6           Q.     On the first page of Exhibit 35, your  
7 prefiled testimony, there is a statement about your  
8 special -- the services that you specialize in. I  
9 believe it indicates comprehensive lab packing.

10          A.     That's correct.

11          Q.     And waste tracking programs. What is a lab  
12 packing program?

13          A.     Lab packing program is basically a facility  
14 that generates multitudes of small volumes of chemistry  
15 waste, laboratories, clinical research facilities that  
16 generate a variety of different hazards. A lab pack  
17 program is a way to manage those in a cost effective  
18 manner where like or compatible chemical products are  
19 overpacked into a single container and then shipped for  
20 disposal.

21          Q.     Okay. And that has nothing to do with  
22 infectious waste, does it?

23          A.     It does not.

24          Q.     And I believe then on the bottom of page 1  
25 and carrying over to page 2 there is a statement of your

0497

1 experience in the environmental field.

2 A. Yes.

3 Q. And from what I can see there, there is  
4 nothing with respect to your experience that involves  
5 handling of biomedical waste; is that correct?

6 A. That's correct.

7 Q. Prior to becoming involved in the  
8 environmental industry, you worked as a, I'm sorry, you  
9 worked with Swedish Hospital, Fred Hutchinson Cancer  
10 Research Center for five years?

11 A. Correct.

12 Q. What were your duties there?

13 A. I was a pharmacy technician in our clinical  
14 pharmacy program in the bone marrow transplant unit. My  
15 specific duties related to manufacture of compounding of  
16 high dose chemotherapy agents.

17 Q. And did that activity have anything to do  
18 with biomedical waste?

19 A. It did not.

20 Q. And was your training as a pharmacy  
21 technician in any way related to the handling or  
22 transportation of biomedical waste?

23 A. No, it wasn't.

24 Q. Mr. Perrollaz, do you have any idea what  
25 types of additional employees will be required for Kleen

0498

1 to carry out its new services if its application is  
2 granted? I'm referring to the biomedical waste  
3 collection service proposed.

4 A. My understanding, and this could be more  
5 readily addressed by Ken Lee, but my understanding is  
6 that we will bring on two new full-time employees as  
7 well as an administrator to operate that program.

8 Q. What would the two full-time employees --

9 A. They would be technician drivers.

10 Q. And what would the administrator's function  
11 be?

12 A. My assumption is he would have oversight of  
13 developing and implementing a program.

14 Q. What would your role be in relation to the  
15 program?

16 A. My responsibilities would be more a  
17 consultant and a consulting administrative capacity and  
18 working with that person to develop programs to go into  
19 the hospitals and work with a variety of issues that are  
20 compounded around the biomedical waste component.

21 Q. I'm sorry, that last part I just didn't  
22 track, could you --

23 A. There's a variety of issues in dealing with  
24 hospitals, which is something I'm inherently familiar  
25 with, and my responsibility would be to work with the

0499

1 administrators and the technical driving individuals to  
2 understand some of the intricacies that surround  
3 basically the waste that is generated corporately by the  
4 hospital environment, and that kind of directly relates  
5 to the biomedical waste.

6 Q. So basically the notion is, if I understand  
7 your testimony correctly in context with the other  
8 testimony we have heard, is that you would be assisting  
9 on the sort of integration of biomedical waste  
10 collection activities with the other lab pack  
11 activities --

12 A. That's correct.

13 Q. -- for example that you're currently carrying  
14 out?

15 A. That's correct.

16 Q. But am I correct that your functions would  
17 still be more on the lab pack side?

18 A. That's correct.

19 Q. You will not be directly responsible for the  
20 medical waste business?

21 A. No.

22 JUDGE RENDAHL: And, Mr. Perrollaz, if you  
23 will wait until the question is asked before you answer.

24 THE WITNESS: I apologize.

25 JUDGE RENDAHL: Just another reminder.

0500

1 MR. HAFFNER: You need a sign.

2 JUDGE RENDAHL: That's right, pause.

3 BY MR. JOHNSON:

4 Q. So who will be the person that's primarily  
5 responsible for regulatory compliance for the medical  
6 waste business proposed in the application?

7 A. I will be initially.

8 Q. But only initially?

9 A. Only initially.

10 Q. What's the concept there?

11 A. To train other individuals to carry out those  
12 activities and to focus on my main expertise.

13 Q. So your position involving a sort of startup  
14 would be temporary?

15 A. That's correct.

16 Q. And your thought would be that you would move  
17 out of that position as rapidly as possible?

18 A. Yes, sir.

19 Q. Mr. Perrollaz, do you have any formal  
20 training in any matters related to the handling or  
21 transportation of biomedical waste?

22 A. Not directly.

23 Q. When you say not directly, do you mean you  
24 have had such training in another way?

25 A. I have had Department of Transportation

0501

1 training of both the biomedical waste handling and the  
2 hazardous waste handling, but I have no direct  
3 experience in working with biomedical waste.

4 Q. When you say you have had that training, in  
5 what context have you received that training?

6 A. DOT transportation course.

7 Q. Basically is that a comprehensive course that  
8 deals with HAZMAT regulations generally and --

9 A. Yes.

10 Sorry.

11 Q. So that you took such a course, and it  
12 included all aspects of the HAZMAT regs, including the  
13 biomedical waste --

14 A. Yes.

15 Q. -- waste regs?

16 A. Yes.

17 Q. Excuse me.

18 A. Yes.

19 Q. When was that training?

20 A. The last one I took was in October of 2003,  
21 and it's a class I upgrade and refresh on annually.

22 Q. And who provides that training?

23 A. Transportation Skills Program.

24 Q. What is that?

25 A. It's a nationally recognized program based

0502

1 out of Pennsylvania that provides certified training in  
2 Department of Transportation regulations.

3 Q. Now, Mr. Perrollaz, what is your current  
4 compensation?

5 A. My annual salary?

6 Q. Yes, sir.

7 A. I make the equivalent of \$20 per hour.

8 Q. What does that produce as an annual salary?

9 A. \$45,000, \$46,000.

10 Q. And I think Mr. Olson indicated that  
11 shareholders of Kleen receive bonuses from time to time.

12 A. That's correct.

13 Q. Have you received any bonuses in the last  
14 couple of years?

15 A. Yes, I have.

16 Q. And approximately what amounts were those?

17 A. The bonus I received was for \$15,000.

18 Q. And do you receive those at the end of  
19 Kleen's fiscal year or at the end of the calendar year,  
20 or how does that --

21 A. Typically it's at the end of the fiscal year.

22 Q. So December 30 I believe is the end of fiscal  
23 year, correct?

24 A. Correct.

25 Q. So you received \$15,000 at the end of the

0503

1 2003 fiscal year?

2 A. That's correct.

3 Q. And same in prior years?

4 A. No.

5 Q. So did you receive a bonus in 2002?

6 A. I believe I did receive a bonus in 2002.

7 Q. You're not sure?

8 A. Pardon?

9 Q. I say you're not sure?

10 A. I'm not sure.

11 Q. Okay.

12 A. I believe so.

13 Q. Would it have been in approximately the same  
14 amount?

15 A. Yes.

16 Q. Do you anticipate receiving a bonus this  
17 year?

18 A. I do not.

19 Q. Why is that?

20 A. I think I would defer that to our  
21 comptroller.

22 Q. I asked you though, so I asked you if you  
23 anticipate receiving a bonus and you said no, now I'm  
24 asking you for your understanding.

25 A. My understanding would be due to expenditures



0504

1 and additional personnel that we have brought on through  
2 the course of the year.

3 Q. So the funds are not available?

4 A. That's correct.

5 Q. Mr. Perrollaz, are you familiar with the  
6 disposal facility at Brooks, Oregon, the incinerator  
7 facility there?

8 A. I am.

9 Q. And is it your understanding that medical  
10 waste that's destined for that facility needs to be  
11 segregated in any way?

12 A. It's my understanding that it does not need  
13 to be segregated specifically, but we probably would  
14 institute a segregation policy at the facility.

15 Q. What policy would that be?

16 A. Segregating soft waste versus sharps and  
17 additionally putting in an insurance policy or insurance  
18 in place that nonconforming waste would not become a  
19 part of the biomedical waste stream.

20 Q. Why would you want to segregate sharps from  
21 softs?

22 A. Sharps would typically be contained in an  
23 inner package that was puncture resistant, and we just  
24 would -- everything that I have worked with has sharps  
25 segregated from the soft waste. They're collected in a

0505

1 different fashion, they're managed and handled in a  
2 different fashion.

3 Q. So then is it your testimony that a generator  
4 that had sharps waste and softs waste or let's just call  
5 it other general medical waste that wanted to ship or to  
6 have Kleen collect those wastes would have to use two  
7 separate containers to ship those?

8 A. That's correct.

9 Q. And that's true even though there is no  
10 reason to segregate them for disposal at Covanta?

11 A. That's correct.

12 Q. Is that because of some regulatory  
13 requirement?

14 A. Not that I'm aware of.

15 Q. So why would you do it? Wouldn't it double  
16 the customer's cost to have to ship in two containers?

17 A. I don't believe so, I believe that the volume  
18 of sharps that are generated and that are packaged are  
19 sufficiently generated in quantities that segregation  
20 would not be an impractical opportunity.

21 Q. Does your proposed tariff, perhaps I can  
22 refer you to Exhibit 32.

23 MR. JOHNSON: I know this is a relatively new  
24 exhibit, is it in the book there, Greg?

25 MR. HAFFNER: It should be.

0506

1 BY MR. JOHNSON:

2 Q. Does that tariff provide for the segregation  
3 of sharps waste from other general medical waste?

4 A. I honestly don't know. I wasn't in on the  
5 development of the tariff.

6 Q. Are there any other types of biomedical waste  
7 that would require segregation in the service you're  
8 proposing?

9 A. I don't believe so.

10 Q. So if I understand your testimony correctly,  
11 Kleen would require a generator of medical waste to  
12 segregate sharps waste from all other types of waste,  
13 but no other segregation would be required?

14 A. I don't believe that that's entirely true.  
15 One of the difficulties or one of the anomalies that I  
16 have run into is the cross mixing of chemotherapy and  
17 pharmaceutical waste with biological waste, and one of  
18 the things that we try to do is to ensure that there's  
19 nonconforming waste in the biomedical waste side. We  
20 would segregate the sharps out, they're generated,  
21 they're typically handled in the facilities differently,  
22 we would package them as sharps. And the additional  
23 regulated medical waste would also be handled as an  
24 individual waste stream, as a consolidated waste stream.  
25 There are other products that we would deal with that

0507

1 are biological products in nature that are not a  
2 regulated medical waste, and those don't have to conform  
3 in the same packaging standards as the regulated medical  
4 waste, and that would be an option to the generator  
5 whether or not they wanted to include those with the  
6 regulated medical waste or not.

7 Q. When you refer to biological products, what  
8 are you referring to?

9 A. I'm talking about products that are generated  
10 from organisms, kanamycin sulphate is one, vincristine,  
11 vinblastine, there's a variety of pharmaceutical  
12 products on the market that are biologically originated  
13 but are not necessarily regulated medical waste when  
14 disposed.

15 JUDGE RENDAHL: Just for the record, can you  
16 restate those and spell them if possible.

17 THE WITNESS: Sure. Kanamycin,  
18 K-A-N-A-M-Y-C-I-N, sulphate, vinblastine, vincristine.

19 JUDGE RENDAHL: So vinblastine would be  
20 V-I-N-B-L-A-S-T-I --

21 THE WITNESS: T-I-N-E.

22 MR. JOHNSON: Is that one word?

23 THE WITNESS: That's one word.

24 JUDGE RENDAHL: And then the third one?

25 THE WITNESS: Vincristine,

0508

1 V-I-N-C-R-I-S-T-I-N-E.

2 JUDGE RENDAHL: Thank you very much.

3 Go ahead, Mr. Johnson.

4 MR. JOHNSON: Thank you.

5 BY MR. JOHNSON:

6 Q. Now these are pharmaceutical products you're  
7 referring to?

8 A. That's correct.

9 Q. And are you saying these are RCRA hazardous  
10 waste?

11 A. They are not, the vinblastine and vincristine  
12 are considered chemotherapeutic agents. The kanamycin  
13 sulphate is an antibiotic. They're of plant origin, but  
14 they are not considered regulated medical waste.

15 Q. So are you saying they would be required to  
16 be segregated?

17 A. Yes.

18 Q. But no other types of -- those are not  
19 regulated medical waste, are they?

20 A. Not under the biomedical waste standards.

21 Q. So those would be segregated and handled  
22 separately, that's not related to the biomedical waste  
23 service?

24 A. Right, but they do end up in the biomedical  
25 waste stream, which is one of the reasons I'm involved

0509

1 in this.

2 Q. I'm sorry, so you're saying the hospitals  
3 generate a variety of things, and this is one, that  
4 would not be properly collected under the biomedical  
5 waste authority for which Kleen has applied?

6 A. Correct.

7 Q. Okay. So you're talking about a service that  
8 would be provided for the collection, you're talking  
9 about assisting the generator to separate waste out that  
10 do not belong in the biomedical waste stream?

11 A. Yes.

12 Q. Okay. Just referring to the biomedical waste  
13 stream for a second, I think we have established, and  
14 just check me if I'm correct, that the only segregation  
15 you would require is sharps waste would be segregated  
16 from nonsharps, and all other biomedical waste would be  
17 otherwise unsegregated?

18 A. Correct.

19 Q. Mr. Perrollaz, are you familiar with the  
20 hazardous materials regulations of the Department of  
21 Transportation with respect to the generator's  
22 responsibility for packaging waste?

23 A. Some of them.

24 Q. How about for packaging biomedical waste?

25 A. Not completely.

0510

1 Q. Is it your understanding that they must be  
2 packaged in a manner that permits safe transportation?

3 A. That's correct.

4 Q. Referring to Exhibit 45, which was the  
5 original tariff filed in this matter, if you look at  
6 Exhibit 45 on item 20 on page 4, paragraph 7 has a  
7 statement of rules that are presented here in this item  
8 20 as a limitation on the service offered by -- to be  
9 offered by Kleen, indicates that:

10 The generator shall not tender and Kleen  
11 shall not knowingly accept for  
12 transportation any container which --

13 And then it goes down through a list of  
14 things that -- would you concur that those are issues  
15 that the generator should be responsible for?

16 A. I would concur.

17 Q. So at the end you would agree that Kleen as a  
18 carrier should not pick up waste that was not sealed and  
19 properly labeled, punctured or materially damaged,  
20 overfilled or overweight, contains anything other than  
21 biomedical waste, or contains radioactive materials as  
22 defined by the U.S. Nuclear Regulatory Commission?

23 A. Correct.

24 Q. Okay. Then I would like you to take a look  
25 at the new tariff, which is Exhibit 32, and look at item

0511

1 20. I think you will notice that paragraph 7 is no  
2 longer part of the tariff.

3 A. What page are we on?

4 Q. It's the last page. Oh, I'm sorry, it's the  
5 second page of item 20, it would be the third page of  
6 the tariff.

7 MR. HAFFNER: Page 3.

8 THE WITNESS: Are we on item --

9 MR. HAFFNER: 32, page 3, right there.

10 MR. JOHNSON: Well, maybe I have made my own  
11 mistake here, because I'm looking at paragraph 6 seems  
12 to have that material in it.

13 MR. HAFFNER: Welcome to the club.

14 MR. JOHNSON: I'm trying to determine which  
15 paragraph got omitted from this new tariff.

16 JUDGE RENDAHL: It looks like the paragraph 4  
17 of Exhibit 45.

18 MR. JOHNSON: I see, so that's the one that  
19 got dropped. Okay, my apologies, sir, I don't need to  
20 ask any more questions about that.

21 THE WITNESS: Okay.

22 JUDGE RENDAHL: Mr. Johnson, before you go  
23 farther, just in this vein I had asked Mr. Haffner when  
24 he produces the revised version of Exhibit 45, which has  
25 been admitted as 32, to redline the differences between



0512

1 45 and 32 so that it clearly shows what the changes are,  
2 so that will assist in the future.

3 MR. JOHNSON: That would be helpful.

4 JUDGE RENDAHL: Just for everyone's  
5 reference.

6 Okay, go ahead, Mr. Johnson.

7 MR. JOHNSON: Thank you, Your Honor.

8 BY MR. JOHNSON:

9 Q. I guess I have one more question about  
10 Exhibit 32 while we're at it, Mr. Perrollaz. With  
11 respect to item 90 on page 6, item 90 states rates, I  
12 believe we can read across this heading together, rates  
13 for non-RCRA, nonstate, chemotherapy waste, pathological  
14 waste, and pharmaceutical. How will those rates be  
15 applied if there's no segregation?

16 MR. HAFFNER: Mr. Johnson, are you  
17 characterizing his testimony as indicating that there  
18 would be segregation or that there would not be  
19 segregation?

20 MR. JOHNSON: That there would not be  
21 segregation the way --

22 A. My understanding is we're talking about  
23 biological waste.

24 BY MR. JOHNSON:

25 Q. Biomedical.

0513

1           A.     Biomedical waste, which the chemotherapy  
2 waste is not, nor is the pharmaceutical waste.

3                   MR. HAFFNER:  And I know it's been answered  
4 now, but I was going to object to the question, and I  
5 think that mischaracterizes his testimony.

6                   MR. JOHNSON:  Well, I don't think it does,  
7 Mr. Haffner.  I asked him about biomedical waste.  Now  
8 Mr. Perrollaz is free to correct me if I am mistaken in  
9 some respect, and I would appreciate if he would do  
10 that.

11 BY MR. JOHNSON:

12           Q.     Perhaps, Mr. Perrollaz, am I correct that  
13 your view is that pharmaceutical waste is not a  
14 biomedical waste?

15           A.     That's correct.

16           Q.     And is it your position that pathological  
17 waste is not a biomedical waste?

18           A.     No, it's my understanding that pathological  
19 waste is a biomedical waste.

20           Q.     Okay.

21           A.     And it's also my understanding that  
22 chemotherapy is not a biomedical waste.

23           Q.     Trace chemotherapy waste, are you aware of  
24 that?

25           A.     It doesn't state trace chemotherapy waste.

0514

1 Q. Okay, so your view is, at least the way you  
2 would interpret item 90, that pharmaceutical and  
3 chemotherapy wastes are not biomedical?

4 A. That's correct.

5 Q. But pathological waste is?

6 A. Yes.

7 Q. So let me ask my question this way. Since  
8 your prior testimony was you're not going to segregate  
9 any biomedical waste except sharps, how are you going to  
10 apply this rate in item 90 to pathological waste? I  
11 think that's a rhetorical question, if you don't have an  
12 answer, that's okay too.

13 A. I don't have an answer.

14 Q. Have you investigated the disposal facility,  
15 the hydroclave disposal facility in Port Coquitlam in  
16 British Columbia?

17 A. I have.

18 Q. Have you visited the facility?

19 A. Yes, I have.

20 Q. Are you familiar with its limitations of its  
21 tub washing system?

22 A. I wasn't aware there were any limitations in  
23 their tub washing system.

24 Q. Are you -- do you know the cost of processing  
25 at the hydroclave facility?

0515

1 A. I do not.

2 Q. I believe you were here for Mr. Olson's  
3 testimony earlier; is that correct?

4 A. I was not.

5 Q. You were not. Well, let's see if I can say  
6 something noncontroversial about it and then ask you a  
7 question. I believe Mr. Olson's testimony was that  
8 Kleen was looking for a facility at which to base its  
9 proposed biomedical waste collection business. Is that  
10 your understanding as well?

11 A. It is, yes.

12 Q. And do you know where that facility would be  
13 located?

14 A. I do not, but we have been looking within a  
15 15 mile radius of our current location.

16 Q. Within the city of Seattle?

17 A. Within King County.

18 Q. Are you familiar with the waste storage  
19 regulations, biomedical waste regulations of King County  
20 including its waste storage regulation?

21 A. To some degree.

22 Q. Do you know how long waste may be stored in  
23 King County before transferred to a disposal facility?

24 A. 15 days.

25 Q. So does that mean that medical waste could

0516

1 not be stored within King County for longer than that  
2 period while Kleen was accumulating a full truckload?

3 A. That's correct.

4 Q. Have you investigated what kind of permits  
5 would be required for the facility that is planned by  
6 Kleen?

7 A. I have not personally, but I know that our  
8 office has investigated it or has been approached, has  
9 been looking at it through Jill Trohimovich with the  
10 King County Health Department.

11 Q. So is it your understanding that -- I guess I  
12 should back up one step. I believe the testimony  
13 earlier was that Kleen intended to develop a base for  
14 its new biomedical waste collection system as a site to  
15 be identified in the future and that at that site it  
16 would construct storage facilities for biomedical waste  
17 where waste would be stored while it was being  
18 accumulated for then subsequent transfer to a disposal  
19 facility. Is that your understanding?

20 A. That's my understanding.

21 Q. In your discussions with King County, have  
22 they indicated whether a solid waste handling facility  
23 permit would be required for that kind of a facility?

24 A. I have not been involved in that discussion.

25 Q. So you don't know the answer to that?

0517

1 A. No.

2 Q. Mr. Perrollaz, would it surprise you to know  
3 that a biomedical waste storage facility or storage site  
4 is regulated by King County regulations?

5 A. That would not surprise me.

6 Q. Are you familiar with the regulations that  
7 apply?

8 A. No, not for the permit.

9 Q. And you have not been involved in  
10 investigating the permitting requirements for such a  
11 facility?

12 A. I have not.

13 Q. Mr. Perrollaz, is hazardous material  
14 currently stored at the facilities of Kleen  
15 Environmental at 754 Garfield Street?

16 A. None other than the ones that we use in our  
17 daily business.

18 Q. How about hazardous waste?

19 A. No.

20 Q. Not on trucks?

21 A. We don't store hazardous waste in our  
22 facility.

23 Q. Not on trucks or in the building?

24 A. Our trucks, if we pick up any hazardous waste  
25 it's usually direct ship. We do not store any hazardous

0518

1 waste in the building. We have hazardous materials that  
2 we utilize in the course of our daily operations, which  
3 include fuel products, paints, disinfectants, cleaners,  
4 what have you.

5 Q. But no hazardous waste that you have  
6 collected is stored in your trucks at any time on the  
7 facility, on the premises of your current facility?

8 A. There may be for a short term before it's  
9 delivered to the final disposal facility.

10 Q. What would a short term be, overnight?

11 A. At the very most.

12 Q. Isn't a permit required to store hazardous  
13 waste on a facility even overnight?

14 A. No, if you have a ten day storage permit,  
15 then it is required. But if we're not in the storage --  
16 if we do not have a storage facility, we're not required  
17 to have a permit for storage.

18 Q. But if you store overnight, doesn't that make  
19 you a storage facility?

20 A. I don't believe so.

21 Q. Mr. Olson I believe indicated that Kleen was  
22 applying for a ten day storage permit?

23 A. At this point we don't have a facility for a  
24 ten day storage permit. One of our goals with the new  
25 facility that we're looking at would be to apply for a

0519

1 ten day storage permit.

2 Q. Mr. Perrollaz, are you familiar with the OSHA  
3 bloodborne pathogen regulations?

4 A. Yes.

5 Q. Have you had any training in those  
6 regulations?

7 A. I have.

8 Q. Would you describe that training, please?

9 A. Essentially went over exposure control, what  
10 the medical surveillance standards were and what the  
11 universal precautions were.

12 Q. And who provided that training to you?

13 A. Argus Pacific.

14 Q. And when did you take that training?

15 A. Had to be about 1997 or 1998.

16 Q. And have you had any refresher courses in it  
17 since then?

18 A. I have had refresher courses but not  
19 specifically in a bloodborne pathogen. It's usually  
20 been ancillary with some of my other eight hour  
21 refresher updates.

22 Q. I'm trying to figure out what context that  
23 would be.

24 A. All of my staff are 4D and ADR trained under  
25 the OSHA HAZWOPER standard.



0520

1                   JUDGE RENDAHL: Excuse me, I need you to slow  
2 down.

3           Q.     You might want to spell out HAZWOPER and you  
4 might want to tell us all what it means.

5           A.     HAZWOPER, H-A-Z-W-O-P-E-R, is a hazardous  
6 waste operations and emergency response training that's  
7 required --

8                   JUDGE RENDAHL: Slow down.

9           A.     It's the hazardous waste and emergency  
10 response operations requirements that OSHA and WSHA  
11 require for anybody working in the environmental field  
12 with hands on chemistry experience, hazardous waste,  
13 what have you. And bloodborne pathogen is a module that  
14 is taught as part of that training.

15          Q.     And you have taken that module?

16          A.     Yes.

17          Q.     More than once?

18          A.     More than once.

19          Q.     Now when Mr. McCloskey testified, he  
20 suggested that you were the person responsible for the  
21 content of the hazardous waste -- I'm sorry, let me get  
22 the correct title. I'm looking for the operations plan.

23                   JUDGE RENDAHL: Exhibit 36.

24          Q.     Yes, Exhibit 36, if you could take a look at  
25 that, it's entitled biomedical waste standard operating

0521

1 procedures.

2 A. Correct.

3 Q. Do you --

4 JUDGE RENDAHL: Mr. Johnson, before you go  
5 farther, do you have extensive questioning about this  
6 particular document?

7 MR. JOHNSON: I do.

8 JUDGE RENDAHL: All right, why don't I  
9 suggest we take a ten minute break now, and then we will  
10 come back at 3:15.

11 (Recess taken.)

12 JUDGE RENDAHL: Let's be back on the record  
13 after our afternoon break, and Mr. Johnson is continuing  
14 his cross-examination of Mr. Perrollaz.

15 MR. JOHNSON: If I may, Your Honor.

16 BY MR. JOHNSON:

17 Q. Mr. Perrollaz, I would like to return just  
18 briefly to item 90 of Exhibit 32, because I have been  
19 scratching my head trying to understand it a little  
20 further and wanted to refer you to some of the  
21 definitions that are contained there and ask you to  
22 clarify a couple points. Item 90, it's page 6. Do you  
23 have --

24 A. Yes, I do.

25 Q. Good. If you look down there under

0522

1 definitions you will see a definition of chemotherapy  
2 waste, could you just take a look at that definition for  
3 a moment.

4 A. (Reading.)

5 Q. Would you still maintain that chemotherapy  
6 waste as so defined is a RCRA hazardous waste?

7 A. No, I would not.

8 Q. So chemotherapy waste as referred to in item  
9 90 is a biomedical waste?

10 A. I would call it that, yes.

11 Q. And how about pharmaceutical waste as shown  
12 in the definition that follows?

13 A. The problem I have with pharmaceutical waste  
14 is it's incredibly encompassing, because there are  
15 pharmaceutical products that are manufactured of human  
16 origin. By and large the majority of pharmaceutical  
17 waste is not, and so I would -- there are some products  
18 that I would call biological products, but predominantly  
19 I would call pharmaceutical waste nonmedical or not  
20 nonmedical but nonbiomedical.

21 Q. How are you using the terms biomedical and  
22 medical in this context?

23 A. Well, medical are therapeutic products that  
24 are used in clinical intervention or certain therapies.

25 Q. Like drugs?

0523

1 A. Drugs.

2 Q. Okay.

3 A. Okay.

4 Q. And biomedical is something that may have  
5 been contaminated with a pathogen of some type?

6 A. That's correct.

7 Q. Okay. But in terms of -- so pharmaceutical  
8 waste here as defined is defined as not being RCRA  
9 hazardous waste, right?

10 A. Right.

11 Q. So would that be something that could be  
12 considered biomedical waste?

13 A. I still would not call it biomedical waste.

14 Q. That's where it is in this tariff, is it not,  
15 under item 90?

16 A. Well, there are pharmaceutical products that  
17 would be considered biomedical waste, which would be  
18 your albumin products, some of your immunoglobulin  
19 products, what have you, those types of things. But if,  
20 you know, if you look at the predominance of -- that's  
21 my cell phone, I apologize -- the majority of discarded  
22 pharmaceutical products in a clinical setting are  
23 non-RCRA nonbiomedical products.

24 Q. Okay, I think that is satisfactory in terms  
25 of the issue of pharmaceutical waste. I guess this

0524

1 comes back to this notion though that if you have -- if  
2 you're going to apply item 90, let's just eliminate  
3 pharmaceutical and talk about trace chemotherapy or  
4 chemotherapy waste as defined in pathological waste, you  
5 still have to find a way to identify it if you're going  
6 to rate it differently, do you not?

7 A. Correct.

8 Q. But if I understood you correctly, you're not  
9 planning to have generators segregate that waste; is  
10 that correct?

11 A. The way chemotherapy is handled in hospitals,  
12 there are specific training and management requirements.  
13 American Society Hospital Pharmacy has guidelines  
14 related specifically to the management and the  
15 containerization of pharmaceutical wastes, and my  
16 assumption in terms of segregation is that those are  
17 going to be packaged and handled separately from other  
18 biomedical wastes.

19 Q. The question I had I guess is whether your  
20 company is going to require them to be segregated?

21 A. Yes, they would.

22 Q. Okay. So I believe that's a change from your  
23 testimony before the break; is that right?

24 A. That's correct.

25 Q. So now a customer that generates sharps

0525

1 waste, what we might call softs waste or other general  
2 medical waste, and pathological and chemotherapy waste  
3 would have to tender three separate containers to your  
4 company in order for you to collect it; is that correct?

5 A. That's correct.

6 Q. Now could all three of those types of waste  
7 be processed at the hydroclave facility in British  
8 Columbia?

9 A. Could you state the three wastes.

10 Q. I'm sorry, I think we're talking about  
11 sharps, softs, general medical waste, and pathological  
12 or trace chemotherapy waste.

13 A. I'm not sure about the chemotherapy waste,  
14 but the others I believe so.

15 Q. And pathological waste?

16 A. I don't think that they can treat the  
17 pathological waste at the hydroclave. I think that goes  
18 through incineration.

19 Q. Okay.

20 A. The hydroclave folks can answer that better  
21 than I.

22 Q. Now I would like to turn to the biomedical  
23 waste standard operating procedures document that's  
24 Exhibit 36. And as I was saying just before the break,  
25 Mr. McCloskey says this is your work product.

0526

1 A. This is a collaboration of his and mine.

2 Q. Are you responsible for the content of the  
3 document?

4 A. I am responsible for some of the content.

5 Q. But not all of it?

6 A. Not all of it.

7 Q. So we may have to ask Mr. McCloskey on some  
8 occasion to explain certain aspects of it?

9 A. That is possible.

10 Q. On page 2 of the document at the bottom of  
11 the page there is something referred to as Kleen  
12 Environmental's exposure control plan. Do you have a  
13 copy of that document with you?

14 A. I do not.

15 Q. Is there such a document?

16 A. There is such a document, yes.

17 Q. Where is it?

18 A. It's in my office.

19 Q. It hasn't been submitted for this hearing?

20 A. Well, there are elements of it are in here,  
21 but I have a separate exposure control plan for my  
22 clandestine drug lab work, which does include some  
23 pathogen exposure issues.

24 Q. So let me see if I understand correctly. The  
25 exposure control plan that you're referring to was

0527

1 created for your existing business and its involvement  
2 in handling clandestine drug lab cleanups; is that  
3 right?

4 A. That's correct.

5 Q. So it was not created to address the  
6 occupational exposures of --

7 A. There are some --

8 Q. Excuse me, sir.

9 -- occupational exposures of workers involved  
10 in the collection and transportation of biomedical  
11 waste; is that right?

12 A. Could you state the question again, please.

13 Q. I will try. The plan that you're referring  
14 to was not created to deal with the occupational  
15 exposures of the people that would be involved in your  
16 proposed biomedical waste collection service; isn't that  
17 right?

18 A. That's correct.

19 Q. So it isn't tailored to the biomedical waste  
20 collection business?

21 A. The one I have in my office is not. The  
22 information in here is.

23 Q. Are you -- I think you told me before you  
24 were familiar with the bloodborne pathogen standard that  
25 is published by the Occupational Safety and Health



0528

1 Administration at 29 CFR, part 1910, section 1030; is  
2 that right?

3 A. Mm-hm.

4 Q. And what does that regulation require with  
5 respect to an exposure control plan?

6 A. It requires engineering controls, training,  
7 and use of personal protective equipment, managing  
8 materials that may be or may not be contaminated with  
9 bloodborne pathogens, blood products.

10 Q. Sir, I think you misunderstand my question.  
11 I'm not asking you for a general overview of the  
12 bloodborne pathogen standard. I asked you what it  
13 requires with respect to an exposure control plan.

14 A. I believe it does require an exposure control  
15 plan.

16 Q. Yeah, and doesn't it require an exposure  
17 control plan specifically designed for the occupational  
18 exposures of particular jobs and particular job  
19 functions?

20 A. Correct.

21 Q. So isn't it the case that you don't have an  
22 exposure control plan that's tailored to the  
23 occupational exposures of workers involved in the  
24 proposed biomedical waste collection service?

25 A. That's correct.

0529

1 Q. So isn't it true that you are not in  
2 compliance or would not be in compliance with the  
3 bloodborne pathogen standard requirements with respect  
4 to the exposure control plan based on what you have  
5 today?

6 A. That's absolutely correct.

7 Q. Mr. Perrollaz, are you familiar with the  
8 requirements of the bloodborne pathogen standard with  
9 respect to employee training?

10 A. No.

11 Q. Who in Kleen Environmental will be  
12 responsible for employee training for the new or the  
13 proposed biomedical waste collection business?

14 A. I will be the one responsible for setting up  
15 and ensuring that training is taken care of.

16 Q. But you don't know, you're not familiar with  
17 the training requirements of the bloodborne pathogen  
18 standards?

19 A. That's why I employ outside trainers.

20 Q. So you're going to hire -- and then what  
21 about record keeping and follow up, who is going to be  
22 responsible for that?

23 A. I'm responsible for the record keeping and  
24 the refresher training, and the medical surveillance is  
25 taken care of by Al Force.

0530

1 Q. When you say you're responsible for refresher  
2 training, that suggests you know what the training  
3 requirements are to some extent, right?

4 A. Correct.

5 Q. What is required in the nature of refresher  
6 training?

7 A. For medical surveillance for the HAZWOPER  
8 training that we deal with, it requires eight hours  
9 worth of annual refresher training to maintain our  
10 certification, and we also run people through additional  
11 training in terms of some of our drug lab programs, some  
12 of our specialty programs in terms of defined space  
13 entry and a variety of other things. So there's a lot  
14 of different ancillary training that has to be  
15 maintained on an annual basis.

16 Q. I think you misunderstood. I'm referring to  
17 refresher training or other training involving the  
18 proposed biomedical waste collection business, you're  
19 going to be responsible for that?

20 A. Yes.

21 Q. Does Kleen Environmental have an employee  
22 training plan, a written plan?

23 A. For?

24 Q. For its biomedical waste collection business.

25 A. I believe we have one that's in the process.

0531

1 Q. Okay. Are you familiar with the requirements  
2 of the Washington Utilities and Transportation  
3 Commission regulations dealing with biomedical waste?

4 A. I am not.

5 Q. Well, WAC 480-70-441(1)(a) requires that a  
6 biomedical waste collection company develop, publish,  
7 and maintain an employee training plan, but you have no  
8 such plan; is that right?

9 A. Not to my knowledge at this point.

10 Q. Mr. Perrollaz, you indicated I think in  
11 response to earlier questions that you had some  
12 knowledge of the Covanta incinerator in Oregon and the  
13 hydroclave facility in British Columbia; is that right?

14 A. That's right.

15 Q. Are you also familiar with the Airway Heights  
16 incinerator near Spokane, Washington?

17 A. I am vaguely familiar with that facility.

18 Q. Have you investigated its availability to you  
19 for incineration of biomedical waste?

20 A. I have not personally. Others in my company  
21 have.

22 Q. So you don't know whether they will accept  
23 biomedical waste at all?

24 A. I don't personally, no.

25 Q. And how about the autoclave that's apparently

0532

1 owned and operated by Land Recovery, Inc. near Puyallup,  
2 do you know anything about that facility?

3 A. Again, I know nothing about that facility.  
4 Others in my company have investigated it.

5 Q. Mr. Perrollaz, are you familiar with the  
6 difference between infectious substances and regulated  
7 medical waste as those terms are used in the Department  
8 of Transportation hazardous materials regulation?

9 A. Yes, I am.

10 Q. And could you describe the difference for me?

11 A. My understanding is that infectious  
12 substances are organisms that can cause disease or have  
13 the potential to cause disease in human beings or  
14 animals, and as such, it can be a product, a specimen,  
15 something that would be regulated in transport as a  
16 substance not designated as a waste. A medical  
17 biohazardous waste is a waste material that has been  
18 contaminated or has come in contact with a pathogen or  
19 organism that is capable of causing disease in animals  
20 or humans, and they're segregated into risk categories.

21 Q. Is it your understanding that cultures and  
22 stocks might come within the infectious substances --

23 A. Yes.

24 Q. -- definitions?

25 A. Yes.

0533

1 Q. And does Kleen intend to handle the disposal  
2 or the transportation of cultures and stocks?

3 A. I believe so.

4 Q. Would that include all risk levels?

5 A. I don't know.

6 Q. Mr. Perrollaz, wouldn't you agree that some  
7 form of instruction is necessary to biomedical waste  
8 generators to advise them on what types of waste belong  
9 in what categories in terms of we talked about several  
10 that you suggested might be segregated, cultures and  
11 stocks as well if there are any special requirements  
12 related to those, are you planning to provide your  
13 customers with some kind of instruction with respect to  
14 how to segregate their waste and how to package them?

15 A. We would develop a guidance document  
16 addressing all those issues and make that part of our  
17 package.

18 Q. Do you know whether pretreatment of any  
19 cultures and stocks would be required?

20 A. I know that there are facilities that do it.  
21 I don't know what the specific requirements are in  
22 having it done.

23 Q. So you don't know whether Kleen would require  
24 pretreatment of any cultures and stocks of any risk  
25 level?

0534

1           A.     I believe that it would be required if there  
2 was anything at a risk level 4 or possibly a 2, 3, and 4  
3 but not a 1.

4           Q.     Now referring again to the exhibit that's  
5 your standard operating plan, Exhibit 36, is it your  
6 intention that the storage facility that Kleen would  
7 develop at its future site for the storage of biomedical  
8 waste be refrigerated?

9           A.     Yes.

10          Q.     So all storage would be refrigerated, I'm  
11 sorry, all storage of biomedical waste on the -- at the  
12 facility would be refrigerated?

13          A.     Yes.

14          Q.     Is that your understanding of what the  
15 operating plan provides for?

16          A.     I believe so.

17          Q.     I had just some confusion about that.  If you  
18 look at page 3 talks about storage of medical waste,  
19 that first sentence seems to suggest that medical waste  
20 would be placed in storage, refrigerated storage I guess  
21 that is, for no longer than 15 days; is that right?

22          A.     Correct.

23          Q.     The next sentence seems to raise a question  
24 about whether you intend to refrigerate all of your  
25 waste, because it says that such waste would be stored

0535

1 and refrigerated when necessary.

2 A. To be honest, I'm not sure what that sentence  
3 means.

4 Q. I couldn't figure it out either. Let me  
5 refer you to another page, page 11, and there I'm  
6 looking at towards the bottom of page 11, item number 8  
7 under transporting medical waste, the heading is  
8 transporting medical waste. That item seems to say that  
9 refrigeration shall be maintained for regulated medical  
10 waste that will not be delivered for treatment within  
11 seven calendar days. Can you explain that statement?

12 A. I think our intent is that from the point of  
13 pickup to where it's actually offloaded at the disposal  
14 facility won't exceed seven days.

15 Q. But I'm talking about the refrigeration  
16 issue, it suggests that refrigeration would not be  
17 required, doesn't it, if the regulated waste was  
18 delivered to a treatment facility within seven days?

19 A. I read that sentence as saying that it's  
20 going to be refrigerated, it's just going to be  
21 refrigerated. It happens to have that seven days, but  
22 the sentence to me reads that it's going to be -- the  
23 temperature is going to be maintained.

24 Q. For regulated medical waste that will not be  
25 delivered --



0536

1 A. Or treatment per se.

2 Q. -- for treatment within seven days. What  
3 about regulated medical waste that is delivered for  
4 treatment within seven days? Isn't that an error in the  
5 document?

6 A. I believe it is.

7 Q. That's what I thought.

8 And I also had some trouble understanding the  
9 time period that waste would be stored on the -- on site  
10 at the Kleen facility. If you look at page 6, I'm  
11 looking at the paragraph headed designation of alternate  
12 treatment facilities.

13 JUDGE RENDAHL: Which page are you on?

14 MR. JOHNSON: I'm sorry, page 6.

15 JUDGE RENDAHL: Well, you were on page 8 with  
16 the refrigeration, so I'm not following.

17 MR. JOHNSON: I'm sorry, let's see if I have  
18 my pages misnumbered.

19 MR. HAFFNER: It's the one with the biohazard  
20 symbol.

21 MR. JOHNSON: I was on page 11 with my last  
22 question about refrigeration.

23 JUDGE RENDAHL: All right.

24 MR. JOHNSON: Page 11, item 8.

25 JUDGE RENDAHL: Okay, so biohazardous symbol.

0537

1 MR. JOHNSON: Right, page 6 has the biohazard  
2 symbol on it.

3 BY MR. JOHNSON:

4 Q. And just above that, there's a sentence that  
5 says:

6 Infectious waste awaiting transport for  
7 incineration shall be stored for no  
8 longer than 72 hours.

9 Is that the plan?

10 A. That's how I read it, but what I don't  
11 understand by reading through this is whether or not we  
12 would defer to an alternate facility.

13 Q. I'm not tracking with you, so could you try  
14 that again?

15 A. To be honest with you, I'm not really sure  
16 what the intent is there.

17 Q. If you go over back to page 3 of the same  
18 document, if you look at the first sentence under  
19 storage of medical waste, it seems to say something  
20 about length of time that storage would be undertaken  
21 also, and that seems to say 15 days, no longer than 15  
22 days, so I was having trouble putting those together.  
23 Do you know, I mean what is the commitment of the plan  
24 with respect to the limit of --

25 A. Well, there's a 15 day --

0538

1 Q. Excuse me.

2 What is the committent of the plan with  
3 respect to the limitations of storage at the Kleen  
4 facility?

5 A. Our plan is definitely we won't exceed our 15  
6 day storage capacity. And I believe that if for some  
7 reason the incinerator was down, we would have to defer  
8 immediately to an alternative facility, we wouldn't have  
9 the capacity to store it for longer than 15 days.

10 Q. Now going to your operating plan again, let's  
11 switch back to page 8 with that issue with respect to  
12 alternate treatment facilities, the section is headed  
13 designation of alternate treatment facilities.

14 MR. TRAUTMAN: Page 6.

15 Q. I'm sorry, page 6, and that paragraph seems  
16 to suggest that Hospital Sterilization Services will be  
17 the primary treatment facility; is that right?

18 A. That one does, but in reality it would be our  
19 alternate facility.

20 Q. So the plan is not correct in that regard?

21 A. Correct.

22 Q. So you're saying the hydroclave would be the  
23 alternate or backup facility?

24 A. Yes.

25 Q. Do you know whether the hydroclave can

0539

1 process all of the waste that would otherwise be  
2 incinerated?

3 A. I believe they can't, but they also have an  
4 avenue to incinerator where they can divert those  
5 materials.

6 Q. So it's your understanding that you could  
7 deliver all of your waste to the hydroclave?

8 A. Yes.

9 Q. And they would handle it, either dispose  
10 of --

11 A. Yes.

12 Q. -- either process it or dispose of it  
13 elsewhere?

14 A. Yes.

15 Q. Have you investigated the requirements of the  
16 Canadian government or the province of British Columbia  
17 with respect to bringing in medical waste for treatment  
18 or disposal in Canada?

19 A. Our company has, yes.

20 Q. Have you?

21 A. I have not personally.

22 Q. So you don't know anything about the  
23 regulations that might apply?

24 A. Not in biomedical waste.

25 Q. Do you know something about it in hazardous

0540

1 waste?

2 A. Yes.

3 Q. If you show up at the border with a truck  
4 full of hazardous waste and say you're going to a  
5 disposal site in British Columbia, what would the  
6 Canadian government require from you?

7 A. They would require a prenotification period  
8 with the specific generator's address, they would  
9 require a dual manifest with a U.S. and a Canadian  
10 manifest.

11 Q. Would they require that you have some  
12 indication from a disposal facility that they're willing  
13 to accept your waste?

14 A. Yes.

15 Q. Do you know whether Kleen has any kind of  
16 contract with the hydroclave facility?

17 A. I don't know if there is a contractual  
18 arrangement at this point.

19 Q. Do you know if there is any kind of  
20 documentation of any nature whatsoever that indicates  
21 that the hydroclave facility would accept Kleen's waste?

22 A. Yes, there is.

23 Q. What is it?

24 A. I don't know what the documentation is, I  
25 just know that that's been something that we have been

0541

1 working on.

2 Q. So you believe there is some documentation,  
3 but you actually don't know?

4 A. No.

5 Q. And you haven't seen it?

6 A. I haven't seen it, no.

7 Q. Okay.

8 Now I noticed that throughout this document a  
9 lot of responsibility is assigned to the administrator  
10 of the plan, and that is you, is it not?

11 Are you checking?

12 A. Well, there is -- yes, I am checking, because  
13 I believe it talks about me as the administrator or a  
14 designee.

15 Q. But in point of reality, who is going to be  
16 the administrator of this plan?

17 A. As we talked earlier, initially I will be the  
18 administrator of the plan.

19 Q. And do you have in mind a designee that would  
20 take over for you?

21 A. Not at this point.

22 Q. Is it going to be someone that would be  
23 employed subsequently --

24 A. Yes.

25 Q. -- or a current employee?

0542

1 A. Someone that would be employed subsequently.

2 Q. So this would be an entirely new position  
3 within the company that would occupy the position of  
4 plan administrator that would sort of supervise and  
5 oversee implementation of the operation plan and perhaps  
6 other aspects of the biomedical waste --

7 A. I believe so.

8 Q. -- biomedical waste collection business?

9 I'm sorry, your answer was?

10 A. I believe so.

11 Q. Would this person be hired immediately if the  
12 application was granted?

13 A. No.

14 Q. Do you have any sense for a plan in term of  
15 how soon that would happen?

16 A. I don't have a time frame, no.

17 Q. I believe the plan, if you look at page 6 at  
18 the top, it says responsibilities of the plan  
19 administrator. It says, the plan administrator or his  
20 designee shall be available 24 hours a day, 7 days a  
21 week. That suggests that there would be a designee  
22 identified immediately.

23 A. Yes.

24 Q. And who would that designee be?

25 A. Well, it says the plan administrator or his

0543

1 designee. Right now I am the technical on call person  
2 24 hours a day, 7 days a week.

3 Q. But I'm assuming that even you must go on  
4 vacation or out of cell range or something. There must  
5 be -- wouldn't you have a designee?

6 A. I wish that were true. I would have a  
7 designee, and it would be somebody that I would sit down  
8 corporately and make a decision who that would be.

9 Q. But you haven't made such a decision?

10 A. Not at this point, no.

11 Q. You don't have any idea who that person would  
12 be?

13 A. In our current capacity, that defers over to  
14 Mr. Olson.

15 Q. Now if there is a spill of one container or  
16 less, how would that be handled under the operations  
17 plan?

18 A. A lot of it depends on where the spill  
19 occurs.

20 Q. Well, let's say it's in Ephrata.

21 A. It would depend if it was contained within a  
22 facility, whether it was contained on the vehicle, or  
23 whether there was a release to the environment.

24 Q. What does the plan provide?

25 A. A contingency for all three.



0544

1 Q. Okay.

2 A. If it's a spill that's at the facility or  
3 it's within our control, if it's what I would consider a  
4 minor incident, a minor spill that's within our control,  
5 would require notification of the administrator, a  
6 notification of the spill, and steps taken to take  
7 adequate precautions to clean up the spill and contain  
8 it.

9 Q. Would it require the administrator to direct  
10 the cleanup?

11 A. It would require the administrator to be  
12 apprised of the cleanup and be available to provide  
13 guidance in the cleanup.

14 Q. How about if two containers are spilled, how  
15 would that be handled?

16 A. The administrator would be notified and make  
17 a determination with the person that was on the scene  
18 whether or not it was a -- would require notification to  
19 any local authorities and whether or not that particular  
20 release was within that person's scope to handle.

21 Q. If you look at the carryover paragraph that  
22 starts on page 9 and goes to page 10, it describes under  
23 the heading imminent danger steps to follow and then  
24 identifies steps that would be followed in case of a  
25 major incident. Do you know what a major incident is as

0545

1 used in this plan?

2 A. It's a little bit subjective, but one that  
3 would be foreseen as being immediately beyond the scope  
4 of a KET employee on site to manage it and one that  
5 would -- could present a potential threat with the  
6 release of some material.

7 Q. Wouldn't it include a spill of two containers  
8 regardless of the other factors involved?

9 A. If the spill were contained on a vehicle or  
10 if it was in an area that was remote and it didn't pose  
11 an immediate threat or a release to the environment or a  
12 threat to individuals in the area, I would not  
13 necessarily deem that as imminent threat.

14 Q. Well, neither would I, but I'm talking about  
15 what the plan says. And I guess what I'm looking at is  
16 this has been difficult for me to follow, but there is a  
17 heading called minor incident on page 9, and then over  
18 on page 10 there is a heading called spill from a single  
19 container. And it says, spills from a single container  
20 would be handled as described in the section entitled  
21 minor incidents.

22 A. Right.

23 Q. Okay, so, you know, you might have expected I  
24 suppose that sentence to appear in the minor incidents  
25 section of the plan. But anyway, it appears to be

0546

1 defining what a minor incident is. The other category  
2 we have in the plan starting at the bottom of page 9 is  
3 imminent danger, and the only thing we have is the  
4 definition of what appears to be minor incidents, so I  
5 inferred that anything not a spill of a single container  
6 would be dealt with under the imminent danger heading;  
7 is that not right?

8 A. It's possible that we would revise that in  
9 some capacity, because I would not personally look at  
10 that as imminent danger.

11 Q. But is that what the plan says now? I mean  
12 I'm having trouble just understanding what it says. Is  
13 there any other definition of something that is not a  
14 spill of a single container but is not covered by the  
15 imminent danger section?

16 A. I'm sorry, would you repeat that, please.

17 Q. Yeah, I mean we have apparently a definition  
18 of a minor incident that involves a spill from a single  
19 container, and then we have a category of imminent  
20 danger. I don't know that there's any other category  
21 defined in the plan for any other intermediate type of  
22 spill situation, is there?

23 A. Not at this point.

24 Q. So wouldn't you agree that right now the way  
25 the plan is written if you spill more than one

0547

1 container, you're in the imminent danger category?

2 A. Right now the way the plan is written, yes.

3 Q. Okay. Then if you turn over to page 10 and  
4 look down A, B, C, D, and so forth, the way it's  
5 currently written the administrator or its designee, I'm  
6 looking at B, will go to the spill area and assess the  
7 situation. That's the second thing. The first thing is  
8 the administrator will be notified, the second thing is  
9 the administrator will go to the spill area and assess  
10 the situation, and then there will be further activity  
11 as laid out. Does that seem practical to you in all  
12 cases of spills of two or more containers?

13 A. Not in all cases, no.

14 Q. So that should be changed, right?

15 A. Right.

16 Q. Now this is a heading called imminent danger,  
17 but maybe it encompasses more than that, but I assume  
18 that if there were, in fact, imminent danger to people  
19 that the local authorities would be notified; is that  
20 right?

21 A. That's right.

22 Q. So the point on E that proper agencies would  
23 be notified, well, this is for assistance if deemed  
24 necessary. Let's see.

25 A. The reality is, if we determined it was

0548

1 imminent danger, the authorities would be notified  
2 regardless.

3 Q. Now if you go back to page 4 and look at  
4 accidents/spills, the section with that heading, if you  
5 look at the second sentence, it seems to suggest that  
6 you or your, and I will just read it for the record, it  
7 says:

8 Upon notification, Mr. Perrollaz or his  
9 designee will evaluate the incident and  
10 take necessary precautions to contain  
11 the spill.

12 So that seems to suggest that all accidents  
13 or spills would require your direct supervision; is that  
14 right?

15 A. Yeah, but I think I would defer that back to,  
16 I'm not sure what page this is, to section B under  
17 imminent danger where the administrator or his designee  
18 will go to the spill area and assess the situation. As  
19 an administrator, I would require notification, but I'm  
20 not necessarily going to be involved in every cleanup  
21 activity.

22 Q. I think that's probably the practical answer,  
23 but that's not what the plan says, is it?

24 A. I understand.

25 Q. In fact, under accidents and spills, the

0549

1 first sentence says:

2 All accidents and spills that occur  
3 during collection, transportation,  
4 storage, and processing will be reported  
5 to your immediate supervisor, who will  
6 then notify Darin Perrollaz,  
7 administrator for this plan.

8 And then it goes on:

9 Upon notification, Mr. Perrollaz or his  
10 designee will evaluate the incident and  
11 take necessary precautions, et cetera,  
12 et cetera.

13 So that's just wrong, right?

14 A. Correct.

15 Q. If you look on page 5, there is a heading  
16 called emergency authorities, and there's various  
17 company officials identified there as well as various  
18 agencies I guess I would say that might be called upon  
19 in the event of an emergency. I noticed that all of the  
20 agencies identified are in the Seattle area.

21 A. That's correct.

22 Q. But this wouldn't be a workable list of  
23 emergency contacts, would it, for spills and emergencies  
24 occurring in Eastern Washington or wherever?

25 A. No, I believe that these contacts directly

0550

1 relate to the proposed KET facility in King County.

2 Q. But again, we're talking about a proposed  
3 biomedical waste collection service that would --

4 A. Correct.

5 Q. -- extend all over the state?

6 A. Correct.

7 Q. Shouldn't this refer to, maybe even have a  
8 page or an appendix listing the local or county health  
9 authorities in every county that you would serve?

10 A. That's correct.

11 Q. It doesn't have that, does it?

12 A. Doesn't have that, no.

13 Q. If you look down the page there in the next  
14 section, it says emergency response equipment, did you  
15 identify the emergency response items that are  
16 identified here?

17 A. I did not.

18 Q. So are you responsible for this list?

19 A. I'm not responsible for this particular list.

20 Q. Did you review it?

21 A. I did.

22 Q. Are you satisfied with it?

23 A. I would probably add some things to it.

24 Q. For example, let me ask you this, once a  
25 container has been spilled and you're trying to, some

0551

1 person is trying to address the spill, they would  
2 apparently, looking here at the list, they would have  
3 spill pillows to soak up any liquids, right?

4 A. Right.

5 Q. And they would have a disinfectant, a liquid  
6 disinfectant to try to disinfect the area of the spill,  
7 and they would have biohazard bags, and then they would  
8 have certain personal protective equipment, they would  
9 have a first aid kit, they would have a boundary tape,  
10 and they would have a fire extinguisher, right?

11 A. Right.

12 Q. How would they get the waste that was spilled  
13 on the floor into the container?

14 A. They would have to have some additional  
15 equipment to do that.

16 Q. They wouldn't use their hands, would they?

17 A. No, sir, and they don't -- there's not a  
18 spare container listed to containerize their waste  
19 either.

20 Q. Well, that's another problem. I was thinking  
21 of broom and dust pan, wouldn't you think that would be  
22 an appropriate thing to include?

23 A. At least.

24 Q. Yeah. But that's not there, is it?

25 A. No.



0552

1 Q. So this needs to be revised to include  
2 several items?

3 A. Yes.

4 Q. If you look at the heading on page 4, which  
5 reads personnel exposure, the first sentence is my first  
6 concern or question, which suggests that if an  
7 individual becomes contaminated, I assume by that it  
8 means exposed to medical waste, this individual will be  
9 instructed in proper decontamination procedures. Don't  
10 you think that person should be instructed in proper  
11 decontamination procedures before the incident?

12 A. Certainly.

13 Q. So this isn't right either, is it?

14 A. No.

15 Q. The second clause of that first sentence  
16 suggests that the person who has become contaminated,  
17 "will be transported to a local hospital if penetration  
18 of infectious agent occurred". How would the person  
19 know if penetration of an infectious agent had occurred?

20 A. The person wouldn't, he would have to assume.

21 Q. Right. So the way this should be written is  
22 that if a person is pricked with a needle or has contact  
23 of the skin with infectious waste that he should proceed  
24 to take some further action at a hospital or wherever;  
25 would you agree with that?

0553

1           A.     I'm sorry, I didn't hear the last part of  
2 your sentence.

3           Q.     I'm sorry. This talks about when you would  
4 go to the hospital, talks about penetration of  
5 infectious agent occurred, that would be the sort of the  
6 trigger of going to the hospital. But I think you have  
7 indicated that that wouldn't be right, you would be  
8 going on the basis of something else; what would that  
9 something else be?

10          A.     That if there's a penetration or a prick, you  
11 assume the worst and you go to the hospital regardless.

12          Q.     Right. So this should be revised to indicate  
13 that?

14          A.     Yes.

15          Q.     The second sentence suggests that spills of a  
16 certain size would be reported to the Environmental  
17 Protection Agency. Is it your understanding that the  
18 Environmental Protection Agency would require  
19 notification of such a spill?

20          A.     No.

21          Q.     So that's wrong too?

22          A.     Yes.

23          Q.     The last sentence of that paragraph says that  
24 spill kits which include procedures for cleaning of a  
25 spill shall be located in various places. I guess my

0554

1 question is with respect to the procedures that would be  
2 included in the spill kit. Is it your understanding  
3 that if there's a spill that somebody who is responsible  
4 for addressing the spill would read about how to do that  
5 at the time?

6 A. My understanding is that person would be  
7 trained about that beforehand so that they knew the  
8 measures to take, but also a written plan would be  
9 available for them to take a look at for review during  
10 the process.

11 Q. It might be a checklist in the spill kit?

12 A. Yes.

13 Q. I also had a little trouble understanding the  
14 section on page 7 entitled shipping papers. Take a look  
15 at that point 1 there, if you would, and just read it  
16 for a moment, and then I will ask you a question or two  
17 about it.

18 A. (Reading.)

19 Q. I'm trying to figure out whether all the  
20 information that's listed there under A, B, C, D, E, F,  
21 G, and H would be on the label for the container. The  
22 plan seems to say that each package, I omitted some  
23 language, shall be labeled with a water resistant  
24 international biohazard symbol and contain the  
25 following, and then it lists all of these things. Is it

0555

1 your understanding that labels on biomedical waste  
2 collection containers should include all those items?

3 A. It certainly is for the shipping papers, but  
4 I don't know if all that is required on the shipping  
5 label, especially the G or the signature.

6 Q. That clearly isn't, right?

7 A. Right.

8 Q. So this is just poorly written and needs to  
9 be changed, should distinguish between what should be on  
10 the label and what should be on the shipping papers,  
11 right?

12 A. Correct.

13 Q. I guess I should have referred this to you  
14 before in connection with our discussion of who does  
15 what when there is a spill, but I notice again on page  
16 8, this is in the section entitled determining when to  
17 implement cleanup, the first sentence says that:

18 Cleanup procedures will be implemented  
19 after the administrator or his designee  
20 assesses the situation to determine what  
21 hazards exist.

22 Again, that suggests that nothing would  
23 happen until you or your designee took charge of the  
24 spill. That's just not right, is it?

25 A. No.

0556

1 Q. I mean I guess I'm starting to belabor this,  
2 and I apologize for that, but I get over to page 9 and  
3 then there's a section entitled assessment of problem,  
4 and it seems to say the same thing that's been said  
5 throughout the document, that nothing happens until the  
6 administrator makes an assessment and does something,  
7 does it not, the first sentence there?

8 A. I'm sorry, where are you?

9 Q. I'm sorry, it's in the middle of page 9,  
10 assessment of problem. Throughout the document there  
11 are statements made that essentially in any case that  
12 there's a spill or anything like that that the  
13 administrator, which is currently you or would be you,  
14 would take charge and do whatever is required and give  
15 instructions. That's just not practical, is it?

16 A. No.

17 Q. So all of that has to be redone?

18 A. Correct.

19 Q. And just to belabor that one more time, on  
20 page 10 entitled decontamination, the first sentence  
21 says that:

22 The administrator or his designee will  
23 supervise the decontamination of all  
24 areas affected by infectious waste  
25 spills.

0557

1 MR. HAFFNER: Is there a question, counsel?

2 JUDGE RENDAHL: I was going to say, is that a  
3 question?

4 MR. JOHNSON: Sorry.

5 BY MR. JOHNSON:

6 Q. I mean that's again the same kind of  
7 misstatement, is it not, that needs to be corrected?

8 A. That's correct.

9 Q. I noticed also when I was going through this  
10 that there are two different lists of what you might  
11 call spill kit content. They're not called spill kits,  
12 but they're -- I mean they're referred to sometimes in  
13 the text as spill kits. If you look at page 4 under  
14 personnel exposure, the last sentence talks about spill  
15 kit, and I think we know more or less what that is. But  
16 then on page 5 there is a heading called emergency  
17 response equipment, it doesn't call it a spill kit. So  
18 I mean perhaps once you know that it's supposed to mean  
19 the same thing, that would allow you to find that  
20 section. But the plan itself uses terminology  
21 inconsistently or at least not consistently I would say;  
22 would you agree?

23 A. I would agree.

24 Q. And then over on page 11 there is a section  
25 called safety measures, which seems to be another spill

0558

1 kit list; is that right?

2 A. That's right.

3 Q. And do you know whether the two lists are the  
4 same?

5 A. I don't.

6 Q. Well, there are a couple of minor differences  
7 I believe. For example --

8 MR. HAFFNER: Objection, the document speaks  
9 for itself.

10 Q. Well, I guess my question goes to why are  
11 there two lists of spill kit contents that are slightly  
12 different? Would this be helpful to people trying to  
13 implement this plan?

14 A. To answer your question, the lists should be  
15 standardized.

16 Q. Maybe they should be just stated once; would  
17 you agree?

18 A. I don't think so. I think that it should be  
19 standardized, but I think that it should be reinforced  
20 throughout the document. At least reference to the  
21 spill kit should be throughout the document but maybe  
22 listed just once.

23 Q. Now at the tail end of this document there  
24 are -- there is a page, I have it marked at page 12, and  
25 it includes the following statement, the following are

0559

1 adopted by reference or otherwise, and then there is a  
2 list of citations to the Washington Administrative Code  
3 and to the regulations of the Department of  
4 Transportation. Do you think adopting this list of  
5 regulations by reference is an appropriate thing in an  
6 operational plan?

7 A. Probably not in an operational plan.

8 Q. If these are to be guidance to people trying  
9 to perform these functions, they should be spelled out  
10 or their contents should be spelled out, should it not?

11 A. They should.

12 Q. Yeah.

13 Mr. Perrollaz, were you present when  
14 Mr. McCloskey testified with respect to the heading or  
15 the section on page 8 entitled repackaging?

16 A. Yes.

17 Q. Do you concur with his interpretation that  
18 this is to apply only when there has been a spill?

19 A. I do, or if the package has obviously been  
20 compromised and is not transportable.

21 Q. But, Mr. Perrollaz, if it's not  
22 transportable, are you talking about during -- after  
23 it's been accepted by --

24 A. After it's been accepted.

25 Q. The actual language here though doesn't say



0560

1 anything about spills, does it?

2 A. No, it doesn't.

3 Q. Would you clarify that if you were revising  
4 the plan?

5 A. Yes, I would.

6 Q. Well, Mr. Perrollaz, at the bottom of page 8  
7 there's a heading entitled decontamination of vehicles,  
8 would you just take a look at that. I'm really  
9 primarily interested in the first sentence.

10 A. (Reading.)

11 Q. I'm having trouble understanding when Kleen  
12 intends to decontaminate its vehicles based on this  
13 sentence. Can you clarify it for me?

14 A. We obviously aren't going to decontaminate a  
15 vehicle that has materials on board. Any time an empty  
16 vehicle comes back to the facility or if it shows  
17 evidence that there has been a potential leak or what  
18 have you, then the decontamination procedures would be  
19 implemented.

20 Q. So each day when the vehicle returns to the  
21 facility it will be decontaminated?

22 A. Not each day, it will be inspected to see if  
23 there's any evidence or whether decontamination is  
24 required. I think that the spirit of our policy is that  
25 when we have a truck come back to the facility and it's

0561

1 empty that before it ever goes back out on the road it's  
2 going to be decontaminated and thoroughly cleaned.

3 Q. I was following along up until that last  
4 part. So it's going to be decontaminated at the end of  
5 every day or before it goes out again?

6 A. Before it goes out again.

7 Q. Using a disinfectant or something of that  
8 kind?

9 A. That's correct.

10 Q. Is that what this sentence says?

11 A. It's not.

12 Q. It's not quite clear on that point; would you  
13 agree?

14 A. I would agree.

15 Q. Mr. Perrollaz, does Kleen Environmental  
16 currently have a drug and alcohol policy?

17 A. Yes, it does.

18 Q. Does it have a written policy?

19 A. Yes.

20 Q. Do you believe that policy is sufficient for  
21 the proposed biomedical waste collection service?

22 A. Yes, I do.

23 Q. We don't have it in front of us, but it's  
24 back at the office someplace?

25 A. Yes, I do.

0562

1 JUDGE RENDAHL: Let's be off the record for a  
2 moment.

3 (Discussion off the record.)

4 (Recess taken.)

5 JUDGE RENDAHL: Mr. Johnson, do you have  
6 anything further for the witness?

7 MR. JOHNSON: I think not, Your Honor, thank  
8 you.

9 JUDGE RENDAHL: Okay.  
10 Mr. Sells.

11 MR. SELLS: Thank you, if Your Honor please.

12

13 C R O S S - E X A M I N A T I O N

14 BY MR. SELLS:

15 Q. Mr. Perrollaz, I was trying to follow along  
16 with Mr. Johnson here, and I didn't listen to his every  
17 statement, but it looks to me like there's very little  
18 in this standard operating agreement that doesn't have  
19 to be redone; is that correct?

20 A. There's quite a bit of revision, yes.

21 Q. So right as we sit here now it's pretty  
22 useless, isn't it?

23 A. I wouldn't say it's useless, no.

24 Q. It's only useful as a basis to be redone; is  
25 that a fair statement?

0563

1           A.     I believe that the framework is a good basis  
2 to make the revisions on.

3           Q.     Who is going to make those revisions?

4           A.     I will probably be working on those with  
5 Mr. McCloskey.

6           Q.     Is that going to be done during this  
7 proceeding or after this proceeding?

8           A.     I would say probably after this proceeding.

9           MR. SELLS: Thank you, that's all I have.

10          JUDGE RENDAHL: Mr. Trautman.

11          MR. TRAUTMAN: No questions.

12          JUDGE RENDAHL: And I do not have any  
13 questions.

14                 So, Mr. Haffner, do you have any redirect?

15          MR. HAFFNER: Yes, Your Honor, thank you.

16

17                   R E D I R E C T   E X A M I N A T I O N

18 BY MR. HAFFNER:

19           Q.     Mr. Perrollaz, in your cross-examination by  
20 Mr. Johnson, I believe you testified that you would  
21 initially be responsible to train others and that you  
22 would then like to move out of that position as soon as  
23 possible. Do you have any idea how long it would take  
24 you to train the person that you believe would require  
25 training to become the I guess it would be the

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1 administrator?

2 A. I don't have a specific time frame.

3 Q. Could it take up to a year?

4 A. That's possible.

5 Q. Do you know who it would be that you would be  
6 training?

7 A. I do not.

8 Q. Is it your understanding that regulations  
9 governing transportation of sharps need to be in hard  
10 sided containers?

11 A. That was a issue that came up in reviewing  
12 the regulations.

13 Q. And is it your intent to have your company  
14 comply with those regulations?

15 A. That's correct.

16 Q. You testified about I believe it's OSHA  
17 bloodborne pathogen training that you have received.

18 A. Yes.

19 Q. Have you determined, recall any other  
20 training on OSHA bloodborne pathogens?

21 A. Yes. When I first responded to Mr. Johnson's  
22 question, I was putting it relative to Kleen  
23 Environmental, but it's a training I have to go through  
24 and be recertified every year as an employee at Highline  
25 Hospital.

0565

1 Q. You just testified to Mr. Sells that you  
2 anticipate that this standard operating procedures which  
3 is identified as Exhibit 36 will need to be revised and  
4 that you and did you say Mr. McCloskey will assist you  
5 with that?

6 A. Yes.

7 Q. When the two of you do that revision, do you  
8 intend to comply with all the rules and regulations and  
9 laws applicable to the transportation of biomedical  
10 waste?

11 A. Yes.

12 Q. If it is suggested -- well, never mind.

13 MR. HAFFNER: That's all the questions I  
14 have.

15 JUDGE RENDAHL: Okay.

16 Any recross based on redirect, Mr. Johnson?

17 MR. JOHNSON: Your Honor, just a couple of  
18 questions.

19

20 R E C R O S S - E X A M I N A T I O N

21 BY MR. JOHNSON:

22 Q. Mr. Perrollaz, you mentioned employment at  
23 Highline Community Hospital, in what capacity are you  
24 employed at Highline Community Hospital?

25 A. I'm a pharmacy technician, and I work on a

0566

1 per diem capacity.

2 Q. So about how many hours a week?

3 A. I work about two evenings a month.

4 Q. Two evenings a month.

5 MR. JOHNSON: Thank you, no other questions.

6 JUDGE RENDAHL: Okay.

7 Is there anything further for this witness?

8 Then I believe we have admitted Exhibits 35  
9 and 36, which relate to Mr. Perrollaz's testimony, is  
10 there any other exhibit we need to admit for  
11 Mr. Perrollaz?

12 MR. HAFFNER: No, Your Honor.

13 JUDGE RENDAHL: All right, then thank you,  
14 Mr. Perrollaz for appearing today, and you are excused.

15 And is there anything further we need to take  
16 up this evening before we recess until the morning?

17 Hearing nothing, we will be in recess until  
18 tomorrow morning, we will be off the record.

19 (Hearing adjourned at 4:45 p.m.)

20

21

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23

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25