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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. GA-079251 of)Docket TG-040221
 HAROLD LEMAY ENTERPRISES, INC., ET)Volume VII
 AL)Pages 567-721
)(Consolidated)
)
 For an Extension of Certificate No.)
 G-98 for a Certificate of Public)
 Convenience and Necessity to Operate)
 Motor Vehicles in Furnishing Solid)
 Waste Collection Service.)
)
 In re Application No. GA-079254 of)Docket TG-040248
)
 KLEEN ENVIRONMENTAL TECHNOLOGIES,)
 INC.)
)
 For a Certificate of Public)
 Necessity to Operate Motor Vehicles)
 in Furnishing Solid Waste Collection)
 Service.)
)
 In re Application No. GA-079266 of)Docket TG-040553
 (Continued on Next Page))
)

A hearing in the above-entitled matter
was held at 9:43 a.m. on Wednesday, September 29,
2004, at 220 Fourth Avenue South, Kent, Washington,
before Administrative Law Judge ANN E. RENDAHL.

Barbara L. Nelson, CCR
Court Reporter

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1 RUBATINO REFUSE REMOVAL, INC.)
)
2 For an Extension of Certificate)
No. G-58 for a Certificate of)
3 Public Convenience and Necessity)
to Operate Motor Vehicles in)
4 Furnishing Solid Waste Collection)
Service.)
5 _____)

6

7 The parties present were as follows:

8 COMMISSION STAFF, by Gregory J.
Trautman, Assistant Attorney General, 1400 S.
9 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
Washington, 98504-1028.

10

11 KLEEN ENVIRONMENTAL TECHNOLOGIES, INC.,
by Greg Haffner, Attorney at Law, 555 W. Smith, Kent,
Washington, 98035.

12

13 STERICYCLE OF WASHINGTON, INC., by
Stephen B. Johnson, Attorney at Law, Garvey Schubert
Barer, 1191 Second Avenue, 18th Floor, Seattle,
14 Washington 98101.

15 RUBATINO REFUSE REMOVAL, INC., HAROLD
LEMAY ENTERPRISES, INC., WASHINGTON REFUSE AND
16 RECYCLING ASSOCIATION, by James Sells, Attorney at
Law, 9657 Levin Road, N.W., Silverdale, Washington
17 98383.

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1 JUDGE RENDAHL: All right. Let's be on the
2 record. Good morning. We're here before the
3 Washington Utilities and Transportation Commission
4 for the third day of hearing in the application of
5 Kleen Environmental Technologies, Incorporated, for a
6 solid waste certificate to collect, transport and
7 dispose of biomedical waste.

8 For those of you who haven't been here
9 before, my name's Ann Rendahl, I'm the Administrative
10 Law Judge in this proceeding. While we were off the
11 record this morning, we -- Mr. Johnson provided a
12 copy of what I have now marked as Exhibit 145, which
13 are the supplemental responses of Harold LeMay
14 Enterprises, Incorporated, to the first data requests
15 of Stericycle of Washington. My understanding is
16 that there's a stipulation for admission; is that
17 correct?

18 MR. JOHNSON: Yes, Your Honor.

19 JUDGE RENDAHL: All right. So exhibit --
20 what's been marked as Exhibit 145 will be admitted.
21 Mr. Johnson, was there something you wished to state
22 on the record concerning Exhibit 145?

23 MR. JOHNSON: Yes, Your Honor. On page four
24 of the exhibit, there's some data that was provided
25 by Harold LeMay Enterprises, Inc. in response to

0572

1 Stericycle's first data requests. You'll see, under
2 documents for Data Request Number 24, there is a
3 couple of tables or lists, a number of large quantity
4 generators, as defined, and a number of small
5 quantity generators, as defined.

6 You will recall that, in the testimony of
7 Larry Meany yesterday for LeMay, there was reference
8 to LeMay having submitted in some document numbers of
9 large and small quantity generators it serves, it has
10 served. This is that data.

11 I would like you to note for the record that
12 the data request that Stericycle submitted defined
13 large quantity generator in different terms than we
14 have previously discussed it in this hearing, and the
15 breakpoint for the data request was \$500 per month or
16 more would be a large quantity generator, and
17 anything below that would be a small quantity
18 generator.

19 So to compare data for large and small
20 quantity generators, you need to take that into
21 account when evaluating the information on page four
22 of Exhibit 145.

23 JUDGE RENDAHL: Okay. Thank you very much.
24 Does anyone wish to add anything to that explanation?
25 All right. I think our next order of business is to

0573

1 hear from Mr. Graves. Now, Mr. Haffner, I understand
2 Mr. Graves is adopting the testimony of Mr.
3 Vanderwal?

4 MR. HAFFNER: He is. We have prepared a
5 separate pre-filed testimony of Mr. Graves, but it
6 has the same content in it as that of Mr. Vanderwal,
7 other than the personal biography of Mr. Graves, and
8 I will offer that as an exhibit. I don't know if we
9 want to substitute it for 55-T or use it as a new
10 exhibit for 58.

11 MR. JOHNSON: Mr. Haffner -- excuse me, Your
12 Honor, may I ask a question?

13 JUDGE RENDAHL: Yes.

14 MR. JOHNSON: Mr. Haffner, do you have a
15 red-lined text that shows changes?

16 MR. HAFFNER: I don't have a red-lined text,
17 no. It's a very short document. It's only three
18 pages long.

19 JUDGE RENDAHL: All right. Let's be off the
20 record for a moment.

21 (Discussion off the record.)

22 JUDGE RENDAHL: All right. Let's be on the
23 record. While we were off the record, we marked or
24 substituted what's been marked as Exhibit 55-T, which
25 was the testimony of Richard Vanderwal, with the

0574

1 testimony provided this morning, the pre-filed
2 testimony of Mr. Allen Graves, and so I'll just make
3 that substitution. The attachments are marked as
4 Exhibit 56 and 57, and those didn't change. So I
5 think we're ready to take Mr. Graves, unless there's
6 anything further.

7 MR. HAFFNER: No, Your Honor.

8 JUDGE RENDAHL: All right. Mr. Graves,
9 could you step forward, please? Could you state your
10 full name for the record and your business address?

11 MR. GRAVES: Allen Arthur Andrews Graves,
12 and it's 662 Norris Court, Kingston, Ontario.

13 JUDGE RENDAHL: Thank you. Could you raise
14 your right hand, please?

15 Whereupon,

16 ALLEN ARTHUR ANDREWS GRAVES,
17 having been first duly sworn, was called as a witness
18 herein and was examined and testified as follows:

19 JUDGE RENDAHL: Okay. So two things before
20 you all go ahead. If you can wait till your attorney
21 or another attorney has finished their question
22 before you start, it's a little nerve-wracking to be
23 in one of these proceedings, so you just kind of want
24 to get your answer out, but if you can just make a
25 mental note to pause, then it will be easier for the

0575

1 court reporter.

2 And secondly, since we're dealing with
3 medical waste terminology and we have a new court
4 reporter here this morning, if there are any terms or
5 acronyms, if you can spell them, that might not be
6 normally used in conversation that we might need to
7 know, and that will be helpful. I've given some of
8 the terms to the court reporter, but if you can just
9 be aware of that, that would be helpful.

10 THE WITNESS: Okay.

11 JUDGE RENDAHL: Okay. Please go ahead, Mr.
12 Haffner.

13 MR. HAFFNER: Thank you, Your Honor.

14

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

16 BY MR. HAFFNER:

17 Q. Mr. Graves, can you take a look at the
18 document marked for this hearing as Exhibit 55? It's
19 that loose document that's in your hand. Can you
20 tell us if you recall seeing that document before?

21 A. Yes.

22 Q. Is that your signature on page three?

23 A. Yes.

24 Q. Is everything in that document true and
25 accurate as of the date it was signed?

0576

1 A. Yes.

2 Q. You reference two exhibits in that document.
3 If you could take a look at Exhibits 56 and 57 in
4 your book and tell us if you're familiar with those
5 documents?

6 A. Yes.

7 Q. What do those documents portray?

8 A. They go through the operation of the
9 hydroclave and how it achieves the sterilization. It
10 also shows, I believe, the capacities.

11 Q. And based on your testimony, you work for
12 the hydroclave -- the company that makes the
13 hydroclave?

14 A. Yes.

15 Q. So you have experience with the hydroclave
16 process and its system?

17 A. Yes.

18 MR. HAFFNER: Okay. Those are all the
19 questions I have for the witness, and offer the
20 exhibits at this time.

21 JUDGE RENDAHL: Okay. Mr. Johnson, any
22 objection to the exhibits, or do you wish to wait
23 until you've cross-examined the witness to --

24 MR. JOHNSON: I have no objection to the
25 exhibits.

0577

1 JUDGE RENDAHL: All right. Any objection to
2 the exhibits?

3 MR. SELLS: No, Your Honor.

4 MR. TRAUTMAN: No.

5 JUDGE RENDAHL: Then what's been marked as
6 Exhibits 55-T, 56, and 57 will be admitted into the
7 record. Please go ahead, Mr. Johnson.

8

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

10 BY MR. JOHNSON:

11 Q. Hello, Mr. Graves.

12 A. How are you?

13 Q. My name is Steve Johnson. I am an attorney
14 here representing Stericycle of Washington. I'm
15 going to ask you a few questions, hopefully very few,
16 and if you are unclear about any part of my question,
17 please ask for clarification. If my question is
18 confusing, please ask me to restate, and I'll do my
19 best to make it clear for you. And you should answer
20 audibly to these questions so the court reporter will
21 have something to take down.

22 A. Okay.

23 Q. Thank you. Mr. Graves, on page one of your
24 written testimony, which is Exhibit 55-T, there is a
25 statement about the types of biomedical waste handled

0578

1 at the Port Coquitlam facility. Do you see that at
2 line 14?

3 A. Yes.

4 Q. And then it goes down to line 18 or so?

5 A. Yes.

6 Q. Is it the case that each of these categories
7 of medical waste is required to be segregated to be
8 processed or to be handled, I should say, by the Port
9 Coquitlam facility operated by Hospital Sterilization
10 Services?

11 A. Yes, Vancouver -- or yeah, Vancouver has --
12 you have to separate the sharps, yes. Not in
13 Ontario, but Vancouver, yes.

14 Q. Right, but we're talking about Port
15 Coquitlam.

16 A. Yeah.

17 Q. Is that what you're referring to as --

18 A. Sorry.

19 Q. Is that what you're referring to as
20 Vancouver?

21 A. Yes. Yeah, sorry.

22 Q. Thank you. So sharps waste needs to be
23 segregated. How about pathological waste?

24 A. The hydroclave doesn't do pathological
25 waste, so they have to separate it, yes.

0579

1 Q. How about cytotoxic waste?

2 A. No, hydroclave doesn't do it, either.

3 Q. So that would also have to be segregated?

4 A. Mm-hmm.

5 Q. So a generator that had each of these types
6 of waste would have to package its waste in four
7 different containers; is that right?

8 A. Yes, I would think so, yes.

9 Q. Do you know whether the hydroclave operated
10 by Hospital Sterilization Services in British
11 Columbia has contractual commitments with Canadian
12 haulers or waste generators to process their waste?

13 A. I don't.

14 Q. So you don't know the unused capacity of
15 that facility?

16 A. No, I don't.

17 Q. You're not actually involved in the
18 operation of the hydroclave, are you?

19 A. No, no.

20 Q. So in your testimony, where you say we
21 handle the following types of biomedical waste,
22 that's perhaps not quite accurate?

23 A. Yeah, that's what the we refers to, the HSS.

24 Q. The Hospital Sterilization Services?

25 A. Yeah.

0580

1 Q. They handle that kind of --

2 A. Yes.

3 Q. So it's not your company?

4 A. No.

5 Q. Mr. Graves, do you know what regulatory
6 requirements the Canadian government or the Province
7 of British Columbia would impose on a medical waste
8 hauler taking U.S. origin biomedical waste into
9 British Columbia?

10 A. No.

11 Q. Mr. Graves, are there hydroclaves operating
12 in the United States?

13 A. No, not at the moment. We are installing a
14 system in Maine, but no.

15 Q. Do you know anything about the prices
16 charged by the Hospital Sterilization Services
17 hydroclave for processing at that facility?

18 A. I don't -- I think I may have heard it one
19 time, but I'm not sure.

20 Q. Okay. So in your testimony, when you refer
21 to low processing cost, for example, on page three,
22 roughly line three --

23 A. Mm-hmm.

24 Q. -- of your written testimony --

25 A. Yeah.

0581

1 Q. -- you're referring to sort of a generalized
2 --

3 A. Our technology.

4 Q. I see, yeah, a generalized statement about
5 the technology and the cost to the processor itself;
6 not to the generator, necessarily?

7 A. Yeah.

8 Q. Or excuse me.

9 A. Yes.

10 Q. So it's the cost to the processor you're
11 referring to?

12 A. Yes.

13 Q. Looking at the top of page three, where you
14 talk about guaranteed sterility, when you say
15 guaranteed, what do you mean?

16 A. Well, we have -- well, we have spore samples
17 that are put in on a regular basis, depending on
18 where it's operating.

19 Q. That's true of other --

20 A. Yes. Sorry.

21 Q. Excuse me. That's true of other
22 technologies. They use the same type of testing, do
23 they not?

24 A. Yes.

25 Q. So your guarantee is no different from any

0582

1 other processing technology's guarantee with respect
2 to what it can achieve in the way of sterility; is
3 that right?

4 A. Yeah. Well, the difference being that we do
5 -- besides the random spore testing, we do have a
6 continual chart that makes sure that we meet the
7 parameters in order to achieve those sterility
8 levels.

9 Q. So you do an ongoing testing process as part
10 of your technology?

11 A. Yeah, it's a recording process that proves
12 that you have been at the minimum parameters for the
13 process in order to reach the 6 log sterility, yes.

14 Q. Is that different for what other
15 technologies or other processes use to evidence
16 efficacy of their processes?

17 A. I think they probably all have to have some
18 kind of a hard copy or available hard copy, yes.

19 Q. Mr. Graves, are you familiar with the tub
20 washing facility there in the Hospital Sterilization
21 Services' hydroclave?

22 A. Yes.

23 Q. Are you aware of any limitations on the size
24 of containers that can be handled there?

25 A. It was designed for the containers that HSS

0583

1 uses. You could go smaller, but not too much larger.

2 Q. What size is that?

3 A. It's a Rubbermaid product. I forget what
4 the size is, whether it's -- I think it's 20 -- I
5 think it's 30 liters or 30 gallons or something like
6 that.

7 Q. Perhaps 28 gallons?

8 A. Yeah, I'm not -- it's just -- I should know,
9 but I don't, because of --

10 Q. So it can't wash tubs that are larger than
11 that; is that right?

12 A. Yeah, no, it's pretty well designed to
13 handle those.

14 MR. HAFFNER: Mr. Graves, if you could speak
15 up a little at the end of your answers.

16 THE WITNESS: Oh, okay.

17 MR. HAFFNER: Thank you.

18 MR. JOHNSON: I have no further questions.

19 JUDGE RENDAHL: Mr. Sells.

20 MR. SELLS: Thank you, Your Honor.

21

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

23 BY MR. SELLS:

24 Q. Mr. Graves, my name's Jim Sells. I
25 represent several small garbage haulers here in this

0584

1 state. I'm a bit confused. Is it my understanding
2 that the hydroclave will only treat the regulated
3 medical waste category of your four categories here?

4 A. No, it will treat the regulated medical
5 waste and the sharps.

6 Q. Ah, okay. The other two, the pathological
7 waste and the cytotoxic waste, is treated in some
8 different fashion up there?

9 A. Yes.

10 Q. All right. What's one of these things cost,
11 the hydroclave?

12 A. The H-100, I believe the H-100 is probably
13 around a hundred -- I'm not really sure. About
14 110,000 U.S., I guess, 120,000 U.S. I'm not really
15 sure. I'm not in sales, but I do know some of the
16 prices.

17 Q. And my understanding of your testimony is
18 there are none of these operational in the U.S. at
19 this point?

20 A. Correct.

21 Q. And the only one that's going in is on the
22 East Coast?

23 A. Yes.

24 MR. SELLS: All right. Thank you. I have
25 nothing further.

0585

1 JUDGE RENDAHL: Mr. Trautman.

2 MR. TRAUTMAN: No questions. Thank you.

3

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

5 BY JUDGE RENDAHL:

6 Q. I just have one question, and that has to do
7 with following up on Mr. Sells' line of questioning.

8 The HSS facility, does that also have an incinerator?

9 A. No.

10 Q. So do you know how the pathological waste
11 and cytotoxic waste are treated?

12 A. I believe they have a contract with another
13 company, but I'd have to -- that's not in my line. I
14 really don't.

15 JUDGE RENDAHL: Okay. Then I don't have
16 anything further. Mr. Haffner, do you have any
17 redirect?

18 MR. HAFFNER: I have one question on
19 redirect and three questions of rebuttal in response
20 to Mr. Shiner's pre-filed testimony. Given the fact
21 that Mr. Graves is from out of town and going back,
22 may I ask those three questions?

23 JUDGE RENDAHL: Let's go ahead.

24 MR. HAFFNER: Thank you.

25

0586

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

2 BY MR. HAFFNER:

3 Q. First, on the redirect, Mr. Graves, how many
4 hydroclave units has your company installed in
5 Canada?

6 A. Six.

7 Q. And throughout the world?

8 A. Oh, gosh. Count them all in my head. I
9 think around 17, just -- I haven't really counted
10 them all, but --

11 Q. That's okay. With respect to some rebuttal
12 questions, there was a statement by -- I believe it
13 was a Mr. Shiner, in some pre-filed testimony that
14 has not been admitted yet, that the hydroclave
15 systems has problems with the internal mixing arms
16 jamming. Can you address that claim?

17 A. The arms don't jam. On our original unit or
18 test units, we did have some problems, we had to
19 change the arms. The arms sometimes get tangled with
20 rags or surgical tubing, which have to be removed at
21 the end of the cycle, but it doesn't affect the
22 cycle, doesn't affect the sterilization.

23 Q. When you say the end of the cycle, are you
24 saying, then, that the process can continue and the
25 sterilization can occur before you have to go in and

0587

1 take that product off the arms?

2 A. Yes.

3 Q. Can you describe the amount of reduction in
4 the waste that occurs during the process of using the
5 hydroclave system?

6 A. We generally get around 75 percent in the
7 weight reduction, and 60 to 75 percent in the volume
8 reduction.

9 Q. How is the air from the hydroclave system
10 vented?

11 A. Oh, at the end of the cycle, the steam is
12 vented through the top of the machine, goes through a
13 strainer, it then goes to a condenser, which could be
14 either water or air, where the waste is cooled to a
15 temperature that's allowed by whatever temperature
16 that the municipality requires. The noncombustible
17 gases that remain are vented to atmosphere, that come
18 off, that can't go down the drain.

19 Q. Do those vented gases have any odor issues
20 with them?

21 A. There's an odor with them, but they're not
22 -- as a rule, we haven't had any problems with the
23 odors in the other plants we have, but there is an
24 odor.

25 MR. HAFFNER: Okay. Those are all the

0588

1 questions I have, Your Honor.

2 JUDGE RENDAHL: And Mr. Johnson, do you have
3 any cross based on the rebuttal, or how would you
4 wish to address the rebuttal? We had discussed
5 yesterday the option of bringing Mr. Shiner in next
6 week if you felt the need to bring him in.

7 MR. JOHNSON: Right, Your Honor. I don't
8 think we'll need Mr. Shiner. I might have a
9 question, if I could gather my thoughts here.

10 JUDGE RENDAHL: All right. Let's be off the
11 record for a moment.

12 (Discussion off the record.)

13 JUDGE RENDAHL: Let's be on the record.

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. Graves, just a question about the
18 jamming issue. I don't know -- I didn't quite
19 understand your answer on that. I thought you said,
20 maybe at an earlier point, with an earlier test
21 model, you did have jamming problems, and then you've
22 solved the problem; is that right?

23 A. Yes, sir.

24 Q. And I'm wondering about the extent of the
25 reduction in weight --

0589

1 A. Mm-hmm.

2 Q. -- achieved with a hydroclave process. Are
3 you saying that if you put 1,000 pounds of biomedical
4 waste into the hydroclave, you're going to get 250
5 pounds out?

6 A. Depending on the amount of liquid content.

7 Q. Right. Pardon me. It depends on the amount
8 of liquid content?

9 A. Mm-hmm.

10 Q. But I'm talking about sort of in general or
11 on average, what do you get in terms of a reduction
12 by weight?

13 A. Well, we get about that because most medical
14 waste that we process is fairly -- has a lot of
15 liquid in it. Blood pails and things like that have
16 a lot of liquid in them, so they do -- we do get rid
17 of all or most of the liquid in it, yeah.

18 Q. So it would depend on the amount of liquid
19 in the waste, and then the average that you would
20 achieve would depend on the source of the material;
21 is that right?

22 A. Yes.

23 Q. So perhaps -- I don't know whether you know
24 whether the general medical waste stream coming out
25 of Washington biomedical waste system would be

0590

1 similar or different to what you're familiar with in
2 Canada. Do you know?

3 A. No.

4 MR. JOHNSON: Your Honor, I have no further
5 questions. I would ask that the testimony of Mr.
6 Shiner be admitted. I had understood that that was
7 our understanding when we deferred his presentation
8 yesterday.

9 JUDGE RENDAHL: All right. Is there any
10 objection to admitting the testimony of Mr. Shiner,
11 which is currently marked as Exhibits 110-T and 111?

12 MR. HAFFNER: No, Your Honor.

13 MR. SELLS: No, Your Honor.

14 MR. TRAUTMAN: No.

15 JUDGE RENDAHL: All right. Exhibits 110-T
16 and 111 will be admitted. Mr. Sells, do you have any
17 additional cross for the witness?

18 MR. SELLS: I do not, Your Honor.

19 JUDGE RENDAHL: Mr. Trautman.

20 MR. TRAUTMAN: No.

21 JUDGE RENDAHL: All right. And I don't have
22 anything further. So Mr. Haffner, are we finished?

23 MR. HAFFNER: I have nothing further of the
24 witness, Your Honor.

25 JUDGE RENDAHL: Well, thank you very much

0591

1 for coming in such a short time, Mr. Graves. I think
2 it is useful for you to be here, and I appreciate you
3 coming in on such short notice from Canada.

4 THE WITNESS: Thank you.

5 JUDGE RENDAHL: So you may step down and
6 you're excused. We'll be off the record while we
7 change witnesses.

8 (Recess taken.)

9 JUDGE RENDAHL: Let's be back on the record.
10 We took an extended break. We did discuss some
11 things off the record. In particular, Mr. Haffner
12 distributed two exhibits that I have marked as
13 Exhibits 50 and 51. Exhibit 50 is titled Kleen
14 Environmental Technologies, Incorporated, Biohazard
15 Waste Disposal Division Pro Forma Balance Sheet
16 Analysis for Combined Regions One Through Four. And
17 my understanding, Mr. Haffner, is that this exhibit
18 is essentially a modification of Exhibits 44 and 49;
19 is that correct?

20 MR. HAFFNER: Exhibit 50 is a revision of
21 Exhibit 49, and Exhibit 51 is a revision of the
22 combined pro formas of Exhibit 44.

23 JUDGE RENDAHL: Okay. And what I have
24 marked as Exhibit 51 is titled Kleen Environmental
25 Technologies, Inc. Biohazard Waste Disposal Division

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1 Pro Forma Profit and Loss Analysis, Combined Regions
2 One through Four, Revised Three Audit, Dated
3 9/23/2004.

4 What we will be doing is bringing Mr. Lee
5 up. Mr. Haffner, you may ask a few preliminary
6 questions of Mr. Lee about these two exhibits. We'll
7 reserve discussion about admission of what's been
8 marked as Exhibits 49, 50 and 51 until we conclude at
9 least with Mr. Lee's testimony today, and possibly
10 the rebuttal testimony next week.

11 We had some discussion off the record about
12 shipper/generator witnesses. The parties should be
13 providing to me and distributing to other parties
14 their -- the identity of their shipper/generator
15 witnesses and the description of what they intend to
16 testify to today, and I've asked parties to file
17 those with the Commission by tomorrow so that the
18 Commission has an official record of it.

19 Any additional shipper/generator witnesses,
20 due to the changes in the tariff, Kleen's tariff, can
21 be provided up to the start of the hearing next
22 Wednesday. We had some discussion about whether
23 shipper/generator witnesses can be provided, their
24 testimony can be provided through written statements.
25 I've asked counsel to discuss that during the lunch

0593

1 break to see if there's an agreement, and then we'll
2 bring that back after the lunch break.

3 And Mr. Johnson had a final question about
4 timing for filing rebuttal exhibits, and I think I
5 deferred that discussion till either later today or
6 tomorrow, following Mr. Lee's testimony, and possibly
7 Ms. Walker's testimony. So with that, is there
8 anything else preliminarily we need to discuss?

9 MR. HAFFNER: No, Your Honor.

10 JUDGE RENDAHL: Okay. So Mr. Lee, why don't
11 you come forward. If you could state your full name
12 and your business address for the record, please?

13 MS. LEHOLM: Kenneth R. Lee, 754 Garfield,
14 Seattle, Washington, 98109.

15 JUDGE RENDAHL: Thank you. Could you raise
16 your right hand, please?

17 Whereupon,

18 KENNETH R. LEE,
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21 JUDGE RENDAHL: Okay. And you've been here
22 through -- since Monday; is that correct?

23 THE WITNESS: Don't talk over.

24 JUDGE RENDAHL: Don't talk over. That's
25 right.

0594

1 THE WITNESS: I will do my best.

2 JUDGE RENDAHL: And the court reporter is
3 pretty familiar with financial detail from the
4 Commission, but if there's any acronyms or anything
5 that needs to be spelled out, please do so.

6 THE WITNESS: I will.

7 JUDGE RENDAHL: Okay. Please go ahead, Mr.
8 Haffner.

9 MR. HAFFNER: Thank you, Your Honor.
10

11 DIRECT EXAMINATION

12 BY MR. HAFFNER:

13 Q. Mr. Lee, can you look at the document that
14 is identified as Exhibit 40 in the book before you?

15 A. Yes, I see that.

16 Q. And are you familiar with that document?

17 A. Yes.

18 Q. Is that your signature on page two?

19 A. It is.

20 Q. Can you also look at the document, marked as
21 Exhibit 41?

22 A. Yes.

23 Q. Are you familiar with those documents?

24 A. I am.

25 Q. Did you assist in the production of those

0595

1 documents?

2 A. I did not.

3 Q. How are you familiar with them?

4 A. I am familiar with them -- I provided the
5 basic information to our auditors.

6 Q. Okay.

7 A. And they prepared the document.

8 Q. Can you look at Exhibit 42? And please tell
9 me if you're familiar with that document?

10 A. I am.

11 Q. Is that your signature on page two?

12 A. It is.

13 Q. Can you please take a look at the document
14 on Exhibit 43?

15 A. Yes.

16 Q. Are you familiar with that document?

17 A. I am.

18 Q. How are you familiar with that document?

19 A. This document was given to me by Mr. Olson,
20 the president of --

21 JUDGE RENDAHL: And that's O-l-s-o-n, Olson?

22 THE WITNESS: Yes.

23 Q. And how did you use that document?

24 A. I used that in developing information that
25 went into our pro formas.

0596

1 Q. All right. Thank you.

2 MR. JOHNSON: I'm sorry, were you referring
3 to Exhibit 43?

4 MR. HAFFNER: Yes.

5 Q. Can you look at the document marked as
6 Exhibit 44. And there's a series of documents there.
7 Can you tell me or tell us if you're familiar with
8 those documents?

9 A. I am. I prepared them all.

10 Q. And then let's skip to Exhibit 49. And can
11 you tell me if you're familiar with that document?

12 A. I am.

13 Q. Did you prepare that document?

14 A. I did.

15 Q. Does that document go together with the
16 documents in Exhibit 44?

17 A. It does.

18 Q. If I can have you look at Exhibit 50. Are
19 you familiar with that document?

20 A. I am.

21 Q. Did you prepare it?

22 A. I did.

23 Q. Is that a revision of the documents -- in
24 some of the documents on Exhibit 49?

25 A. It is.

0597

1 Q. And can you look at Exhibit 51?

2 A. Yes.

3 Q. And are you familiar with that document?

4 A. I am.

5 Q. And did you prepare that document?

6 A. I did.

7 Q. Is that a revision of the summary documents
8 that are reflected in Exhibit 44?

9 A. It is.

10 Q. Then, if you can look at Exhibit 45. Is
11 that a document that you are familiar with?
12 Actually, I guess we've already admitted 45, haven't
13 we?

14 JUDGE RENDAHL: We have.

15 MR. HAFFNER: Okay. Never mind about 45.
16 Those are all the initial questions I have of the
17 witness, and I would offer those as Exhibits 40-T,
18 41, 42, 43, 44, 49, 50, and 51.

19 JUDGE RENDAHL: I have a question about 46.
20 That hadn't been admitted yet, I don't believe,
21 unless I wrote things down incorrectly. Did you
22 intend to ask Mr. Lee about that document and intend
23 to offer it?

24 MR. HAFFNER: I believe that 46, 47, 48 and
25 49 are all documents that Mr. Johnson wishes to use

0598

1 on cross-examination.

2 MR. JOHNSON: Your Honor, that's true, with
3 the exception of 49, which I believe, Mr. Haffner, is
4 one of yours.

5 MR. HAFFNER: I'm sorry. Right, 46, 47 and
6 48 are cross-examination exhibits.

7 JUDGE RENDAHL: Oh, excuse me. So your
8 intent is to offer 40, 41 has already been admitted,
9 42 through 44, and you've offered 49 through 51, as
10 well.

11 MR. HAFFNER: Yes, Your Honor.

12 JUDGE RENDAHL: Okay. Mr. Johnson.

13 MR. JOHNSON: Well, Your Honor, I would like
14 to request that we defer admission or decision on
15 admission of these documents until I've had a chance
16 to cross-examine Mr. Lee.

17 JUDGE RENDAHL: All right. Mr. Sells.

18 MR. SELLS: Same, Your Honor.

19 JUDGE RENDAHL: Okay. Well, at this point
20 the offer to admit them is made, and we'll defer
21 ruling until after cross-examination. So is there
22 anything further, Mr. Haffner?

23 MR. HAFFNER: No, Your Honor.

24 JUDGE RENDAHL: All right. Please go ahead,
25 Mr. Johnson.

0599

1 MR. JOHNSON: Thank you, Your Honor.

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

3 BY MR. JOHNSON:

4 Q. Mr. Lee, my name is Steve Johnson. I'm an
5 attorney. I represent Stericycle of Washington in
6 these proceedings. I'm going to ask you a series of
7 questions, and I would like you to answer as
8 completely and fully as you can. If any of my
9 questions are unclear or cause any confusion, which
10 I'm sure will happen sometime during this process,
11 please ask me to restate or clarify my question. Is
12 that understood?

13 A. Yes.

14 Q. Thank you. Mr. Lee, would you please tell
15 us what your present position is with Kleen
16 Environmental?

17 A. I'm the CFO, chief financial officer.

18 Q. And are you not also a shareholder?

19 A. I am.

20 Q. And what is your percentage interest in the
21 company?

22 A. Approximately 29 percent.

23 Q. And Mr. Lee, I think we've had earlier
24 testimony that you are not full-time employed with
25 Kleen; is that right?

0600

1 A. That's right.

2 Q. Approximately what percentage of your
3 employment is with Kleen?

4 A. Approximately 25 percent.

5 Q. And how are you compensated by Kleen?

6 A. On an hourly basis.

7 Q. And what is the hourly rate?

8 A. Twenty dollars an hour.

9 Q. Is this based on time actually spent
10 performing services, or is that sort of a -- for
11 example, if 25 percent is 10 hours a week with a
12 standard 40-hour week, that your compensation would
13 be \$200 a week. Is it done on a pro forma basis or
14 is it done on an actual time spent basis?

15 A. An estimated actual time spent.

16 Q. What has been your --

17 A. I don't -- sorry.

18 Q. Go ahead, sir.

19 A. I don't count my hours every week that I
20 spend. I've done tests of how much time I do spend,
21 and that's the basis.

22 Q. Okay. So what is your annual compensation
23 from Kleen?

24 A. Approximately \$10,000.

25 Q. And has it been about that amount for the

0601

1 last several years, or has it fluctuated?

2 A. It fluctuates with the bonuses.

3 Q. So does that \$10,000 per year include
4 bonuses?

5 A. Average, yes.

6 Q. So what have been the amounts of your
7 bonuses the last few years?

8 A. Last year, we issued a bonus of
9 approximately \$10,000 apiece. Prior years, it could
10 have been as much as 20 to 25.

11 Q. So when you say 10,000 apiece, did you
12 receive 25 percent of 10,000, or did you receive
13 10,000 as a bonus?

14 A. I received 10,000.

15 Q. So that would have been on top of your other
16 compensation, would it not?

17 A. You're correct.

18 Q. So perhaps in 2003, your total compensation
19 would have been about 20,000?

20 A. That's correct.

21 Q. 2003 was not a particularly good year,
22 because bonuses were reduced; is that right?

23 A. It was a lower year. We base our bonuses on
24 profitability and available cash.

25 Q. And Mr. Perrollaz yesterday indicated that

0602

1 he didn't expect a bonus for the year ending in a few
2 days, maybe tomorrow. Is that your anticipation, as
3 well?

4 A. That is my anticipation.

5 Q. So year ending September 30, 2004, has not
6 been a particularly good year, either?

7 A. Well, the reason it's not been good is
8 because we've expended all the expenses for this
9 project. We didn't capitalize any of those expenses.
10 Legal fees, outside labor fees, that kind of thing.

11 Q. Do you anticipate your gross revenues in the
12 existing Kleen business being substantially the same
13 as in prior years or different for the 2004 fiscal
14 year?

15 A. It's hard to determine that, because a good
16 part of our business is project-oriented.

17 Q. But we're pretty close to the end of the
18 year.

19 A. Oh, you're thinking of the end that ends
20 tomorrow?

21 Q. That's right.

22 A. It will be within range of prior years. It
23 varies between 750 and 950,000.

24 Q. And so you would expect the revenues for
25 fiscal year ending September 30, 2004, to be within

0603

1 that range?

2 A. Yes.

3 Q. Do you know where they'll be within that
4 range?

5 A. At the lower end.

6 Q. Okay. Mr. Lee, could you tell us a little
7 bit -- you've described your position as being chief
8 financial officer for Kleen. What duties does that
9 entail in the current business?

10 A. Cash management, financial statement
11 preparation, accounts receivable management, accounts
12 payable management.

13 Q. And would you anticipate those functions
14 continuing with respect to the proposed biomedical
15 waste collection service?

16 A. I do.

17 Q. So you would be performing functions -- the
18 function that you've just described in relation to
19 the new biomedical waste collection business in
20 addition to the preexisting business?

21 A. I expect to.

22 Q. Mr. Lee, do you anticipate your -- the
23 amount of time spent on Kleen business increasing as
24 a result of the new biomedical waste collection
25 business if the application is granted?

0604

1 A. I think it will go up slightly.

2 Q. You're aware of the financial reporting
3 requirements of the Washington Utilities and
4 Transportation Commission with respect to solid waste
5 collection companies?

6 A. I've seen the form, yes, sir.

7 Q. And you're aware that the Commission
8 requires the accounts of a solid waste collection
9 company to be kept in accordance with certain rules
10 and standards?

11 A. As I understand it, yes.

12 Q. Are you familiar with those rules and
13 standards?

14 A. Not in detail.

15 Q. So right at this point, perhaps you don't
16 know entirely what additional duties you may have
17 that would come with a grant of an application to
18 operate as a solid waste collection company; is that
19 right?

20 A. That's correct.

21 Q. Are you aware that there's an annual
22 financial report required?

23 A. I would expect there to be one, yes.

24 Q. Mr. Lee, what other business are you
25 involved in with the remaining elements of your time?

0605

1 You've mentioned current activities with Kleen
2 involving 25 percent of your time. Do you have other
3 business involvement?

4 A. I do.

5 Q. Could you just give us a little sketch of --

6 A. I own a construction temporary help service,
7 as well as several real estate investment companies.

8 Q. And do I take it that your involvement in
9 those other business ventures takes the remaining 75
10 percent of your time currently?

11 A. That's correct.

12 Q. But I gather you have some flexibility with
13 respect to the amount of time you devote to these
14 different activities?

15 A. I do.

16 Q. Do you own these companies that you're
17 involved with?

18 A. I do.

19 Q. So you will be able to allocate additional
20 time to the Kleen service, as needed, to comply with
21 the Commission's regulations and to meet the other
22 requirements of its business if the application is
23 granted?

24 A. I will be able to.

25 Q. Mr. Lee, would you anticipate doing the

0606

1 financial accounting that may be required to meet the
2 Commission's requirements yourself or would you be
3 employing accountants to assist you with that?

4 A. At this present time, I don't know.

5 Q. So there's no plan at this present time?

6 A. Well, my initial plan is I will do it. If I
7 need additional help, I will get it. I do have my
8 son, who works for me, and I'm training him to become
9 my replacement at my other businesses so that I will
10 have more time to spend, if necessary.

11 Q. And is it your intent to spend whatever time
12 is necessary in the Kleen business?

13 A. It is.

14 Q. Are you an accountant, Mr. Lee?

15 A. Am I an accountant?

16 Q. Yeah.

17 A. I do not have any certification as an
18 accountant.

19 Q. Perhaps you could give us your educational
20 background, just briefly?

21 A. Certainly. I have a B.A. in economics from
22 Rutgers University, and I have an M.B.A. in finance
23 and marketing from Columbia University.

24 Q. Am I correct that your prior work experience
25 has not involved any activities for regulated

0607

1 transportation companies, and by that I mean
2 companies regulated by the Utilities and
3 Transportation Commission?

4 A. That's correct. I have not.

5 Q. Mr. Lee, what other personnel do you
6 anticipate will be involved in the performance of the
7 services proposed in Kleen's application?

8 JUDGE RENDAHL: Can you hold that for just a
9 second? We're fine, go ahead. Back on the record.
10 Do you remember the question?

11 THE WITNESS: Please restate it.

12 JUDGE RENDAHL: Sorry to interrupt.

13 Q. Other than yourself, what other personnel
14 would be involved in delivering the services proposed
15 in Kleen's application?

16 A. You mean within my purview?

17 Q. No, just in general.

18 A. Oh.

19 Q. All personnel that would be involved in the
20 proposed biomedical waste collection service?

21 A. Well, as I understand it -- I am not the
22 operations side of the business, but as I understand
23 it, we'll have a director or general manager of
24 operations.

25 Q. That would be Mr. Olson?

0608

1 A. No, that would probably be Mr. McCloskey if
2 -- you know, nothing has been defined yet with regard
3 to his work within the division, but I expect we
4 would have someone -- if not him, someone like him.

5 Q. In a general manager position?

6 A. A general manager position for that
7 division.

8 Q. How about Mr. Olson? Would he be involved,
9 as well?

10 A. Oh, yes. Mr. Olson is involved in
11 everything. We are a small business.

12 Q. Understood.

13 A. We all wear many hats.

14 Q. And additional folks. Mr. Perrollaz?

15 A. He'll have involvement.

16 Q. And other employees?

17 A. Probably not of the existing employees.

18 Q. Would there be new -- excuse me. Were you
19 finishing your answer?

20 A. Yes. No, I had not finished.

21 Q. Please proceed.

22 A. We will not be using any -- most likely, any
23 of the existing employees. They are needed in the
24 existing business. We will be hiring one or more
25 drivers/technicians.

0609

1 Q. Okay. So when you say you won't be using
2 your existing employees, you mean the tech level
3 people?

4 A. That's correct.

5 Q. But you've already indicated you'll have
6 somebody in the position -- obviously, Mr. Olson will
7 be involved, Mr. McCloskey or some other general
8 manager, Mr. Perrollaz, and then one or more
9 driver/technicians; right?

10 A. That's correct.

11 Q. How about office personnel?

12 A. I don't know if there will be any office
13 personnel added. That's Mr. Olson's purview.

14 Q. So he hasn't indicated that to you?

15 A. No.

16 Q. Or marketing personnel?

17 A. No.

18 Q. Mr. Lee, I understand that, from Mr. Olson's
19 testimony, that you're looking for a new facility at
20 which to base the proposed biomedical waste
21 collection service?

22 A. We are. Yes, we are. Sorry.

23 Q. But that facility hasn't yet been found; is
24 that right?

25 A. That's correct.

0610

1 Q. Do you know the sort of specifications for
2 the facility that you're looking for, in terms of
3 space?

4 A. In general, I do. I've spoken with Mr.
5 Olson. We're looking for between four and 5,000
6 square feet, with some potential room for expansion
7 on the facility, of which 2,000 will be --
8 approximately 2,000 will be office, the balance will
9 be warehouse type space, with a fenced-in yard
10 attached to the building.

11 Q. Excuse me. So the fenced yard would be in
12 addition to the four to 5,000 square feet?

13 A. Oh, yes.

14 Q. And how much space? I think Mr. Olson, if
15 I'm -- if I didn't invent this number, said something
16 like 30,000 square feet. Is that consistent with
17 your understanding?

18 A. No.

19 Q. Okay. Please tell me what you understand
20 the --

21 A. I understand that we're looking for a total
22 space of about a half-acre, upon which there is a
23 4,500, 5,000 square foot building.

24 Q. So a half-acre would be about 20,000 square
25 feet; is that right?

0611

1 A. Yes, that's right.

2 Q. So we're talking maybe a 15,000 square foot
3 yard, plus or minus?

4 A. That's correct.

5 Q. And that yard would be a transportation
6 yard, where you would store your vehicles and so
7 forth?

8 A. That's correct.

9 Q. And is it your understanding that, within
10 the warehouse space that you've mentioned, there
11 would be a refrigerated storage facility installed
12 for the storage of biomedical waste?

13 A. That's correct.

14 Q. Mr. Lee, do you know what Kleen's cash on
15 hand is?

16 A. Yesterday or last month?

17 Q. Take yesterday.

18 A. Ninety-five thousand.

19 Q. And is that located in a bank account
20 someplace?

21 A. Yes.

22 Q. Is that retained earnings, essentially, or
23 cash generated by the existing business?

24 A. It's cash generated by the business.

25 Q. Now, I believe the financial statements

0612

1 we've looked at previously suggest that that number,
2 95,000 to 105, or something like that, is a cash
3 balance that you've been carrying for several years?

4 A. Yes.

5 Q. And I take it that, related to the project
6 nature of the business, that the shareholders of the
7 company have deemed that appropriate to hold in the
8 company in order to deal with changes in cash flow?

9 A. No, I've determined that I don't want to get
10 below 50,000, that's my bottom limit, and I just keep
11 the other part in the cash account. And I could put
12 it in a money market, but they don't pay anything, so
13 it doesn't matter.

14 Q. Well, I'm not distinguishing necessarily
15 between money market and cash. In your prior answer,
16 were you distinguishing between cash and cash
17 equivalents?

18 A. No.

19 Q. So the 95,000 is sort of all --

20 A. Cash.

21 Q. -- the readily available cash and cash
22 equivalents; is that right?

23 A. That's correct.

24 Q. So 50,000 is what you think is needed for
25 the existing business to sort of deal with the

0613

1 working capital requirement?

2 A. Yes.

3 Q. So that leaves you with approximately 45,000
4 that could be invested in other activity; is that
5 correct?

6 A. That's as of yesterday. Cash varies every
7 day.

8 Q. Understood.

9 A. And in the past month, it's varied from
10 85,000 to 135,000.

11 Q. Okay. So the amount available would be that
12 increment above 50,000, but also, depending on a
13 certain amount of judgment as to what's coming down
14 the pike in the next month or two, I assume?

15 A. That's a correct assumption.

16 Q. Now, Mr. Lee, could you please refer to
17 what's been marked as Exhibit Number 17, I believe
18 it's already been admitted, as well. And I don't
19 think I'm going astray to identify the document there
20 as Stericycle of Washington's Second Data Request to
21 Kleen. Are you familiar with that document?

22 A. Not in total.

23 Q. Are you --

24 A. I've seen sections of it.

25 Q. Okay. Were you asked to provide input on

0614

1 that?

2 A. I was.

3 Q. Okay. And then, Exhibit Number 18 is
4 Kleen's response to that data request, I believe.

5 Were you involved in preparing those responses?

6 A. No, not this letter, I was not.

7 Q. I'm sorry, sir. I'm not looking at a
8 letter.

9 A. Well, this document.

10 Q. Okay.

11 A. I didn't prepare this document.

12 Q. So you haven't seen it before?

13 A. No.

14 Q. Okay. Sir, if I could ask you to look at
15 the response at the bottom of the page to Data
16 Request Number 5 on Exhibit 18 -- I'm sorry, the
17 bottom of page one, Data Request Number 5. When I
18 asked Mr. Olson whether this statement was an
19 accurate statement, he said it was. Do you have any
20 reason to disagree with that?

21 A. Yes.

22 Q. Okay. I'm going to read the statement so
23 the record is clear what we're talking about here, if
24 I may.

25 A. Okay.

0615

1 Q. The statement on Exhibit 18, page one, under
2 the heading Data Request Number 5, is as follows:
3 Quote, "The shareholders of Kleen have an oral
4 understanding that the funding for the proposed
5 service will come from working capital and cash flow
6 of existing operations of the company as an expansion
7 of the company," unquote. So you disagree with Mr.
8 Olson's perspective on that?

9 A. Yes, only in the sense that we may need more
10 capital than what we would strip out of the -- or use
11 of the existing cash that we have available, but --

12 Q. This statement suggests that the oral
13 understanding is that the new business, the proposed
14 biomedical waste collection business, would be funded
15 from existing cash sources within the company; is
16 that right?

17 A. Mr. Olson -- I can't interpret what Mr.
18 Olson meant. We've had discussions, he and I, about
19 where the funds will come from, and there are three
20 levels of funds that we will supply into the company,
21 into the cash, and those three sources are existing
22 cash, line of credit, and a personal fund supplied by
23 the partners, stockholders.

24 Q. By the partners, you mean the shareholders?

25 A. By the shareholders, yes.

0616

1 Q. Mr. Lee, if I could refer you to Exhibit
2 Number 43, an attachment to your pre-filed testimony,
3 I believe you testified, in response to Mr. Haffner's
4 questions, that you were not the author of this
5 document?

6 A. That's correct.

7 Q. And this is the document that's headed Kleen
8 Environmental Tech, Inc. Biohazardous Waste
9 Capitalization Inventory List. So Mr. Lee, were you
10 involved in attempting to come up with the cost
11 estimates that are shown on this table?

12 A. I was not.

13 Q. So you couldn't answer questions about where
14 these numbers came from or what research was done to
15 come up with them or anything of that kind?

16 A. No.

17 Q. Were you involved in trying to inventory
18 what capital cost items might be required to develop
19 the new business?

20 A. I used these numbers to help as a basis for
21 entering these figures into my pro formas.

22 Q. But you did not -- you're not involved in
23 obtaining these numbers or -- and you can't testify
24 as to whether they're reasonable or anything else
25 about them?

0617

1 A. Some of the line items, I can. The
2 vehicles. I personally have contacted our truck
3 dealer that we use and can verify those prices.

4 Q. But that was subsequent to the preparation
5 of this document; is that right?

6 A. It was approximately at the same time,
7 because when I saw -- not to come up with these
8 numbers, but when I saw what the numbers were, I
9 called my dealership, verified the cost.

10 Q. But you didn't do that with respect to any
11 of the other items on this list?

12 A. That's correct, I did not.

13 Q. Now, Mr. Lee, may I refer you to Exhibit
14 Number 46? And I would like to ask you if you're
15 familiar with that document?

16 A. I am.

17 Q. Could you tell us what it is?

18 A. This is a pro forma profit and loss
19 analysis.

20 Q. And it's -- the heading is Biohazard Waste
21 Disposal Division Pro Forma Profit and Loss Analysis;
22 correct?

23 A. Correct.

24 Q. And did you prepare that document?

25 A. I did, in conjunction with Mr. McCloskey.

0618

1 Q. And am I correct that this document was used
2 to respond to data requests provided to you by
3 Stericycle?

4 A. No, I don't believe it was.

5 Q. Well, what do you think it reflects?

6 A. It reflects our first attempt at looking at
7 the number relationships when we had initially
8 thought we would just do -- operate in the area of
9 the I-5 corridor, from Bellingham to Olympia, what,
10 in essence, is Region One.

11 Q. I see.

12 A. Subsequently came to be called Region One.

13 MR. JOHNSON: So Mr. Haffner, are you willing
14 to stipulate that this is the pro forma information
15 that was provided by Kleen in response to
16 Stericycle's First Data Request?

17 MR. HAFFNER: I don't recall. I think you
18 may be correct, but frankly, I don't recall if that
19 was the document that we submitted. That's easily
20 verified.

21 MR. JOHNSON: Perhaps you could check your
22 records.

23 MR. HAFFNER: Okay.

24 MR. JOHNSON: It's my representation that
25 that's what it is. And I think Mr. Lee has indicated

0619

1 that it's his work product and it relates to an
2 earlier point in time when you thought your service
3 would be limited to the I-5 corridor; is that
4 correct?

5 THE WITNESS: That's correct.

6 Q. And at what point in time was that?

7 A. I don't recall exactly. I can't answer
8 that.

9 Q. Wasn't it during the summer, this past
10 summer?

11 A. Could have been. I don't know.

12 Q. Do you know when the plan changed?

13 A. I don't recall the specific date, no.

14 Q. Roughly, roughly.

15 A. It was probably sometime in the summer.

16 Q. Well, the I-5 corridor isn't just Region
17 One, is it?

18 A. Is that a question?

19 Q. Yes.

20 A. The Region One, the counties are what we
21 subsequently called Region One. There's a list in
22 one of the pre-filed testimonies of what counties are
23 in Region One.

24 Q. Okay. I guess I'm referring to exhibit -- I
25 believe you're referring to Exhibit 25, which is the

0620

1 pre-filed testimony of Mr. McCloskey, and on page
2 five, there's a list of -- or a table showing the
3 different --

4 A. Yes.

5 Q. -- the different counties by region?

6 A. Yes.

7 Q. So am I correct that the original plan was
8 just to provide service in Region One, as shown here
9 on page five of Mr. McCloskey's testimony?

10 A. This document, we didn't identify a specific
11 region at that time. We were talking about a
12 circumference around the Seattle-based area.

13 Q. So by this document, you're referring to
14 Exhibit 46?

15 A. That's correct.

16 Q. So you didn't have any specific set of
17 counties or locations in mind when you prepared
18 Exhibit 46?

19 A. That's correct.

20 Q. But it might be roughly -- a rough
21 approximation to Region One?

22 A. I would expect so.

23 Q. Now, subsequently, I believe, with your
24 pre-filed testimony, you filed what is in our exhibit
25 book as Exhibit 44, so I'll ask you to look at that

0621

1 exhibit with me. Do you have that in front of you?

2 A. I do.

3 Q. Okay. The first page of that exhibit, I
4 believe -- and this is headed at the top, Kleen
5 Environmental Technologies, Inc. Biohazard Waste
6 Disposal Division Pro Forma Profit and Loss Analysis.
7 The first page, in the upper left-hand corner, says
8 Region One; is that right?

9 A. That's correct.

10 Q. And isn't it the case that Exhibit 46 is, in
11 essence, the same as the first page here that's now
12 labeled Region One?

13 A. It is.

14 Q. Mr. Lee, could you show me -- well, let me
15 go on. I guess -- and this profit and loss analysis
16 has Region One, Region Two, Region Three, Region
17 Four, and then, at the end, it has a summary
18 combining all these; right?

19 A. Correct.

20 Q. And so I might look at the combined page as
21 just as a way of being a summary, which we don't have
22 the pages numbered here. Should we number them?

23 JUDGE RENDAHL: Well, they're the last two
24 pages of the exhibit, aren't they?

25 MR. JOHNSON: Right.

0622

1 Q. And Mr. Lee, could you show me where on this
2 exhibit your compensation is in terms of cost that
3 the proposed biomedical waste collection service
4 would incur?

5 A. It isn't specifically. It may be part of
6 administrative hours. I don't recall.
7 Administrative hours is -- basically, I'm Mr. Olson,
8 and perhaps some of Mr. Perrollaz's time.

9 Q. So I guess that's what was going to be my
10 other questions, to ask you where Mr. Olson's time
11 and expense would be, or Mr. Perrollaz's time and
12 expense would be. Is it all under administrative
13 hours down here or administrative expense toward the
14 bottom of this summary page?

15 A. It was our expectation, yes.

16 Q. So you would anticipate that, in
17 combination, the three of you would only put in 35
18 hours a month on proposed biomedical waste collection
19 service?

20 A. Most of my -- of that number is Mr. Olson's.
21 How much time I spend on it, I don't know at this
22 point, so I didn't try to guesstimate or increase
23 that number by any great degree.

24 Q. But presumably it would need to be increased
25 to account for your time?

0623

1 A. Yes.

2 Q. How about Mr. Perrollaz? I believe the
3 operating plan indicates he will be the administrator
4 of the operating plan with substantial
5 responsibilities for the new biomedical waste
6 collection business. If the bulk of this time is Mr.
7 Olson's, where is his time?

8 A. I can't answer that. I don't know how much
9 time he has planned on spending on this project.

10 Q. You did not consult with him about that or

11 --

12 A. I did not.

13 Q. Or others within the company?

14 A. No.

15 Q. Mr. Lee, could you show me where on this
16 summary table you have space cost?

17 A. Space cost.

18 Q. I'm thinking of for the facilities used, the
19 real property used to provide service?

20 A. It's not on this one.

21 Q. Okay. So there --

22 A. I failed -- I'm sorry.

23 Q. Please go ahead.

24 A. I failed to put it in. I forgot about rent.

25 And I did put it in the subsequent one.

0624

1 Q. Okay. Now, by the subsequent one, I think
2 you're referring --

3 A. Exhibit --

4 Q. -- to what we've marked as -- let me see if
5 I can get this straight. Exhibit 51?

6 A. No, that would be Exhibit 50.

7 Q. That's the balance sheet?

8 A. Well, then maybe one of us has it backwards.
9 I don't know which one.

10 MR. JOHNSON: Your Honor, can you help us?

11 JUDGE RENDAHL: I will. I'll clarify. I
12 marked Exhibit 50 as the Pro Forma Balance Sheet
13 Analysis, and 51 as the Pro Forma Profit and Loss
14 Analysis.

15 THE WITNESS: I will fix that.

16 JUDGE RENDAHL: Okay.

17 Q. Okay. So Mr. Lee, I believe we're referring
18 to Exhibit 51?

19 A. I believe you're right, sir.

20 MR. HAFFNER: My mistake.

21 Q. And Mr. Lee, reserving my objections to this
22 exhibit, I'd like to ask you a few questions about
23 it, starting with where is the cost of the facility
24 in this document?

25 A. It's on page two of Exhibit 51, under rent.

0625

1 Q. Okay. Maybe, just for the record, I don't
2 know if the record's clear, but we should just -- let
3 me describe what this document is as it's labeled.
4 It's labeled at the top Kleen Environmental
5 Technologies, Inc. Biohazard Waste Disposal Division
6 Pro Forma Profit and Loss Analysis, and this
7 particular document is a two-page document and it
8 shows, I believe, changes that you would be proposing
9 for the combined Regions One through Four
10 presentation that is found at the last two pages of
11 Exhibit 44; is that right?

12 JUDGE RENDAHL: Mr. Johnson, can you repeat
13 for me the last part of your question?

14 THE WITNESS: That's correct.

15 JUDGE RENDAHL: When you compared it to 44,
16 just so I understand what you're asking?

17 MR. JOHNSON: Well, I'm not sure I was
18 asking a question there, but this Exhibit 51, I
19 believe, is the witness intends or his company
20 intends would substitute, in fact, for the last two
21 pages of Exhibit 44.

22 Q. Is that right, sir?

23 A. That's correct.

24 Q. So it doesn't completely replace Exhibit 44;
25 it just replaces what we might call the summary,

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1 combined section; is that right?

2 A. That's correct.

3 Q. So you have a line item now on this pro
4 forma, which was provided to us during the hearing,
5 for rent; is that right?

6 A. That's correct.

7 Q. And what is that figure?

8 A. The figure is, on a monthly basis, \$650,
9 annual basis, 7,800.

10 Q. Is that what your current lease costs are
11 for the Kleen facility?

12 A. No, we're not going to be using the current
13 facility.

14 Q. Do I read this correctly, where it says rent
15 at 1,000 square feet?

16 A. That's correct.

17 Q. So you're assuming you're going to be basing
18 this operation in a 1,000-square-foot facility --

19 A. No.

20 Q. -- or do I misread?

21 A. That's not correct. If you look at the
22 title of that section, which is the last line on page
23 one, it says marginal indirect expenses. And all of
24 these expenses are marginal, meaning they're the
25 expenses that will be added to our overhead for this

0627

1 division. So \$1,000 -- or 1,000 square feet is what
2 we estimate we will need for just this operation.

3 Q. Mr. Lee, I thought that -- well, let me ask
4 you this. What's your current space at the 754
5 Garfield? What's the square footage?

6 A. It's never been measured, but I guesstimate
7 it about 1,700 to 1,800 feet of office and about
8 1,500 feet of storage.

9 Q. But my understanding from your earlier
10 comments was that the new facility that you're
11 planning to acquire would be substantially larger
12 than that?

13 A. What I told you, it would be 4,500 feet. So
14 if I add the 2,000, the 1,750, and 1,500, that comes
15 up to about, what, 2,780, just under 3,000, and we'll
16 add another 1,000 for the new operation.

17 Q. I see. So that's referring to just the
18 building space?

19 A. Yes.

20 Q. But I believe we established that there
21 would be about 15,000 square feet of vehicle storage,
22 fenced yard, also; right?

23 A. Yes.

24 Q. But is there a rent cost in your revised
25 Exhibit 51 for that additional space?

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1 A. No.

2 Q. Why not?

3 A. The commercial rental brokers I have spoken
4 with have indicated that most renters don't charge
5 extra for a reasonable amount of land space that goes
6 with the building, stand-alone building.

7 Q. But aren't we talking about three times the
8 office space that's in the stand-alone building?

9 A. I'm sorry, I don't --

10 Q. I'm sorry.

11 A. I'm sorry. I don't understand your
12 question.

13 Q. Okay. Well, I thought we were talking about
14 four to 5,000 square feet of office space, office and
15 warehouse space?

16 A. Right.

17 Q. Plus 15,000 square feet of fenced yard
18 space?

19 A. That's correct.

20 Q. So that the amount of yard space is three
21 times, roughly, maybe a little more than three times
22 the square footage of the office space?

23 A. That's correct.

24 Q. But so you didn't think that it was
25 necessary to include a rental increment for that

0629

1 15,000 square feet?

2 A. I did not, based on my conversations with
3 several real estate -- commercial real estate agents.

4 Q. But you don't actually have this facility;
5 right?

6 A. That's correct.

7 Q. So you don't even really know what the costs
8 are going to be, do you?

9 A. No, but I do know what going rates are in
10 the South Sound area, or down in this area.

11 Q. I'm sorry.

12 A. I'll clarify that. In Kent, Renton, Tukwila
13 and south end Seattle, industrial park, they all
14 average about 60 cents for warehouse space and a
15 dollar to a dollar and a quarter for office space,
16 and generally no expense for the surrounding lot,
17 because most commercial buildings, at least the kind
18 we would be renting, are pretty much stand-alone
19 buildings on a lot, and they're not wall-to-wall, as
20 you might expect in the downtown area.

21 Q. So are you referring to fenced yard space
22 that's secure to prevent public access?

23 A. I am.

24 Q. So your testimony with respect to the rental
25 cost is based on conversations with someone else; is

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1 that right?

2 A. That's correct.

3 Q. You don't personally know what the rental
4 costs are?

5 A. Other than talking to people that are doing
6 the renting, no.

7 Q. And you don't have a facility now; right?

8 A. Right.

9 Q. So you don't know for sure what your rental
10 costs are going to be, do you?

11 A. All I can know is in the ranges I just
12 mentioned, around 60 cents a foot for warehouse and a
13 dollar to dollar and a quarter for office.

14 Q. Mr. Olson indicates that you might purchase
15 a building or land. Is that another possibility?

16 A. It's a possibility.

17 Q. You haven't decided whether to rent or to
18 buy?

19 A. That's correct.

20 Q. Mr. Olson indicated that several proposals
21 had been made to acquire a facility that would be
22 suitable for this biomedical waste collection
23 service. Are you aware of that?

24 A. I am not, and that's an incorrect statement
25 of what he said, I think, because at the time we had

0631

1 looked and made offers, the biomedical waste was not
2 in our forecast. We were looking to replace what we
3 have now with our own building.

4 Q. I see. So have you been investigating what
5 it would take to site this new facility that you've
6 described?

7 A. Well, other than talking to brokers,
8 commercial brokers.

9 JUDGE RENDAHL: Mr. Johnson, are you going
10 to move on to a new subject at this point?

11 MR. JOHNSON: Maybe we could take our break,
12 if that's what you're thinking, Your Honor.

13 JUDGE RENDAHL: I'm thinking maybe we'll
14 break for lunch and come back just a little before
15 1:30 and start then. So let's be off the record for
16 a lunch break, and come back at 1:25.

17 (Lunch recess taken.)

18 JUDGE RENDAHL: Let's be back on the record.
19 We're continuing with the cross-examination of Mr.
20 Lee. Go ahead, Mr. Johnson.

21 MR. JOHNSON: Thank you, Your Honor.

22 Q. Mr. Lee, I think we were talking about the
23 rental expense shown on the new Exhibit 51, Profit
24 and Loss Analysis, when we broke. I have a few more
25 questions about that, if you could refer to it.

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1 Mr. Lee, I believe you said that office and
2 warehouse space, at least based on your -- what you
3 had been told by real estate brokers, went for
4 different rates per square foot per month?

5 A. That's correct.

6 Q. Could you give me those again?

7 A. They're varying from 45 cents to 65 cents
8 for warehouse, and a dollar to a dollar and a quarter
9 for office.

10 Q. And however, you've only shown 65 cents a
11 foot here for your rent expense in Exhibit 51. How
12 did you come to that number?

13 A. Because that's the marginal rent expense we
14 were expecting to incur for 1,000 square feet of
15 additional warehouse.

16 Q. Sir, I'm again having a little trouble
17 following. Are you saying that 1,000 square feet
18 would be the total square footage needed for the new
19 medical waste facility that you're looking to
20 acquire?

21 A. That's what our expectation is. Yes, sir.

22 Q. So 1,000 square feet would be the total
23 square footage, according to your Exhibit 51, but
24 what about the 65 cents? How does that work? Is it
25 all warehouse?

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1 A. Warehouse space averages between 45 and 65
2 cents a square foot per month.

3 Q. Understood. So are you assuming this
4 marginal 1,000 square feet is all warehouse space; is
5 that correct?

6 A. Yes, I am.

7 Q. And there would be no office space devoted
8 to the new medical waste collection services?

9 A. Not specifically, no.

10 Q. But some office activities would be
11 involved, would they not?

12 A. Yes.

13 Q. So actually, there should be some allocation
14 of office space?

15 A. Well, I don't find it necessary to do that.

16 Q. So you didn't do that in this Exhibit 51?

17 A. I did not do that.

18 Q. I think you need to wait till I finish my
19 question, so we don't talk over each other.

20 A. I apologize.

21 Q. Now, I believe Mr. Olson testified that the
22 new space that at least he thought Kleen was looking
23 for would involve 2,000 square feet of refrigerated
24 storage. Are you aware of that?

25 A. I don't recall that.

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1 Q. If that was his testimony, all of that 2,000
2 square feet would be associated with the new medical
3 waste collection service, would it not?

4 A. If that were his testimony. I don't recall
5 him saying that, but --

6 Q. Mr. Lee, do you recall him also indicating
7 that Kleen would intend to install shower and
8 dressing facilities in the new space?

9 A. Yes.

10 Q. Is that included within the 1,000 square
11 feet?

12 A. Yes.

13 Q. About how much square footage would you
14 assume would be taken up by that kind of a facility?

15 A. Well, I'm expecting there to be a bathroom
16 in the new facility, several of them in that much
17 square footage, and I'm assuming that we're going to
18 find something or install a shower.

19 Q. And a dressing area for the driver or
20 drivers?

21 A. Mm-hmm, yes.

22 Q. Mr. Lee, there's nothing in the record from
23 any real estate broker or agent with respect to lease
24 costs in the South King County area or anywhere else,
25 is there?

0635

1 A. Not that I know of.

2 Q. You have not provided us with any such
3 information, have you?

4 A. I have not.

5 Q. Mr. Lee, referring to -- I think it's the
6 same on Exhibit 44 and Exhibit 51. There is a line
7 -- well, again, we'll look at the summary pages at
8 the back of Exhibit 44. Under direct cost of sales,
9 there's an item called disposal admin at \$2 per box?

10 A. Correct.

11 Q. I believe Mr. McCloskey testified that that
12 was his compensation. Is that -- is that correct?

13 A. That's my understanding.

14 Q. Why is Mr. McCloskey's compensation
15 described there as a direct cost of sales, rather
16 than as an administrative expense?

17 A. We just elected to put it there, sir.

18 Q. But you haven't got any factor associated
19 with payroll taxes or workers' comp or anything like
20 that --

21 A. No.

22 Q. -- for this salary; is that true?

23 A. Yes, that's true.

24 Q. Why is that?

25 A. The number was all-inclusive of those

0636

1 things.

2 Q. But we can't see that here. There's no
3 breakdown here on either Exhibit 44 or Exhibit 51; is
4 that right?

5 A. That's correct.

6 Q. I believe Mr. McCloskey testified that this
7 was going to be his compensation. If that were true,
8 wouldn't payroll taxes and workers' comp be payable
9 in addition to that amount for his compensation?

10 A. We've had no direct agreement with Mr.
11 McCloskey on his compensation. My understanding is
12 that that direct disposal administration would be his
13 compensation, including payroll taxes.

14 Q. Did you put Mr. McCloskey's compensation
15 under direct cost of sales because he is not going to
16 be an employee of the company?

17 A. No, I did not.

18 Q. You're not sure, though, whether he's going
19 to be an employee or exactly what his status would
20 be?

21 A. Not at this time.

22 Q. Mr. Lee, I'm looking at Exhibit 44 again,
23 and the summary pages, the last two pages of that
24 exhibit, and I'm looking at the unit for disposal.
25 And your assumption there is, I believe, that you're

0637

1 going to pick up 15 containers per customer, per
2 week, four weeks in a month; is that right?

3 A. That's correct.

4 Q. So if I -- so that would be 60 units per
5 customer per month; right?

6 A. Approximately, yes.

7 Q. So if I multiply the number of clients
8 obtained, as shown on Exhibit 44, the last few pages,
9 times 60, in each case I should get, for each month,
10 I should get the number of containers; is that right?

11 A. If -- that's correct, if Excel calculated
12 correctly, and I believe it does most of the time.

13 Q. Now, if you look at Exhibit 44 again, if you
14 look at Region One and you go through the number of
15 containers obtained and the units for disposal, the
16 -- and you multiply the number of clients obtained,
17 sorry, by 60 on each of those months, you don't get
18 the number of units for disposal shown on that second
19 line there, do you?

20 A. Not on every month, and I think there was
21 some rounding problems within that.

22 Q. So that would just be arithmetic error,
23 perhaps?

24 A. Yes.

25 Q. And have you tried to -- I guess you have

0638

1 given us a -- your Exhibit 51 is a summary. You
2 didn't give us the region-by-region basis for Exhibit
3 51, did you?

4 A. No, I did not.

5 Q. So we can't tell whether the
6 region-by-region analysis in Exhibit 44 is still
7 good, can we?

8 A. I did not go back and redo Regions One, Two,
9 Three and Four.

10 Q. Any reason that you did not?

11 A. I didn't see the value of it. The whole
12 purpose of getting Regions One, Two, Three and Four
13 was to try and identify customers, not -- and perhaps
14 some of the vehicle expense. The rest of the things
15 were not really meaningful at that low level.

16 Q. Well, I'm going to ask you to look at Region
17 One, for example, under Exhibit 44. And I could not
18 -- I could not get your numbers for clients obtained
19 times 60 to equal the number of units for disposal.
20 But your point is that that was an arithmetic error
21 that we can overlook or that was somehow corrected in
22 the summary that you've given us in Exhibit 51?

23 A. As I said, there are some arithmetic errors
24 within the calculations that Excel did. If you look
25 at March, that is -- 10 times 60 is 600. If you look

0639

1 at April, 16 times 60, I believe it's 960. If you
2 look at May, 20 times 60 is 1,200. So --

3 Q. But if you look at July --

4 A. I understand that.

5 Q. -- 21 times 60 does not equal 1,261?

6 A. You're absolutely right.

7 Q. And nor does, for August, 22 times 60 equal
8 1,292; or for September, 22 times 60 equals 1,325; or
9 for October, 23 times 60 equals 1,358, and if you'd
10 just take my word for it, perhaps, that none of the
11 rest of the months work out either.

12 A. I'm not disagreeing with you.

13 Q. Now, if you look -- again, I'm on Exhibit
14 44, and for the moment I'm sticking with Region One,
15 just to get the assumptions. It's the top sheet.
16 You assume a sales revenue of \$18.44 per unit. Where
17 did that number come from?

18 A. Mr. McCloskey.

19 Q. And do you know what that number was based
20 on?

21 A. Mr. McCloskey. He gave me that number.

22 Q. Okay. And how about the 15 -- the
23 assumption above that, in the line immediately above
24 that, that says that each client would generate 15
25 containers per week. Where did that come from?

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1 A. Mr. McCloskey.

2 Q. And you have no way of knowing whether
3 that's correct, either?

4 A. No, I do not.

5 Q. Did Mr. McCloskey discuss the basis for that
6 number with you?

7 A. He said that was what he felt, after his
8 discussions with prospective clients that had talked
9 to him about that's what their count was.

10 Q. Are you aware that that's a very large
11 number for most generators in the state of
12 Washington?

13 A. I do not know.

14 Q. How about the \$18.44 per unit? Do you know
15 how that rates in relation to the average cost per
16 unit for containers collected by existing biomedical
17 waste collection companies in Washington?

18 A. I do not know.

19 Q. Now, looking again at Exhibit 44, there is a
20 line called Labor Hours. It looks like one employee,
21 up to 1,000 units. Does that explain the assumption
22 on which the subsequent numbers across the columns
23 are based?

24 A. Yes.

25 Q. And basically, the number there, labor

0641

1 hours, is four times 40, so it's a month's worth of
2 hours; right?

3 A. Yes.

4 Q. And labor wages, then, is on the next line.
5 The next number is \$3,200 all the way across; right?

6 A. Correct.

7 Q. So presumably, with one employee at \$20 an
8 hour, I suspect, working 160 hours in January, would
9 produce a labor cost of \$3,200?

10 A. Correct.

11 Q. And that's the assumption all the way across
12 there, is it not?

13 A. It is.

14 Q. But shouldn't that change after you hit
15 1,000 units? I'm a little unclear here. If you look
16 up in your table, in May, there's 1,200 units picked
17 up, but we still have the same labor wages. And I
18 guess I understood the reference, the labor hours
19 line, the one employee, up to 1,000 units, to mean
20 that after you hit 1,000 units, you would need a
21 second employee; is that right?

22 A. Not totally. As I said before, the
23 regional analysis was mainly to try and identify how
24 many clients we would obtain out of each region. We
25 combined those quantities into the combined, and the

0642

1 combined is what we used for our determination for
2 labor hours. So the regionals are not that valuable.

3 Q. Well, isn't it true that they're not
4 consistent with the assumptions that you made or that
5 you at least stated on the left-hand side of the
6 document? I mean, if you look at Region One, the
7 assumption is one employee, up to 1,000 units, and at
8 least as far as Region One is concerned, you exceed
9 1,000 units in May of the first year, but you don't
10 increase your labor cost; right?

11 A. That's because our staff will be handling
12 all four regions at the same time. I'm not going to
13 have one person devoted to this one region. We will
14 not operate by region; we'll operate over the state
15 as a whole, and that's why I don't think using the
16 labor quantities on a regional basis have any value
17 in a pro forma. I did it, but I don't think it has
18 great value in making management decisions about how
19 many staff we're going to have.

20 Q. If I understand, the way I would interpret
21 your answer is that you didn't allocate labor by
22 region?

23 A. Really not.

24 Q. So the numbers shown here by region, under
25 labor hours, are essentially meaningless, are they

0643

1 not? I mean, they do sum to the total that's at the
2 back. I'm not --

3 A. Yeah, they're a very minor value.

4 Q. Well, I can't see that they would have any
5 value with respect to this labor wages point, because
6 the labor wages do not track your assumption; right?

7 A. Absolutely. Yes.

8 Q. It says material, boxes at \$1.40 a box. Did
9 you -- where did that number come from?

10 A. Mr. McCloskey.

11 Q. And then, further down beneath that,
12 material labels at 36 cents a box, that came from Mr.
13 McCloskey, also?

14 A. Yes.

15 Q. And disposal at \$4 a box, I think we've --
16 the prior testimony established that was based on the
17 disposal at the Covanta incinerator?

18 A. That's correct.

19 Q. Now, if you keep going down that column and
20 get the indirect cost of sales in Exhibit 44, there
21 is a -- I'm still on Region One, just for the
22 exercise of it, it says miles per month, and it shows
23 2,800 there as the miles per month in January of the
24 first year. What was that number based on?

25 A. We tried to base it on what our expectations

0644

1 are of how big the route would be, and it's hard to
2 do that in a vacuum. We tried to take a stab at it.
3 It was our best guess.

4 Q. Okay. We really are in a vacuum here,
5 because we don't know where your facility is located;
6 right?

7 A. It's located in Seattle, or South King
8 County, we do know.

9 Q. Someplace in King County?

10 A. Someplace in South King County, as I --
11 sorry.

12 Q. Okay. Assuming --

13 A. As I had testified, we're looking in the
14 South Seattle Industrial Park, Tukwila, Renton and
15 Kent and Burien.

16 Q. Thank you, sir. Assuming you find a
17 suitable facility --

18 A. Yes.

19 Q. -- that's where you would locate it?

20 A. Yes.

21 Q. So was the 2,800 miles based on some point
22 within South King County, or was it based on 754
23 Garfield Street, or neither?

24 A. Neither. Basically, it was based on
25 Seattle, the downtown area of Seattle. I had to pick

0645

1 a point.

2 Q. Now, when I looked at that number, I thought
3 2,800 miles in January for Region One was a very odd
4 number. Because you only have four customers and
5 you're dealing with King, Pierce, Snohomish Counties,
6 maybe there's another one in there somewhere, but
7 basically the Seattle, Tacoma, Everett area. But you
8 still think it would be 2,800 miles in the first
9 month that your vehicles would travel?

10 A. As I said before, the regionals have very
11 little value to us in a management and operational
12 basis. The one we use will be a our combined.
13 That's what we use as our basis. We looked at the
14 number of customers that we're going to obtain on a
15 combined basis and estimated our milage based on
16 that.

17 Q. So the numbers for the regions are
18 essentially meaningless. I mean, they do sum to
19 something at the end, but it's really the cumulative
20 totals?

21 A. Yes.

22 Q. The only figures that we should be paying
23 any attention to here; is that right?

24 A. The combined, yes.

25 Q. Because when I looked at 2,800 miles for

0646

1 Region One with four customers and 16 pickups, I
2 calculated 175 miles per pickup. That's just
3 dividing 2,800 by 16. Would you follow my math and
4 agree that that's the number that's produced?

5 A. I follow your math, and that's why it's
6 ludicrous to try and rely on it on a regional basis.

7 Q. Right. And for example, in Region Four,
8 which is the far eastern part of the state, miles per
9 month for two customers is 600 in January; right?

10 A. That's what it says, yes, sir.

11 Q. And again, that would be -- I believe that's
12 eight pickups; right? Two customers, four times a
13 month, dividing 600 by eight, you get 75 miles per
14 pickup. So basically, if I'm correct, you were
15 projecting 175 miles per pickup in the area closest
16 to your base in King County, and 75 miles per pickup
17 in the area furthest away from your base; is that
18 correct?

19 A. That's what the numbers say. And as I said
20 before, I do not rely on the miles on a regional
21 basis to be of any value. We looked at it on a
22 combined basis for making that determination.

23 Q. The thing I can't understand is why you
24 filed these documents if they're meaningless?

25 A. I don't have any answer to that.

0647

1 Q. Mr. Lee, wouldn't you agree that it is
2 difficult to evaluate the miles that will be required
3 to be driven before you have a base for your medical
4 waste collection activity?

5 A. No.

6 Q. You don't think it matters where your base
7 is within King County?

8 A. Well --

9 Q. Excuse me, sir. In terms of the length of
10 the routes and the time necessary to complete routes
11 within, say, the Puget Sound area?

12 A. No.

13 Q. So you don't believe that a route that
14 requires travel between Kent and Everett, for
15 example, and has to go through downtown Seattle or
16 through downtown Bellevue, on either I-5 or I-405,
17 would necessarily be a longer route in terms of time
18 than a route beginning in Bothell, for example?

19 A. No, because you're taking one client in
20 isolation, and I don't look at one client in
21 isolation. Yes, it might be longer to drive from
22 Kent to Everett, but it's going to be shorter to
23 drive from Kent to Pierce County, so it's going to
24 average out.

25 Q. That really depends on where your customers

0648

1 are, I suppose?

2 A. Absolutely right.

3 Q. Mr. Lee, now I'm on the combined pages of
4 Exhibit 44, the last two pages. There's a line
5 called vehicle lease at \$1,000. I guess I'm having
6 trouble figuring out the note. Is that \$1,000 per
7 vehicle for two vehicles?

8 A. Yes.

9 Q. And so it's your intention to lease vehicles
10 for this service?

11 A. It is.

12 Q. Is a lease deposit normally required for a
13 lease of a commercial vehicle?

14 A. No.

15 Q. How about a vehicle used in medical waste?

16 A. I don't know. I got my numbers from Harris
17 Ford, a gentleman I've been dealing with for 10 years
18 in buying commercial vehicles from him.

19 Q. But you have provided no documentation of
20 that conversation, no letter from someone at Harris
21 Ford or any other evidence that it would be willing
22 to lease you vehicles at these rates, have you?

23 A. I have it at the office, yes.

24 Q. It hasn't been provided for the record, has
25 it?

0649

1 A. No.

2 Q. Continuing down that column, if you would
3 with me, the next line is vehicle operating, at 22
4 cents a mile. Now, where did that number come from?

5 A. That number was based on the 39 cents a mile
6 and backing out depreciation, because 39 cents a mile
7 was the number that I believe is used that includes
8 fuel, maintenance, oil, insurance and depreciation,
9 and in a leased vehicle, you'll have no depreciation,
10 as long as it's an operating lease.

11 Q. So is it your testimony that the lessor of
12 the vehicle would absorb the depreciation, wouldn't
13 attempt to recover that from the lessee?

14 A. Well, that's part of the payments I make on
15 the leased vehicle.

16 Q. I see. So you're just saying that insofar
17 as we're talking about vehicle costs, that would be
18 within the \$1,000 per month?

19 A. Yes, yes.

20 Q. Now, Mr. Lee, looking at Exhibit 51, it
21 looks like that number has changed?

22 A. It has.

23 Q. Could you explain your intention there with
24 with respect to the change?

25 A. Well, I went back and looked at it and

0650

1 actually went and added up what our estimates were of
2 that per mileage costs, and I decided that you were
3 right, based on the audit. One, it shouldn't be 39
4 cents, because that included depreciation, but it
5 should be something more than 22 cents, because the
6 fuel costs are higher now.

7 Q. So when you're referring to the audit,
8 you're referring to the testimony that Stericycle's
9 accounting expert put into the record?

10 A. Yes.

11 Q. Okay. So the original 22 cents a mile was
12 incorrect?

13 A. Yes, it was too low, by my estimations.

14 Q. And that was an error of 30 some -- 30 to 40
15 percent, roughly in that ballpark; is that correct?

16 A. I don't know. It's an error from what
17 point, from 39 cents or from 30 cents?

18 Q. Well, between 22 cents and 30 cents is eight
19 cents. That's what I was calculating. From the 22,
20 it was increased by eight.

21 A. Sure.

22 Q. That's 30 to 40 percent, by my lawyerly
23 brain; is that correct?

24 A. Sounds about right.

25 Q. About right. Now, Mr. Lee, going back a

0651

1 little bit to the administrative costs that are shown
2 -- I don't actually think you changed the
3 administrative costs between Exhibit 44 and Exhibit
4 51, did you?

5 A. No, I did not.

6 Q. That administrative -- the administrative
7 hours shown there, 35 hours per month, that includes,
8 am I correct, Mr. Olson, Mr. McCloskey -- I'm sorry,
9 not Mr. McCloskey -- Mr. Olson and Mr. Perrollaz and
10 yourself?

11 A. Yes.

12 Q. And we have labor hours, as you indicated,
13 of initially one driver and then increasing to two
14 and a half drivers during the period of time that
15 you're portraying in these pro formas; correct?

16 A. That's correct.

17 Q. And is there any office staff included
18 within those labor figures anywhere?

19 A. No.

20 Q. So nobody involved in billing, nobody
21 involved in answering the phones or customer service?

22 A. We're a small business. Everybody answers
23 the phones. And I do the billing.

24 Q. But assuming you become a statewide
25 biomedical waste collection company, you have an

0652

1 enormous number of potential customers that might be
2 interested in your services. Do you think you can
3 remain the size you are with nobody answering the
4 phones, nobody dedicated to answering the phones,
5 nobody dedicated to billing, nobody dedicated to
6 customer service?

7 A. Well, I guess if that time comes when we
8 become hugely successful, then we probably will need
9 office personnel. But within the first year, based
10 on the customer count that we're going to obtain of
11 43, no.

12 Q. Mr. Lee, Mr. McCloskey, in his testimony,
13 suggested that Kleen might at some point want to
14 offer an inter -- I believe he called it interactive
15 Internet-based sort of document system to customers.
16 Are you familiar with that?

17 A. Yes.

18 Q. Are there any costs associated with that in
19 this pro forma?

20 A. No.

21 Q. So none of the pro formas include that cost?

22 A. No.

23 Q. Have you done any investigation of what
24 costs would be involved to establish such a program?

25 A. Not yet.

0653

1 Q. Am I also correct that there are no costs in
2 your pro formas, Exhibit 44 or 51 or any other pro
3 forma, for cost of processing at the Hospital
4 Sterilization Services hydroclave in British
5 Columbia?

6 A. That is correct. Only Covanta.

7 Q. Are you familiar with the -- I believe the
8 testimony was that Kleen intended to offer on-site
9 packaging of medical waste to customers. Are you
10 familiar with that concept?

11 A. Yes. Yes, I am.

12 Q. Are any costs included in your pro formas
13 for that service?

14 A. There aren't either revenues nor costs
15 associated with it in my pro formas. It's too
16 premature.

17 Q. So for example, if that was -- is that
18 because you don't know whether there will be demand
19 for that service or --

20 A. Well, that's one reason. We don't know at
21 this point, if we're given the permit to operate this
22 business, of what customers, where, or how many will
23 utilize that service. We don't know. My point being
24 that if it does, it would be a -- should be a
25 profitable addition to the existing revenue stream,

0654

1 because we will be billing accordingly 48.50 an hour,
2 and if we're paying a packer, tech, whatever you want
3 to call it, you know, in the range of 20 to \$25 an
4 hour, there's plenty of profit margin in that.

5 Q. Okay. My question basically has to do with
6 who's going to do that. My understanding was that
7 the drivers would do that service. Is that your
8 understanding?

9 A. That's my understanding, yes.

10 Q. So if the drivers perform that service for a
11 few customers and it adds substantially to the hours
12 that they are occupied each day, it would seem that
13 it would cut down significantly on the ability of
14 those drivers to serve the rest of the state.

15 A. That may be the case, and we'd have to hire
16 more, but we're getting the revenue from it, so it
17 would be offset.

18 Q. It would be offset pretty dramatically if
19 you had to hire two or three more drivers, wouldn't
20 it?

21 A. Well, if I had to do 2,000 hours of packing
22 over the year, that's what? My mental calculator's
23 not very good, but somewhere around \$100,000 in
24 additional revenue. I think I can hire an extra
25 person, which is represented by that 2,000 hours of

0655

1 work, for \$96,000. I think I can do that.

2 Q. Right. That assumes that you'd only need to
3 hire one, I suppose. Are there any costs in the pro
4 formas you've provided to us for marketing?

5 A. No.

6 Q. There's no 800 number, for example?

7 A. We already have an 800 number.

8 Q. Okay. Would you plan to use the same
9 number?

10 A. Yes.

11 Q. Okay. How about telephone costs? That's an
12 additional cost, is it not, if you have customers
13 calling, additional customers calling on your 800
14 number?

15 A. We have six lines coming in, which is more
16 than adequate for our current needs, plus future
17 needs.

18 Q. So there would be no additional cost --

19 A. No.

20 Q. -- in your view?

21 A. Not in my view.

22 Q. Looking at the, again, the summary section
23 of Exhibit 44, I'm looking at the second page summary
24 and the last page of the exhibit. You have building
25 insurance. Is that renter's insurance or what,

0656

1 exactly?

2 A. In essence, it is. That's what we pay now
3 and that's what our agent told us that, for every
4 marginal foot we rented, it would cost us that much
5 per foot.

6 Q. So again, the numbers across the line here
7 are based on the notion that you're going to rent
8 1,000 square feet, or perhaps Exhibit 44 didn't --
9 was that based on that assumption, that you'd have
10 1,000 square feet?

11 A. Yes, at least I believe it was so.

12 Q. And how about the liability insurance?
13 What's that figure based on?

14 A. Based on my agent, again. I explained what
15 we're doing and she says, because we already have
16 pollution liability and a lot of other insurances,
17 our marginal cost per revenue dollar would be \$1.20
18 at that time. I revised that to \$1.31 in the
19 subsequent --

20 Q. So Exhibit 51, on that line, shows \$1.31 per
21 \$1,000 of revenue; is that right?

22 A. That's correct.

23 Q. Now, I'm -- again, I'm having a little
24 trouble seeing how that number adds up. If you look
25 across to the far right-hand column, it looks like

0657

1 it's \$517 of additional liability insurance costs; is
2 that correct?

3 A. That's what I see, yes.

4 Q. But your pro forma revenue, I believe, is
5 \$395,000, roughly?

6 A. That's correct.

7 Q. At least on Exhibit 51?

8 A. Well, remember, this cost -- are you asking
9 me a question? I'm sorry.

10 Q. Yeah.

11 A. All right.

12 Q. So this is 395,000 times \$1.31; is that what
13 that is?

14 A. Per 1,000.

15 Q. Yeah, so 395 times \$1.31?

16 A. That's correct.

17 Q. Have you provided any written documentation
18 of your agent's quote or the basis for that quote?

19 A. No.

20 Q. Same with your building insurance. Did you
21 get that information from the same agent?

22 A. Yes.

23 Q. But you haven't provided us with any
24 documentation of the costs involved?

25 A. No.

0658

1 Q. Or the basis for the quote that was given to
2 you?

3 A. No.

4 Q. Mr. Lee, under licensing, in Exhibit 44, the
5 last page, I believe it totals \$100, and you revised
6 that Exhibit 51 to read \$1,700?

7 A. Yes, I was way under count there.

8 Q. So you've just corrected the number to match
9 what Stericycle's paying in its license fees?

10 A. Yes.

11 Q. And the line for postage, you show a rather
12 modest postage cost of \$1.32 -- I'm sorry, \$132 for
13 the year. And is that based on one --

14 A. One envelope per customer per month.
15 Monthly billing.

16 Q. So you're not planning to give notice of
17 your services or provide for notice of your tariff
18 filings or anything like that to your customers?

19 A. I'm not involved in the marketing of this
20 service. I don't know how that's going to be done
21 yet.

22 Q. So yours, anyway, your end of the business
23 is the invoice, and you figure one per customer, per
24 month, 37 cents each?

25 A. Yes.

0659

1 Q. Okay. Thank you.

2 A. I had to figure something in there. That's
3 the only way I could do it.

4 Q. Taxes -- I guess, you know, printing, I
5 guess, it's a rather modest charge, as well, \$240. I
6 guess you used a plug number of some kind, or did you
7 have a basis for that?

8 A. Not really. We use common paper, bond paper
9 for our billing system. It prints the logos and all
10 that stuff on it, and you know, that's -- \$20 is
11 probably too much. That's 10 reams.

12 Q. Okay. So you just figured what the cost of
13 a ream of paper was and spread it across the year?

14 Okay.

15 Taxes. B&O tax. Exhibit 44 originally had
16 a tax rate of .00484. Exhibit 51 has zero. Any
17 reason for getting rid of the B&O tax?

18 A. Absolutely, absolutely.

19 Q. Any reason to think that it has been gotten
20 rid of?

21 A. I called DOR.

22 Q. Department of Revenue?

23 A. Yes. And I explained to them what this --
24 what we were doing in this division, and I brought up
25 the public utility tax, as was brought to my

0660

1 attention. And she says no, we would not have to pay
2 it, because we would get an exemption as we're
3 delivering the product out of state to a third party.
4 So I would have the total amount exempt.

5 Q. So your medical waste collection business
6 would not be subject to a B&O tax or the public
7 utility tax?

8 A. That's what she said.

9 Q. You really don't know. You're going based
10 on a phone call to somebody down at the Department of
11 Revenue?

12 A. Yes, that's correct.

13 Q. And the theory is that, because you're
14 taking the waste out of state, that there's no B&O
15 tax?

16 A. That's what she said. And I called twice.

17 Q. Two different people?

18 A. Yes.

19 Q. Okay. Now, wouldn't you agree that the --
20 well, let me go back one step, I guess. If you
21 looked at the very bottom of the line on Exhibit 44,
22 you're going to come to a net profit before
23 depreciation and amortization number. And over on
24 the far right column for the year, \$71,153.26?

25 A. Yes, I see that.

0661

1 Q. But you've modified that in Exhibit 51.
2 Could you explain the change?

3 A. Well, Exhibit 51 shows a gain of \$56,981,
4 based upon the additional expenses that I added
5 and/or revised in the revised addition.

6 Q. Aren't there some corrections just to
7 mathematical or arithmetic errors in earlier
8 summations?

9 A. Each -- on the revised, which is in Number
10 51, you can see, in the second column, under
11 analysis-based changes, I have starred every single
12 line item that I made a change in, and all of those
13 lines that have changes resulted in a profit of
14 56,981, rather than the 71,000.

15 Q. Let me take you back just a moment to the
16 issue of printing and sort of paper. My
17 understanding is that, based on prior testimony, that
18 Kleen intends to use bar code labels, intends to
19 generate shipping manifests for its customers and
20 that kind of thing. Are those costs included in
21 these pro formas?

22 A. I'd guesstimate they are. I'm not sure what
23 those costs are.

24 Q. Where are they?

25 A. I'm not sure what those costs are. I

0662

1 plugged \$20 in as an estimate. A ream of paper is
2 \$2. That leaves \$18 left for the month.

3 Q. So your manifest would cost you \$18, your
4 labels would cost you -- or fit within that 18 bucks
5 somewhere? Or if not, it's perhaps not significant;
6 is that your thinking?

7 A. That's my contention.

8 Q. Okay.

9 A. It could be more.

10 Q. Have you investigated the cost of manifests
11 that are required for this kind of a service?

12 A. I have not.

13 Q. Are the costs of personal protective
14 equipment for spill kits or anything like that
15 included within the cost you've submitted here?

16 A. I believe, if my memory serves me, that we
17 built that into our capital supplies and materials
18 cost on the balance sheet. It would have been a
19 fixed expense for inventory. Then, as usage, we
20 would have to replace it, but I had no handle on how
21 much that would be. Tyvek suits are very cheap, so
22 --

23 Q. But you didn't attempt to calculate --

24 A. I did not.

25 Q. -- the cost that would be involved?

0663

1 A. I did not.

2 Q. Or the replacement costs as they were used?

3 A. I did not.

4 Q. Now, I am -- let's see. Exhibit 49, I'm
5 having trouble locating. Can we go off the record
6 for just a second?

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

8 (Discussion off the record.)

9 JUDGE RENDAHL: Let's go back on the record.

10 Q. Mr. Lee, I'm looking at what's been marked
11 as Exhibit 49. It's a -- it's headed Kleen
12 Environmental Technologies, Inc. Biohazard Waste
13 Disposal Division Pro Forma Balance Sheet Analysis,
14 and it, on the top left corner, it says Combined
15 Regions One to Four. It actually has -- my copy has
16 a certificate of service and a letter attached. Is
17 that part of the exhibit?

18 JUDGE RENDAHL: No. I filed those in my
19 correspondence file.

20 Q. Okay. Well, Mr. Lee, these -- this pro
21 forma balance sheet analysis was provided by Kleen to
22 the parties under cover of a letter dated September
23 23, from your counsel, I believe. Can you -- do you
24 have a copy of that in front of you?

25 A. Yes, I do. I'm looking at it.

0664

1 Q. When was that prepared?

2 A. At the same time the pro forma was prepared.

3 Q. Same time as Exhibit 44?

4 A. Forty-four, yes.

5 Q. Now, on this balance sheet, I guess it was
6 corrected -- or you're proposing to correct it in a
7 revised balance sheet analysis that we've marked as
8 Exhibit 50.

9 JUDGE RENDAHL: Is that a question?

10 Q. Could you explain the difference between
11 these two balance sheets?

12 A. The difference is that all of these values
13 are calculated from the P&L. They're integrated with
14 the P&L. And the cash will fluctuate with usage and
15 receivable collections, and retained earnings is
16 transferred directly from the P&L.

17 Q. Basically, to use the new \$56,000 profit?

18 A. Basically, yes.

19 Q. Okay. Mr. Lee, I'm referring now to, I
20 guess it's the same number on both exhibits, but
21 there is, under the -- on the left-hand column,
22 there's a general section, liabilities and equity,
23 then there's an equity section, and under that
24 section is an item entitled stockholder loans. And
25 it appears to indicate a stockholder loan of \$104,707

0665

1 to the new biomedical waste collection business. Is
2 that what that indicates?

3 A. That's what that indicates. It was
4 indicated that way so that I could have a starting
5 balance of \$100,000, basically.

6 Q. Actually, there has been no such loan, has
7 there?

8 A. There has not been.

9 Q. And there's no commitment for such a loan,
10 is there?

11 A. No.

12 Q. And again, we had this colloquy earlier
13 around Mr. Olson's testimony, but I believe Mr.
14 Olson, in his testimony, indicated that the plan was
15 to finance the new medical waste collection business
16 from the existing working capital of the company.
17 That is not your understanding; is that right?

18 A. My understanding is my responsibilities are
19 to provide the cash that's necessary to run this
20 division and also keep the existing business going.
21 I will take whatever cash that we have that I feel we
22 can use, and the balance will come from either loans,
23 line of credit, and/or capital infusion from the
24 partners.

25 Q. So this is -- oh, I'm sorry.

0666

1 A. That's as I stated to the letter to Mr.
2 Olson back in April.

3 Q. That's your intention?

4 A. My what?

5 Q. Is that your intention?

6 A. Yeah, well, my intention, as the CFO, yes,
7 and I made that aware to him in the letter that is in
8 the record someplace here.

9 Q. But, actually, this stockholder loans item
10 is a plug number, is it not? I mean --

11 A. It is a plug number, yes, sir, because I had
12 to start with a dollar value.

13 Q. Right, you need some substantial amount of
14 capital to get this business going, and this is the
15 amount?

16 A. It was a basis for doing the pro forma. I
17 started with \$100,000, and I wanted to see how my
18 cash would be affected by all of the transactions and
19 to see how low I could go. And my minimum cash, as
20 you can see on Exhibit 50, I reached a low of \$42,000
21 in April, and that tells me that I used 60,000 of
22 that 100 in operations. That's all it's telling me.

23 Q. But, basically, isn't the \$104,770 the
24 amount of startup capital needed to put this business
25 together?

0667

1 A. No, it was a plug number so I could
2 determine how much cash I would actually use if this
3 pro forma became reality.

4 Q. Understood, but if you didn't need that
5 amount, wouldn't you have adjusted the number
6 downward?

7 A. Absolutely.

8 Q. Right, so this is the amount you decided is
9 what you need?

10 A. No, this is the amount I decided to use as a
11 plug number so I could watch my cash in the pro forma
12 to see what my minimum requirements were. And my
13 minimum requirements were approximately \$60,000,
14 which is the difference between 104 and my lowest
15 point of 62, or 42, I guess it is.

16 Q. Basically, what we've got here is the amount
17 of -- the amount of, in the stockholder loan item, is
18 the amount of capital needed to fund the startup
19 business at a point such that your cash would never
20 fall below 40,000; is that right?

21 A. You could say that, yes, sir.

22 Q. I mean, and that's, I guess, what you're
23 thinking is a prudent way to run this business?

24 A. I'm not saying that at all. I'm saying I
25 used that as a plug number to verify how much cash I

0668

1 would be using based on this pro forma. It's not a
2 commitment to put in \$100,000. It's nothing more.
3 It was meant to be nothing more than an analysis of
4 what my cash requirements would be.

5 Q. Well, I'm having a little trouble
6 understanding it. Maybe that's because I'm a lawyer,
7 not a chief financial officer. But it seems to me
8 that what you've got here is you're suggesting that
9 this amount of cash needs to be put into the company
10 in order to get this business going, and then you're
11 running your -- this is what this balance sheet
12 suggests.

13 I mean, why would stockholders loan -- I
14 mean, just conceptually, why would they loan more
15 funds into the company than was needed to run it?

16 A. They wouldn't.

17 Q. Right. So isn't it a fair reading of this
18 to say that this is the amount you think the
19 stockholders or someone needs to put into this
20 company to make it go?

21 A. No, as I said for the third time -- or maybe
22 three, I don't know. Several times I've said this is
23 a plug number so that I can evaluate the cash
24 requirements of this business over the period of this
25 pro forma. And that cash line there tells me that

0669

1 I'll never fall below 42,000 or need more than 60.

2 Q. So then, I think it's your testimony that
3 you would need 40 to \$60,000 to run this business?

4 A. At least 60.

5 Q. At least 60?

6 A. But probably more, based on my cash
7 requirements --

8 Q. All right.

9 A. -- of what I would want to keep in the bank.

10 Q. And does that approximate the 104,000, or am
11 I still off base?

12 A. I don't know. I can't answer that question
13 at this point, only because I don't know how much
14 cash I want to keep in the bank for this division.
15 Remember, we still have the other operating rest of
16 the business, which I have been -- I estimate it
17 requiring 50,000 in cash, and that's for doing, you
18 know, approximately a million dollars worth of
19 volume, and I want to keep 50 in the bank. If I'm
20 going to add 40 percent to my volume, then I might
21 want to add another 20,000 in cash, which is a like
22 40 percent.

23 Q. So you don't anticipate the stockholders
24 lending \$104,770?

25 A. No.

0670

1 Q. You don't anticipate borrowing that amount?

2 A. No.

3 MR. HAFFNER: Can we clarify for the record
4 that when he's saying no, he's agreeing with you?
5 When it shows up on the record in type, I'm afraid
6 that there may be a discrepancy there.

7 JUDGE RENDAHL: Can you ask your question
8 again, Mr. Johnson?

9 MR. JOHNSON: I'm not sure I can.

10 JUDGE RENDAHL: I understood you to say you
11 don't anticipate a stockholder loan of 104,770.

12 MR. JOHNSON: Let me put it in the
13 affirmative.

14 JUDGE RENDAHL: Thank you.

15 Q. Do you anticipate a stockholder loan in the
16 amount of \$104,770?

17 A. No, I do not.

18 Q. Do you anticipate the company requiring
19 loans in that amount?

20 A. No, I don't. I expect to be able to -- were
21 this business to go forward, I would probably expect,
22 right now, today, needing about \$80,000, which is my
23 \$60,000 of what appears to be cash requirements, used
24 requirements, and another 20 in cash reserve for the
25 395,000 in sales. That will come from existing cash

0671

1 in the business that I feel is excess, it will come
2 from perhaps a line of credit, and/or it will come
3 from stockholder loans, a combination thereof.

4 Q. Okay. So let me recap it, see if I've got
5 it. You're thinking you need at least 80,000, 80
6 some thousand?

7 A. Yes, that's correct.

8 Q. And you've indicated that the cash on hand
9 in the existing company is between 86 and 136,000
10 over the last six months?

11 A. It's, yes, it's varied between 80, 85 and
12 135.

13 Q. Okay. So you're assuming that you would be
14 able to -- and you want to have 50,000 in that side
15 of the business?

16 A. Right. Yes, sir.

17 Q. So you're assuming that you would be able to
18 take, what, about -- I think you said yesterday there
19 was \$95,000 in the bank. So let's say 45,000 for the
20 existing business?

21 A. Yes.

22 Q. And you would need another 40 from
23 someplace?

24 A. Yes.

25 Q. In the pro formas that you've filed,

0672

1 referring to Exhibit 44, and I guess Exhibit 51, you
2 have mileage costs. Do those include both route
3 mileage and long haul mileage to the disposal
4 facility?

5 A. Yes, that's my position.

6 Q. Do you have a breakout of what you assumed
7 for those different mileages?

8 A. Not specifically.

9 Q. You haven't given us those assumptions in
10 any of the filings?

11 A. In Exhibit 50, second page.

12 Q. Could you point out the place on the --

13 A. Item 13.

14 Q. Item 13.

15 MR. HAFFNER: Try to let him finish.

16 THE WITNESS: Sorry.

17 Q. So that says that there's a weekly trip to
18 Salem, Oregon, plus weekly trips for client pickup,
19 so it doesn't really tell us the miles assumed in
20 each category, does it?

21 A. That's correct. All I know is approximately
22 225 miles to Salem.

23 Q. And the -- sort of the miles involved in the
24 route collection activity, did you try to estimate
25 those miles?

0673

1 A. No, I did not.

2 Q. And where did those miles come from?

3 A. I did not try and estimate. We just looked
4 at the area and tried to determine how many miles we
5 might drive, but there was no concrete mileage number
6 we could come up with, because we don't know where
7 the customers will be.

8 Q. Did you try to anticipate where the medical
9 waste generators are? For example, did you look at
10 the urban areas in the different regions and then try
11 to draw routes that would involve collections in the
12 different urban areas?

13 A. No, we did not. We do know that, you know,
14 most of -- many of the generators are in the Puget
15 Sound area, and we felt that a good portion of the
16 client base might come from there, but we didn't try
17 and specify any routes.

18 MR. JOHNSON: Your Honor, if I might have --
19 maybe if this were a goodtime for a break, I could
20 review my notes and see if we can wrap up pretty
21 shortly with Mr. Lee. Is that a possibility?

22 JUDGE RENDAHL: That's fine. Why don't we
23 take a five-minute break right now, and we may take
24 another break later. So we'll take five minutes now.
25 Be off the record.

0674

1 (Recess taken.)

2 JUDGE RENDAHL: Let's be back on the record.

3 Mr. Johnson.

4 MR. JOHNSON: Thank you, Your Honor.

5 Q. Mr. Lee, I want to go back to this issue of
6 mileage, and I want to make sure I understand what
7 your testimony was before. My understanding is that
8 you didn't make any effort to design routes or to
9 estimate mileage based on service to specific
10 locations within the state of Washington; is that
11 right?

12 A. That's correct. We made an educated guess,
13 based on our existing customer base.

14 Q. So you assumed all your customers would be
15 in the west side of the mountains?

16 A. Initially we did, and then we attempted to
17 go -- or we were requesting to go statewide. Then we
18 added in some mileage for that.

19 Q. But you did not attempt to design routes
20 that would serve, for example, the major cities of
21 Eastern Washington?

22 A. I did not.

23 Q. And did anyone in your organization do that?

24 A. I don't know. I did not.

25 Q. And the numbers that we have here in the pro

0675

1 formas, Exhibit 44 and Exhibit 51, are those mileage
2 numbers your numbers or did they come from somewhere
3 else?

4 A. They came from a discussion with Mr.
5 McCloskey and I. We discussed it jointly, and we
6 decided that, based on the information we had, that
7 this would be the best estimate that we could come up
8 with at the time of what our mileage requirements
9 might be.

10 Q. And that was based on a region-by-region
11 analysis or not?

12 A. No, based on the overall.

13 Q. So, for example, we went through a little
14 bit before the Region One through Four analysis in
15 Exhibit 44. The mileage analysis there is
16 meaningless; is that right?

17 A. That's correct.

18 Q. And you didn't attempt, then, to determine
19 what mileage would be involved in serving Eastern
20 Washington, then? You simply put it all in one big
21 pot and said this is the number.

22 A. Not really. We did try and do some analysis
23 of having to drive to Spokane, for instance, a couple
24 times a month, and we built that in.

25 Q. Well, did you --

0676

1 A. But we did not design a route.

2 Q. Okay. And you are as knowledgeable as
3 anyone in Kleen with respect to the way these mileage
4 numbers were calculated?

5 A. Yes.

6 Q. Don't you agree that transportation business
7 is -- the expenses of a transportation business are
8 heavily dependent on mileage driven by the trucks
9 involved?

10 A. That is a part of a transportation business,
11 yes.

12 Q. For example, fuel, labor cost, frequently
13 vehicle lease costs include a mileage component, do
14 they not?

15 A. It depends on the lease, and we did not
16 specify any mileage. We have choices when we get a
17 lease. It's just not one lease, that's it. You have
18 choices to decide on how many mileage -- if you even
19 want a mileage factor, or if you're going to want a
20 25 percent residual or --

21 Q. Right. Speaking of that lease, we don't
22 have any of that information in front of us, in terms
23 of what kind of leases you're talking about in terms
24 of your estimate of the lease cost here?

25 A. No, I did not provide that, but we do have

0677

1 written documentation at the office from Harris Ford.

2 Q. For example, let me ask you this. You know,
3 if you have -- your assumptions are based on the
4 notion of, you know, so many employees, so many
5 drivers per 1,000 units. I guess it's one driver per
6 1,000 units, but --

7 A. Approximately, yes, yes.

8 Q. And doesn't that assume that one driver can
9 serve all those 1,000 units?

10 A. That's the assumption.

11 Q. But isn't it the case that if those 1,000
12 units are spread all over the state, that that would
13 be physically impossible?

14 A. That may be, but -- not our assumptions, but
15 that may be. Since I don't know where the customers
16 are, it's kind of hard for me to answer that
17 question.

18 Q. Right. But you know what the population
19 centers are in the state of Washington?

20 A. Yeah, about 75 percent here in Puget Sound.

21 Q. But there are population centers all over
22 the state, are there not?

23 A. Yes, there are.

24 Q. So you're proposing to serve the whole
25 state?

0678

1 A. Yes, we are.

2 Q. Now, I believe that you have a figure in
3 Exhibit 44 for utilities, or do you? Could you find
4 that for me in Exhibit 44? Actually, I don't see it
5 in Exhibit 44.

6 A. No, there is none in 44.

7 Q. So that was an omission that you've proposed
8 to correct in Exhibit 51, perhaps?

9 A. Yes, that's correct.

10 Q. And you're estimating utilities cost there
11 of \$25 a month; is that right?

12 A. That's my guessed estimate, yes.

13 Q. Does that include telephone?

14 A. No.

15 Q. Is telephone in here somewhere?

16 A. No, as I said before, we have six lines
17 coming in. And in-state calls, as I recall, I don't
18 have it in front of me, but in-state calls are, at
19 least within a certain region, have no marginal cost
20 to it. The other cost, from the 800 service, is like
21 seven cents a minute.

22 Q. So there would be an additional cost for
23 customers calling you on the 800 number; right?

24 A. Yeah, if I got 100 calls a month, that would
25 be \$7.

0679

1 Q. How about your long distance inside the
2 state?

3 A. I'd say it's seven minutes -- seven cents
4 per minute.

5 JUDGE RENDAHL: Let's not talk over one
6 another. If you can wait till the answer and the
7 question --

8 Q. And that's on the 800 number?

9 A. Yes.

10 Q. How about utilities cost, things like heat,
11 light, that kind of thing? Are they in these pro
12 formas?

13 A. Well, at the new facility, the only marginal
14 space will be the warehouse space.

15 Q. And so does that mean that there are no
16 utilities costs associated with it?

17 A. Yes, there will be, for the compressor,
18 cool room.

19 Q. Right, that's electrical power you plan to
20 use?

21 A. Yes.

22 Q. And that is included in the \$25 a month?

23 A. That's my estimate, yes.

24 Q. To run a refrigerated storage facility of
25 2,000 square feet?

0680

1 A. My estimate of refrigerated storage would
2 not be 2,000 square feet.

3 Q. What is your estimate?

4 A. Closer to 500.

5 Q. And have you attempted to gather information
6 about what the utilities cost would be to run a
7 refrigerated storage facility?

8 A. Not the electrical component, no.

9 Q. What component have you investigated?

10 A. Only the cost of erecting one.

11 Q. Okay. So the utilities figure here doesn't
12 include the cost of running the refrigeration system?

13 A. I don't know. All I said is that I included
14 \$25 a month, and I have not investigated what the
15 kilowatt-hour cost will be. Depends on the
16 efficiency of the unit and a lot of other factors.

17 Q. Now, Mr. Lee, did you -- when you were
18 testifying with respect to lease costs involved for
19 the vehicles you were thinking of acquiring, did you
20 indicate whether these leases would include
21 maintenance or not?

22 A. No, they do not.

23 Q. Okay. And so when you calculated the new
24 operating costs under Exhibit 51, come up with 30
25 cents a mile, did you include maintenance in that

0681

1 figure?

2 A. Yes.

3 Q. Now, I had understood from your earlier
4 testimony that you started with 39 cents a mile that
5 was provided in Stericycle testimony, and backed out
6 depreciation; is that correct?

7 A. That's correct.

8 Q. Okay. So if the Stericycle 39 cents did not
9 include maintenance, then you didn't include it,
10 either; right?

11 A. My number came from Harris Ford. They said
12 they used a factor of about 38 and a half cents a
13 mile for these vehicles, which included fuel,
14 maintenance, oil, insurance, and depreciation.

15 Q. You're not going to be paying them that
16 figure?

17 A. No, they say that's the factor that they
18 have -- they understood it to be. And I backed out
19 depreciation, and that's how I got to 22. And then I
20 raised it up, based on the review that I was provided
21 by you.

22 Q. Now, this representation to you by someone
23 from Harris Ford with respect to vehicle operating
24 costs, is that in the documents back in the office,
25 also?

0682

1 A. They are handwritten notes, based on my
2 telephone conversation. Not in writing.

3 Q. Your own handwritten notes?

4 A. Yes.

5 Q. But you haven't provided any evidence to us
6 that would indicate that anybody knowledgeable about
7 truck operating costs has provided this figure to
8 you?

9 A. I have not provided anything to this
10 hearing, no.

11 Q. Mr. Lee, part of your pro forma assumption
12 is that you can provide this service for several
13 months without -- with only one driver, I believe.
14 Am I correct about that?

15 A. That's correct.

16 Q. And that, thereafter, you will use two
17 drivers, and then half of an additional driver?

18 A. That's correct.

19 Q. What happens if one of your drivers is ill
20 or -- do you allow vacations in your calculation?

21 A. Not in the first year. People earn
22 vacations in the second year.

23 Q. I see. So what happens if your drivers are
24 ill?

25 A. Can't answer that question right now.

0683

1 Q. It's a problem, I would think.

2 A. Problem for any small company. We may have
3 to cross-train some other people to have to step in.

4 Q. They would have to be trained in things like
5 hazardous materials regulations, blood-borne pathogen
6 regulations?

7 A. Right.

8 Q. Do you anticipate that you would be in
9 communication with your drivers while they're out on
10 their routes?

11 A. I presume so. We do now.

12 Q. And on what basis? What tools do you use
13 for that?

14 A. Cell phones.

15 Q. And are you anticipating, then, that there
16 would be cell phones involved in your biomedical
17 waste collection service, that your drivers would
18 have cell phones?

19 A. Yes.

20 Q. But you haven't provided for those costs
21 here, have you?

22 A. No, you're absolutely right. There is no
23 cost in there for cell phone service.

24 Q. Have you provided for taxes in Oregon,
25 specifically the Public Utilities Commission tax?

0684

1 A. No, I have not.

2 Q. Are you aware of that tax?

3 A. I am not.

4 Q. Mr. Lee, you've assumed certain things with
5 respect to cash flow in your balance sheet, I
6 believe. And that is both Exhibit 49 and Exhibit 50.
7 If you look at Exhibit 50, you're assuming that your
8 accounts receivable -- let me ask you this. What are
9 you assuming with respect to the recovery on your
10 accounts receivable on a monthly basis?

11 A. For purposes of this pro forma, I assumed we
12 would collect within 30 days.

13 Q. Do you think that's a reasonable assumption?

14 A. No, it would probably go a little bit
15 longer. Might be 40 days, 45 days. I don't know.

16 Q. You're not experienced with this kind of
17 business, are you?

18 A. No.

19 Q. So you really don't know?

20 A. I don't know.

21 Q. So that could be at issue with respect to
22 your cash calculations here, in terms of how much
23 cash is needed in the business?

24 A. Mm-hmm. Yes, it might.

25 Q. And how about bad debt? Is there any

0685

1 allowance for people who don't pay their bills at
2 all?

3 A. No, there's not.

4 Q. Do you think that's something that should be
5 included?

6 A. We have had -- our experience has been very
7 little bad debt with the kind of customers that we're
8 dealing with. So all I can go by is experiences
9 we've had. In the knowledge we have, we've had
10 virtually no bad debt.

11 Q. In fact, this is a new business, is it not?

12 A. No, but we have the same customers.

13 Q. You're anticipating that your customers for
14 the biomedical waste collection services will be
15 limited to your existing customers?

16 A. I'm not assuming anything. I'm only telling
17 you that -- or saying that, our experience, and
18 that's all I can base my judgments on, is dealing
19 with the people that we know. And the people we know
20 are customers of ours. I know what their pay
21 schedules are, and generally, they pay around 30 days
22 to us.

23 Q. How many of your customers do you think --
24 or how many of your existing customers do you think
25 you will serve with the biomedical waste collection

0686

1 service?

2 A. I don't know. I can't answer that.

3 Q. Is it 10 and 20?

4 MR. HAFFNER: Asked and answered.

5 Objection.

6 JUDGE RENDAHL: Sustained.

7 THE WITNESS: I don't know, I can't answer
8 that. You might have to check with Mr. McCloskey on
9 that.

10 MR. JOHNSON: Your Honor, I think that
11 concludes my questions for Mr. Lee.

12 JUDGE RENDAHL: Okay. Mr. Sells, do you
13 have any questions for the witness?

14 MR. SELLS: I do, Your Honor. Thank you.

15

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

17 BY MR. SELLS:

18 Q. Mr. Lee, I'm curious as to how you and your
19 fellow shareholders decided -- or how and why you
20 decided to go into the medical waste collection
21 business?

22 A. Well, I didn't decide. I -- my partners,
23 Mr. Perrollaz, Mr. Olson, were getting inquiries from
24 our customers, as I understand it. This is not my
25 knowledge field.

0687

1 Q. That's fine.

2 A. That -- asking us to come into the business,
3 because they liked the service that we've been
4 providing them on the hazardous waste side.

5 Q. So you didn't -- to your understanding, you
6 didn't get inquiries just from out of the blue from
7 some hospital that was dissatisfied with Stericycle,
8 for example?

9 A. No.

10 Q. It was existing customers?

11 A. It was only existing customers.

12 Q. And I know Mr. Johnson just asked this
13 question, but I want to clarify it. Your
14 application, however, is not limited to servicing
15 those customers that you provide hazardous waste
16 service for, is it?

17 A. No, it's not.

18 Q. And you understand, and I've asked Mr. Olson
19 this, you understand that if you are granted
20 statewide authority, you will be required, by the
21 terms of that permit, to provide service for whomever
22 seeks that service?

23 A. I understand.

24 Q. So if you are running one truck and that
25 truck goes over to Spokane, that truck may also have

0688

1 to go down to Asotin County. Do you understand that?

2 A. Mm-hmm.

3 Q. Up to Pend Oreille County, Ferry County,
4 Stevens County, all of those places. Do you think
5 you can do that if you had one customer per county,
6 those counties that I've mentioned, and I'll bet you
7 there'll be a vet, because there's a lot of animal
8 stuff over there. If you had one customer, Ferry
9 County, Stevens County, Asotin County, and let's
10 throw in Garfield County, too, one customer in each
11 one of those counties, and that customer wanted to be
12 picked up every two weeks, say, would you be able to
13 do that with one truck and one driver?

14 A. I can't answer that, but we will abide by
15 the requirements of the permit. We will do what we
16 have to do to make this business a success. That's a
17 commitment on Mr. Olson's part, and I concur with
18 him.

19 Q. And you own about 30 percent of the
20 business, 29, was it?

21 A. Twenty-nine percent.

22 Q. Twenty-nine percent. How much of your own
23 money are you willing to put into this business to
24 make it a success?

25 A. I don't know how to answer that.

0689

1 Q. Well, is there -- have you, within your own
2 mind, have you put a limit on, say, a shareholder
3 loan from you or more equity that you're not going to
4 go beyond to make this?

5 A. I have not put in a limit in my own mind.

6 Q. How about Mr. Olson?

7 A. You'd have to ask Mr. Olson that.

8 Q. All right. Now, I understand that you are
9 involved in some -- personally are involved in some
10 other businesses; correct?

11 A. That's correct.

12 Q. And excuse me if I'm butchering these names.
13 There's something called Leeward Enterprises. What
14 is that?

15 A. Inc.

16 Q. Inc.

17 A. That's the corporate name for Traffic
18 Control Services.

19 Q. And what is Traffic Control Services?

20 A. Traffic Control Services is a construction
21 temporary help service company. We rent out flaggers
22 and the equipment for temporary traffic control.

23 Q. And what is your percentage ownership in
24 that?

25 A. One hundred.

0690

1 Q. And how about -- is it the Remington Group?

2 A. The Remington Group is a --

3 Q. What is that?

4 A. -- real estate holding company.

5 Q. Is that a corporation?

6 A. It's an L.L.C.

7 Q. And what is your share of ownership in that?

8 A. One hundred percent. Excuse me. I should

9 say 50. My wife would be very angry if I said --

10 Q. I was going to call her and tell her if you
11 didn't. And there's something else that I can't read
12 here, called the Neptune, maybe?

13 A. Nepenthe.

14 Q. Nepenthe. Spell that, if you would, please?

15 A. N-e-p-e-n-t-h-e.

16 Q. Group?

17 A. Group, L.L.C.

18 Q. What is that?

19 A. A real estate investment L.L.C.

20 Q. And you and Mrs. Lee own 100 percent of
21 that, as well?

22 A. Yes, that's correct.

23 JUDGE RENDAHL: If you can not talk over one
24 another, that would be great. Thank you.

25 Q. In considering this application, did you

0691

1 become aware of what are called the affiliated
2 interest rules of the Washington Utilities and
3 Transportation Commission?

4 A. No, I'm not familiar with those rules.

5 Q. Does that term ring a bell at all with you?

6 A. No.

7 Q. If I tell you in a very general way that if
8 you are a regulated company, in this case, a solid
9 waste company, and you are also a principal of a
10 certain percentage in another company, that the
11 Commission, WUTC, has the right to look at the books
12 of that affiliated interest, your other company? You
13 were not aware of that?

14 A. No, I was not.

15 Q. Does that cause you any concern, that they
16 would be able to dig into these three companies?

17 A. Not at all.

18 Q. All right. Part of the statute that we
19 operate under, Mr. Lee, indicates that if an
20 applicant, your company, applies for a certificate to
21 operate in a territory that's already served by
22 another carrier or carriers, the Commission will only
23 grant that if the, and I'm quoting now, if the
24 existing solid waste collection company or companies
25 serving the territory will not provide service to the

0692

1 satisfaction of the Commission. I think you've heard
2 that quote before in here.

3 A. Something similar, yes, sir.

4 Q. All right. Do you have any evidence and
5 will you present any evidence that Harold LeMay
6 Enterprises is not serving its territory to the
7 satisfaction of the Commission?

8 A. I have no knowledge of that.

9 Q. Same question regarding Consolidated
10 Disposal in Grant County?

11 A. I have no knowledge of that.

12 Q. And same question regarding Rubatino Refuse,
13 Inc. in Everett?

14 A. Again, I have no knowledge of that.

15 Q. All right. I'm presuming that your
16 employees are nonunion; is that correct?

17 A. At Kleen?

18 Q. Yes.

19 A. They are nonunion.

20 Q. All right. And do you expect your driver or
21 drivers to be nonunion in the medical waste side?

22 A. I would expect so.

23 Q. If those drivers somehow became unionized,
24 heaven forbid, but if they did, that would throw all
25 these figures off, wouldn't it?

0693

1 A. Most likely.

2 Q. Do you provide health insurance to your
3 employees?

4 A. Yes.

5 Q. What percentage does the company pay of the
6 premium?

7 A. A hundred percent.

8 Q. Hundred percent. How about retirement
9 program?

10 A. We have a simple IRA program, which --

11 Q. Go ahead.

12 A. -- is employee contributed, and which the
13 company will contribute up to three percent of their
14 gross salary.

15 Q. And will that be made available to the
16 driver or drivers?

17 A. Yes.

18 Q. Okay. And am I to understand that the --
19 I'll use a garbage term, the route truck, the truck
20 that's going to make the pickups, is the same truck
21 that's going to take this stuff down to Oregon?

22 A. That hasn't been decided. It depends on the
23 -- it will be basically the same truck or a truck of
24 the like.

25 Q. Okay. So in theory, in a one or two-day

0694

1 period of time, this truck and driver could go from
2 South Puget Sound, down to Asotin, up to Pend
3 Oreille, or vice versa, back across the state through
4 Spokane, and then down to Salem, Oregon; correct?

5 A. It's possible.

6 Q. Okay. You will be serving Kitsap County,
7 too, if this is granted. You're aware of that?

8 A. Yes.

9 Q. And assuming your facility is in South
10 Seattle, how are you going to get to Kitsap County
11 from South Seattle, South King County?

12 A. Typically, I would drive around over the
13 Tacoma Narrows Bridge.

14 Q. You're aware that, in a relatively short
15 period of time, the Tacoma Narrows Bridge will have
16 tolls?

17 A. I'm aware.

18 Q. Have you figured those tolls into any of
19 these costs?

20 A. I have not.

21 Q. Have you figured the -- any ferry costs?

22 A. I have not.

23 Q. Any ferry costs for serving San Juan County?

24 A. I have not.

25 Q. You've been here the whole hearing, I think,

0695

1 haven't you?

2 A. Most of it.

3 Q. Pretty much?

4 A. Yeah, pretty much.

5 Q. As have I. And I'm going back here to three

6 primary documents that have been produced here, and

7 the first one was the proposed tariff, the first

8 tariff, and that document turned out to be totally

9 inaccurate; correct?

10 A. Yes.

11 Q. In fact, it was -- appeared to be pretty

12 much a Xerox copy of an old Stericycle tariff. Do

13 you recall that?

14 A. That's what I heard testified to, yes.

15 Q. All right. So that document, that first

16 document introduced was redone overnight, and

17 essentially a brand new tariff was brought in the

18 next day; right?

19 A. Yes.

20 Q. All right. The second one I recall are the

21 operating procedures that Mr. -- I never knew all the

22 names -- Mr. Perrollaz produced yesterday, I think.

23 Do you recall that?

24 A. Yes.

25 Q. And as I recall, his last words were pretty

0696

1 much that that document was -- needed substantial
2 revisions. I think I tried to get him to say it was
3 useless, and he wouldn't say that. Do you recall
4 that?

5 A. I recall that.

6 Q. I do recall him saying, though, that it
7 would be reworked and would probably not be reworked
8 in time to be brought into this hearing. Do you
9 recall that?

10 A. I think I remember that. I'm not sure on
11 that one.

12 Q. Now, the final document that comes to my
13 mind is this pro forma, pro formi, maybe, I don't
14 know what the plural is on that. Those were
15 initially brought in under -- as Exhibit 41, I
16 believe.

17 MR. JOHNSON: Forty-four, I believe.

18 Q. Forty-four. And those turned out to be
19 wrong, and then they became Exhibit Number 49, which
20 begat Exhibit 50 and 51, which is actually a profit
21 and loss. So those documents, as well, turned out to
22 be of no value, as they were originally offered to
23 this Commission. Would you say that's a fair
24 statement?

25 A. No.

0697

1 Q. So -- well, tell me -- tell me about Exhibit
2 Number 44, then. Am I wrong in assuming that that
3 thing had to be virtually totally reworked?

4 A. No.

5 Q. Okay.

6 A. You're wrong.

7 Q. I am wrong?

8 A. You are wrong.

9 Q. Okay. Go ahead.

10 A. The differences between the two documents
11 were based on the review that the CPA did, of
12 Stericycle's, and pointed out that I had made some
13 mistakes, a few mistakes, of which the mistakes
14 contributed about \$15,000 less net profit before
15 depreciation and tax.

16 Q. So you --

17 A. There were a --

18 Q. Go ahead. I'm sorry.

19 A. There were a few line items that I had made
20 mistakes on, and I think we've gone over every one of
21 those line items.

22 Q. And we're not going to do it again, I'll
23 guarantee you of that. But you -- and when I say
24 you, I mean your company, not you personally --

25 A. Yes.

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1 Q. -- produced a document that was reviewed by
2 Stericycle's witness, and then that document was
3 reworked, revised, on the basis of what Stericycle's
4 CPA said was wrong with it; correct?

5 A. That's correct.

6 Q. All right. So you got Stericycle's CPA
7 reworking your pro forma; you got -- tried to get
8 Stericycle's tariff in; and I don't know where the
9 operating procedures came from.

10 MR. HAFFNER: Your Honor, I'm going to
11 object to this questioning, which is more argument
12 than questioning.

13 MR. SELLS: I've got one more question here.

14 MR. HAFFNER: Well, why don't you ask the
15 question, instead of reiterating your argument for
16 closing and your brief?

17 MR. SELLS: Well, I don't get to make a
18 closing.

19 JUDGE RENDAHL: In your brief. Why don't
20 you ask the question, a non-argumentative question.

21 Q. Excuse me. In view of all of that, why
22 should a generator use you instead of just go to the
23 source and use Stericycle?

24 A. I can't answer that question.

25 MR. SELLS: Okay. That's all I have.

0699

1 JUDGE RENDAHL: Mr. Trautman.

2 MR. TRAUTMAN: Thank you.

3

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

5 BY MR. TRAUTMAN:

6 Q. I just had one area I wanted to clarify.

7 I'm Greg Trautman, Assistant Attorney General, for
8 the Commission Staff. When you were talking about
9 the space requirements in the new space that you were
10 seeking to acquire, okay, currently, you have the 754
11 Garfield space; correct?

12 A. Correct.

13 Q. And that is the total of about -- is it
14 3,200 square feet or -- of which about -- I have
15 1,700 square foot office and 1,500 for storage?

16 A. That's approximate, yes, sir.

17 Q. And then, if you acquire the new property
18 somewhere in South King County, will that totally
19 replace the Garfield space?

20 A. Absolutely.

21 Q. And of that new space, that's four to 5,000
22 square feet?

23 A. I'm targeting 4,500 square feet.

24 Q. Forty-five-hundred, so the 1,000 difference
25 is the difference, then, between -- well, that would

0700

1 be 4,500 minus 3,200, that's 1,300, but that's --
2 now, of that new area, of the new space, you
3 allocated it all to warehouse; right?

4 A. Yes.

5 Q. And how did -- so how does that work?
6 Shouldn't some of it be dedicated to office, which is
7 at a higher rate?

8 A. I don't feel that we're going to need any
9 additional office staff, at least in the first year,
10 so I don't see any sense in allocating a desk.
11 Nobody's going to be sitting there.

12 Q. Okay. So the office will be the same. The
13 remainder will be warehouse; correct?

14 A. Yes.

15 Q. And then, now, of the warehouse, how much
16 will be refrigerated storage?

17 A. My estimates are 500.

18 Q. Okay. And was there not another estimate of
19 2,000 by one of the other witnesses?

20 A. Yes, there was. That's what Mr. Olson said.
21 I don't know where he got the number. Nothing we had
22 ever discussed, so -- so he and I have a difference
23 of opinion, which --

24 MR. TRAUTMAN: That's all I have. Thank
25 you.

0701

1

2

E X A M I N A T I O N

3

BY JUDGE RENDAHL:

4

Q. And Mr. Lee, just to follow up on Mr.

5

Trautman's question, in your Exhibit 51, when you

6

discuss the marginal expenses of new space, was that

7

an attempt to allocate a cost -- costs of the

8

business, both existing and for the new space between

9

the existing services the company provides and the

10

medical waste service?

11

A. Basically, yes. A marginal cost analysis is

12

saying here's what we've got, we're going to add

13

something else, what extra things is it going to cost

14

us, in indirect expenses, to do that something else.

15

I.e., we have a hazardous waste business and we're

16

going to add a biomedical waste business. What do we

17

have to add to our indirect expenses to accommodate

18

that extra piece of business.

19

Q. So --

20

A. So it's on a marginal basis. Sorry.

21

Q. Okay. So what you did was on a marginal

22

basis, as opposed to -- so did you allocate costs

23

from the existing business that might be the same,

24

such as -- that might address both, such as utilities

25

or any of that nature? There was no allocation done,

0702

1 per se.

2 A. No, not as a stand-alone division, there was
3 not. The analysis was based on, if I was adding this
4 extra business, what kinds of indirect expenses would
5 I incur because of it. I.e, rent, because we'd have
6 more space, utilities, because we'd have extra air
7 conditioning, cleaning. These are all what I call
8 indirect expenses. And because it's a marginal
9 business, meaning it adds to the base, these are the
10 extra expenses that I would incur.

11 JUDGE RENDAHL: Okay. That's all I have.

12 Mr. Haffner, did you have any redirect?

13 MR. HAFFNER: Yes, Your Honor.

14

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

16 BY MR. HAFFNER:

17 Q. Mr. Lee, there was -- there were questions
18 asked of your other businesses. Do any of those
19 other businesses involve the ownership or rental of
20 commercial office space?

21 A. One does. The Remington Group.

22 Q. From your experience in owning that business
23 -- and can you explain what that real estate business
24 is?

25 A. It rents -- it owns a commercial property in

0703

1 Bellevue.

2 Q. How long have you owned that property?

3 A. Eight years.

4 Q. From your experience of owning that
5 property, have you garnered experience in looking for
6 other rental properties?

7 A. Yes, we have looked at other rental
8 properties to buy as an investment over the past
9 five, six years.

10 Q. In looking for space for this venture that
11 is proposed in this application, where have you
12 looked to find leads for potential space to operate
13 this business at?

14 A. I and my wife, both -- my wife is in real
15 estate, residential. She knows a number of people in
16 the commercial, because occasionally she'll have a
17 request for commercial acquisitions, so she will
18 contact her commercial people, and I know people in
19 the business, too, from my past experiences, so I
20 would contact the people I know in the commercial
21 sales and/or rental.

22 Q. Have you looked in the want ads for any --

23 A. I have also looked in the want ads, yes.
24 That's usually the first place I go.

25 Q. Have you found any places that might be able

0704

1 to suit your needs that are listed in the want ads?

2 A. Without looking at them, I saw about a dozen
3 in the last weekend's paper that -- the warehouse
4 space, at least, was all quoted between 45 and 65
5 cents a square foot. There were about a dozen of
6 them in the paper.

7 Q. Has Kleen Environmental Technologies ever
8 had a line of credit?

9 A. Yes, we had a line of credit for about four
10 years, required by our bonding company, and I don't
11 know -- we still don't understand why they required
12 it, but they did, and we've got -- we had a \$100,000
13 line of credit, which we never called on or a need to
14 use in the four years, so we finally got another
15 bonding company and we dropped it.

16 Q. Are you confident that you could obtain
17 another line of credit if you needed it to assist
18 with this new business venture?

19 A. Without a doubt.

20 Q. If this application were granted, how long
21 do you think it would take you to obtain lease of a
22 space to operate this business?

23 A. Sixty to 90 days. I mean, there are vacant
24 spaces that are available today that I could move
25 into, but I'm talking about doing the research to

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1 make sure we find the right one and move in.

2 Q. And would that -- let me ask -- let me
3 rephrase the question here. Have you investigated
4 the cost of installing refrigeration equipment at
5 that facility?

6 A. I have.

7 Q. Do you know what that cost would be?

8 A. The last quote I got was about 7,500 for the
9 air conditioning, plus -- I don't have a firm quote
10 yet on the insulated walls yet at this point.

11 Q. If this application is granted, how long do
12 you think it would take you to obtain the vehicles
13 that you've identified as necessary to provide the
14 services?

15 A. According to Harris Ford, my agent up there,
16 he could probably have them within a week, Depending
17 on our specifications.

18 MR. HAFFNER: No other questions, Your
19 Honor.

20 JUDGE RENDAHL: Any re-cross, Mr. Johnson?

21 MR. JOHNSON: Yes. Thank you, Your Honor.

22

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

24 BY MR. JOHNSON:

25 Q. Mr. Lee, if you were going to present a pro

0706

1 forma with respect to the proposed medical waste
2 collection business on a fully allocated basis, it
3 would look quite different than it does here, would
4 it not?

5 A. I don't know what you mean by fully
6 allocated.

7 Q. Well, for example, you're assuming that
8 existing office personnel would serve both the
9 existing hazardous materials business, hazardous
10 waste business, and the new biomedical waste
11 collection business, are you not?

12 A. I am.

13 Q. But you're not allocating either their space
14 cost or their salary cost to the new business, are
15 you?

16 A. I am not.

17 Q. So -- and you could run that through the
18 whole list here. I mean, we're talking about the 800
19 numbers, for example. You're talking about a
20 marginal cost of seven bucks, perhaps, per month,
21 based on 100 calls at seven cents, if I remember the
22 example, but if you were going to allocate based on
23 the percentage of revenue, for example, that you
24 anticipate from the new medical waste collection
25 business compared to the revenue that you typically

0707

1 earn in the existing business, you would allocate
2 something like a third of all the utility costs,
3 would you not? A third of the 800 number cost, a
4 third of the office space cost, all of those things,
5 would you not?

6 A. No, why would you assume that I would use
7 that system of allocation based on revenue? No, I
8 would allocate -- if I were to do that, I would
9 allocate based on usage.

10 Q. But, again, you would at least make an
11 effort to calculate an allocation or come up with a
12 plan based on some system of allocation, not a
13 marginal cost basis; right?

14 A. If I were doing an allocational basis, yes,
15 there would be some method of allocation, but not
16 necessarily on a percentage of revenue.

17 Q. But that would be one?

18 A. That is one method, yes.

19 Q. Method. Common method; right?

20 A. Well, I don't know if it's common. It is a
21 method.

22 Q. But you have not allocated costs that would
23 be incurred for facilities, services, personnel that
24 would be performing services for both sides or would
25 be used in both sides of the proposed business, the

0708

1 existing business and the medical waste collection
2 business?

3 A. Of our office personnel.

4 Q. No, the whole range of your cost?

5 A. Of our -- we have, in the direct expenses,
6 the drivers, the general manager, they are -- they
7 are directly deducted or specified in the pro formas.
8 But you're talking about allocation of office
9 expense, and I have no office personnel.

10 Q. I'm talking about space, too.

11 A. Well, I cannot visualize in my mind at the
12 volumes we're dealing about that we would need extra
13 space. I don't need an extra desk for someone.

14 Q. Bear with me, Mr. Lee, but I'm -- if Mr.
15 Olson is sitting at the one desk and he's performing
16 functions that are relevant to both the existing
17 business and the proposed business, shouldn't his
18 costs be allocated and shouldn't his space cost, as
19 well as his labor cost, be allocated?

20 A. It's a theory that one -- you could use,
21 yes. It isn't necessarily one I would use.

22 Q. Do you know whether the Utilities and
23 Transportation Commission, within its accounting
24 requirements related to annual reporting, would
25 require such an allocation?

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1 A. I do not know that. But if it's required,
2 I'll do it.

3 Q. Don't you also think, if it's required, it
4 should be -- the pro forma should be built on that
5 basis, as well?

6 A. I built my pro formas on the basis of
7 marginal cost from a business perspective, not an
8 allocated cost.

9 Q. Mr. Lee, when you looked at the newspaper
10 last weekend and saw 12 sites that might work for, as
11 you've said, I believe, for the proposed new facility
12 for Kleen Environmental, did you visit any of those
13 sites?

14 A. No.

15 Q. So you're just talking about the squib in
16 the ads in the paper?

17 A. I'm talking about the squibs in the ad in
18 the paper, and 12 of them had all prices for
19 warehouse space between 45 and 65 cents per foot, and
20 that just substantiates in my mind what we would have
21 to pay for our space, what we're requiring.

22 Q. You have no --

23 A. And that there were a dozen of them that
24 were in the paper, so there are properties available
25 at that price, and that's only the ones advertised.

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1 Q. But you have no idea whether those
2 properties have a 15,000 square foot fenced vehicle
3 storage yard, do you?

4 A. No, I don't.

5 Q. So what we're looking for is a little -- I
6 guess you haven't provided us with any basis to think
7 that this 45-cent to 65-cent square foot figure is a
8 reasonable projection of what you would actually
9 incur to find the kind of facility you're looking
10 for.

11 MR. HAFFNER: Objection, argumentative.

12 JUDGE RENDAHL: Is there a question there?

13 Q. Isn't that right? I mean, have you provided
14 us a basis to conclude that those per-square-foot
15 rates are anything that the Commission should rely on
16 in identifying the potential costs of acquiring space
17 in a building to store biomedical waste with a 15,000
18 square foot storage yard?

19 MR. HAFFNER: Objection, calls for a legal
20 conclusion. Asked for what the Commission would rely
21 on.

22 Q. Well, are you asking the Commission to rely
23 on these numbers that you've given us?

24 A. I'm only saying that, based on my knowledge
25 of marketplace, the commercial marketplace, that I

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1 should be able to rent a building of a marginal 1,000
2 square feet of warehouse space at 65 cents a square
3 foot. That's all I'm stipulating.

4 Q. So that isn't what you're actually looking
5 for, though? You're looking for something quite
6 different, are you not?

7 A. I'm looking for a 4,500 square foot
8 building.

9 Q. Plus 15,000 square feet of fenced vehicle
10 yard space?

11 A. Yes, or something that will work, yes. That
12 would be my ideal, yes.

13 Q. So none of these squibs that you saw in the
14 paper identified that kind of facility, did they?

15 A. No, that wasn't the intent of looking in the
16 paper.

17 Q. I understand. I think I understand what
18 you've testified to now.

19 A. All right.

20 Q. So when you told Mr. Haffner that you
21 thought you could find leased space to move into
22 within 60 to 90 days, if the application was granted,
23 you really don't know that, do you?

24 A. I don't know that for a fact, no, but I
25 suspect I should be able to, only because there were

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1 so many facilities listed in the paper. I don't know
2 if they're going to fit my needs, but there were a
3 lot in the paper, and according to both brokers I've
4 spoken with over the last several weeks, there are a
5 lot of facilities available, because vacancy rates
6 are very high in South Sound.

7 Q. You haven't given us any indication from the
8 brokers that you refer to now that -- again, you're
9 talking about things people have told you outside
10 this hearing room. You haven't given us any
11 statement by those folks as to what -- that would
12 demonstrate the kind of facility you've identified.

13 MR. HAFFNER: Objection. We're having more
14 argument and no question.

15 JUDGE RENDAHL: I would agree. You'll have
16 an opportunity to make your argument in brief.
17 There's a direct question that you can ask. I also
18 believe that you've asked that question a few times.

19 MR. JOHNSON: Perhaps I have, Your Honor.

20 Q. Mr. Lee, I believe you said that you thought
21 you could get the vehicles you're looking for from a
22 dealership within a week, depending on -- I believe
23 your exact testimony was depending on specifications?

24 A. Yes.

25 Q. Depending on what specifications?

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1 A. That the specified truck that we want is
2 available locally. All of the dealers trade
3 inventory and --

4 Q. So it's uncertain whether the truck that you
5 need would be available locally?

6 A. We're looking for a plain Jane 24-foot van,
7 and they are not rare. That's all I can say, and
8 that's what Bob Harris told me.

9 Q. Do you know whether the box, the floor of
10 the box needs to have special characteristics to be
11 able to haul medical waste?

12 A. I do not know that specification.

13 Q. So you did not specify anything specifically
14 to the folks at the dealership with respect to the
15 kind of box that would be -- that is specifically
16 required for medical waste?

17 A. No, I did not. I do know we have
18 containment in our own trucks, and I'm assuming it
19 will be something similar to that. But I don't know.
20 I'm not a technician.

21 MR. JOHNSON: That's it for me. Thank you.

22 JUDGE RENDAHL: Mr. Sells, any re-cross?

23 MR. SELLS: No, ma'am.

24 JUDGE RENDAHL: Mr. Trautman.

25 MR. TRAUTMAN: No.

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1 MR. HAFFNER: One question, Your Honor?

2 JUDGE RENDAHL: Go ahead.

3

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

5 BY MR. HAFFNER:

6 Q. Mr. Lee, is it your understanding that the
7 facilities that you will be looking at for renting
8 for the business you're proposing will typically have
9 fenced yards at the rates that you have been
10 observing in the paper and were quoted by your real
11 estate agent?

12 A. Based on my experience in the past and
13 looking at prior properties, many of the properties
14 have a fenced yard, because, typically, a
15 single-story warehouse/office building, and many of
16 them have an attached, because they're sitting on,
17 you know, half an acre, quarter of an acre.

18 MR. HAFFNER: No other questions.

19 JUDGE RENDAHL: Mr. Johnson.

20

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

22 BY MR. JOHNSON:

23 Q. Mr. Lee, you haven't actually gone looking
24 for such a facility, have you? Have you actually
25 gone to these sites that you are claiming exist out

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1 there and examined them?

2 A. As I said before, I have not.

3 Q. So you haven't actually looked for the type
4 of facility that you will need to enter into this
5 medical waste collection business?

6 A. The same answer to your same question. I
7 have not.

8 MR. JOHNSON: Thank you, sir.

9 JUDGE RENDAHL: Is there anything more for
10 this witness?

11 MR. HAFFNER: No, Your Honor.

12 JUDGE RENDAHL: Okay. Thank you very much,
13 Mr. Lee. You can step down. You may -- you'll
14 remain under oath, because I understand you may be
15 brought back next week, depending on what our
16 discussion is, so --

17 THE WITNESS: I understand that.

18 JUDGE RENDAHL: Okay. So thank you very
19 much, and you may step down.

20 THE WITNESS: Thank you.

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

22 (Discussion off the record.)

23 JUDGE RENDAHL: Let's go back on the record.

24 While we were off the record, we talked a bit about
25 scheduling for next week's hearing. I received a

0716

1 list of shipper witnesses from Kleen Environmental,
2 which includes seven witnesses, and Mr. Haffner has
3 agreed to provide by tomorrow morning any date
4 restrictions and time restrictions for these seven
5 witnesses.

6 We'll endeavor to have Mr. Rogers and Mr.
7 Knight appear on the same day, preferably on
8 Wednesday, if they're available, and Stericycle has
9 provided its one witness at this point, Robb Menaul,
10 Senior Vice President of the Washington State
11 Hospital Association, who is only available on
12 Wednesday, preferably Wednesday morning.

13 Parties should, by noon on Monday, send to
14 me electronically the names or general identities of
15 their rebuttal witnesses, and any exhibits, any
16 rebuttal exhibits for those witnesses. If those
17 rebuttal exhibits are available sooner, they should
18 be circulated to counsel and myself.

19 On Wednesday morning, the 6th, the parties
20 should identify any cross times for those rebuttal
21 witnesses so we can plot out whether we actually need
22 the 12th. And at that time, we'll also discuss
23 whether we need the 12th for additional
24 shipper/generator witnesses on Stericycle's behalf,
25 and for Mr. Sells' clients' behalf, and take it from

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1 there.

2 So the two other housekeeping matters we
3 have remaining -- oh, I should add, Mr. Johnson may
4 request written shipper statements. At this point,
5 Kleen Environmental is not willing to stipulate to
6 such statements, so we'll address that if the need
7 arises.

8 Two housekeeping matters. First, off the
9 record we discussed Mr. Wash's testimony for
10 Consolidated Disposal Services. We had discussed
11 having him appear next week, but the parties have
12 agreed to stipulate to admitting his testimony
13 without his appearance. And Mr. Sells has stipulated
14 that the territory Consolidated Disposal Services
15 serves is Grant County, and that there are currently
16 no complaints against Consolidated Disposal Services
17 for its medical waste services. Is there anything I
18 have omitted on that discussion?

19 MR. SELLS: If the applicant wishes to put
20 their annual report into evidence, we have no
21 objection to that.

22 JUDGE RENDAHL: All right.

23 MR. SELLS: They being Consolidated.

24 JUDGE RENDAHL: So Mr. Haffner, you may be
25 submitting exhibits for Mr. Wash as the annual

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1 reports for Consolidated Disposal?

2 MR. HAFFNER: Yes, Your Honor.

3 JUDGE RENDAHL: All right. At this point,
4 I'll admit Exhibit 160-T and 161, and if Kleen
5 chooses to submit the annual reports for that
6 witness, then we can address that at that time.

7 The only other remaining issue is Mr. Lee's
8 testimony. Mr. Johnson, is your objection still
9 holding until tomorrow, or can we address at least
10 40-T through 44?

11 MR. JOHNSON: I think we can address those.
12 I actually think we can go ahead and admit -- let's
13 see. We should be able to admit -- we have no
14 objection, let me put it that way, to admitting 40-T,
15 40 -- 40-T.

16 JUDGE RENDAHL: Forty-one's already been
17 admitted.

18 MR. JOHNSON: Forty-one's in. Forty-four,
19 46, 49, 50 and 51.

20 JUDGE RENDAHL: But not 42 and 43?

21 MR. JOHNSON: Forty-three is problematic in
22 that Mr. Lee did not prepare it and didn't provide a
23 foundation for that.

24 MR. HAFFNER: May I respond, Your Honor?

25 JUDGE RENDAHL: Please do.

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1 MR. HAFFNER: I think it should be admitted
2 as a document that he relied upon to prepare the pro
3 formas, and that is what his testimony was. It's not
4 testimony as to the accuracy of the numbers provided
5 there, I believe, except for the lease numbers, which
6 he testified he verified by telephone.

7 MR. JOHNSON: Actually, I think -- I'm not
8 sure they're lease numbers, but they're costs
9 associated with the trucks.

10 MR. HAFFNER: Right, the vehicle lease. Oh,
11 maybe it was vehicle value.

12 MR. JOHNSON: I think it was vehicle cost.

13 MR. HAFFNER: You might be right.

14 MR. JOHNSON: But I have no objection to its
15 admission for that purpose.

16 JUDGE RENDAHL: For the purpose that he
17 relied upon it to prepare the pro formas?

18 MR. JOHNSON: Right. Otherwise, he's not --

19 JUDGE RENDAHL: Well, I think the record is
20 clear that he didn't prepare it, and so I think we
21 have enough evidence in the record concerning the
22 exhibit. So I would admit 43. Now, what about 42?
23 It is a letter from Mr. Lee.

24 MR. JOHNSON: It seems a strange way to
25 present evidence, to have Mr. Lee, who's personally

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1 present, submit a letter that he previously wrote to
2 Mr. Olson. I guess I --

3 JUDGE RENDAHL: Well, I guess what is your
4 objection to the admission?

5 MR. JOHNSON: My objection is that it's
6 hearsay, that Mr. Lee did not testify with respect to
7 the contents of this letter.

8 MR. HAFFNER: He wrote the letter. He
9 acknowledged --

10 MR. JOHNSON: I understand. It's hearsay
11 for himself.

12 MR. HAFFNER: He acknowledged that he signed
13 the letter. It was his letter.

14 JUDGE RENDAHL: I'm going to admit it. I
15 think it's -- he authored it, you could have
16 cross-examined him on the contents, it was verified
17 that he wrote the letter. I think it will be
18 admitted, and whatever the value of it is, we'll
19 address it at that point. So at this point, I'm
20 going to admit into the record Exhibits 40-T, 42, 43,
21 44, 46, 49, 50 and 51. Did I catch everything?

22 MR. HAFFNER: Yes, Your Honor.

23 JUDGE RENDAHL: All right. With that, is
24 there anything more before we go off the record for
25 today? Hearing nothing, we'll be recessed until

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1 tomorrow morning at 9:30. Let's be off the record.

2 (Proceedings adjourned at 4:10 p.m.)

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