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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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In re Application No. GA-079251 of )Docket TG-040221  
 HAROLD LEMAY ENTERPRISES, INC., ET )Volume VIII  
 AL )Pages 722-932  
 )(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) )  
 )  
 )

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A hearing in the above-entitled matter was held at 9:35 a.m. on Thursday, September 30, 2004, at 220 Fourth Avenue South, Kent, Washington, before Administrative Law Judge ANN E. RENDAHL.

Barbara L. Nelson, CCR  
Court Reporter

0723

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: Let's be on the record. We  
2 are back for our fourth day of hearing before the  
3 Washington Utilities and Transportation Commission in  
4 Docket Number TG-040248, which is the application of  
5 Kleen Environmental Technologies, Inc.

6                   I'm Ann Rendahl, the Administrative Law  
7 Judge presiding over this proceeding this morning,  
8 Thursday, September 30th, last day of September,  
9 2004. What we're doing today is continuing  
10 examination of witnesses, but I understand, Mr.  
11 Johnson, you have a motion you wish to make this  
12 morning?

13                   MR. JOHNSON: Thank you, Your Honor, I do.  
14 Your Honor, I move that this application be  
15 dismissed, this proceeding be dismissed, and that we  
16 discontinue this process at this time.

17                   Your Honor, the applicant has finished  
18 presenting its direct case. The applicant has the  
19 the burden to establish that it is fit, willing and  
20 able to provide the service proposed in the  
21 application, and they have failed to do that.

22                   The applicant has the burden under RCW  
23 81.77.040 to present the service and the costs  
24 thereof for the area to be served, they have the  
25 burden to present the cost of the facilities to be

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1 utilized in the plant for solid waste collection and  
2 disposal, and they have a responsibility to establish  
3 the feasibility of the proposed service. They have  
4 failed to do so, and they've failed to do so in some  
5 dramatic ways.

6           The testimony has established beyond any  
7 question that Kleen Environmental does not have the  
8 facilities necessary to provide the proposed service.  
9 They have indicated very clearly that their existing  
10 facility at 754 Garfield Street is not suitable for  
11 the proposed service, and that they do not currently  
12 have any other facility.

13           They have indicated that they would go out  
14 and look for one if the application is granted, and  
15 that simply is not good enough under the standards  
16 applied by the Commission to an application for solid  
17 waste collection authority.

18           They have stated repeatedly that their  
19 intent -- that their service is dependent upon  
20 acquiring a future facility that they don't have.  
21 That facility would involve secure vehicle storage, a  
22 substantial fenced vehicle yard, office space,  
23 refrigerated storage, warehouse space. They have  
24 none of these things.

25           Further, they have not been able to

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1 establish the costs that would be involved in  
2 acquiring such facilities. They have provided only  
3 the barest speculative reference to warehouse space  
4 costs in the newspaper with no -- and I believe, as  
5 Mr. Lee indicated, none of the space that he was  
6 referring to in his testimony -- he was not aware  
7 whether any of the cost data that he provided in his  
8 testimony involved a facility suitable for the  
9 purpose, as has been testified.

10           So they haven't provided any cost data with  
11 respect to this proposed future facility. So not  
12 only don't they have the facility, they haven't  
13 provided the cost data that would be necessary to  
14 confirm that service by the use of this facility is  
15 feasible, nor have they met the requirements of RCW  
16 81.77.040 to establish their cost of service and the  
17 assets and equipment devoted to the service.

18           The testimony so far has also indicated that  
19 they have no equipment that's needed to provide the  
20 service. Their intent is to go out and acquire  
21 vehicles if they need to acquire vehicles. No, I  
22 think they've said that they do need to acquire  
23 vehicles, and their intent is to acquire them if the  
24 application is granted.

25           Mr. Lee provided some testimony with respect

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1 to what it would cost to lease trucks for the  
2 proposed service, but he said he had no idea what the  
3 requirements were for trucks that would be  
4 permissible to hire -- I'm sorry, permissible to haul  
5 biomedical waste with. We all know that there are  
6 special requirements for the bed of a truck that's to  
7 be used for biomedical waste collection service, and  
8 Mr. Lee didn't even know what those requirements  
9 were, much less did he indicate that he had specified  
10 those requirements to the truck dealer that he spoke  
11 with, according to his testimony.

12           So we don't have any reliable evidence of  
13 cost for providing the kind of equipment that is  
14 needed to provide biomedical waste collection  
15 service. Not only does the applicant not have the  
16 necessary equipment, not only has the applicant not  
17 provided cost data that's reliable and would allow us  
18 to evaluate the cost of acquiring such equipment, but  
19 the applicant has no qualified personnel.

20           The applicant has conceded that it has never  
21 engaged in transportation services of any significant  
22 extent, it has no experience in biomedical waste  
23 collection or in the handling of biomedical waste.  
24 The personnel that would be responsible for the  
25 business do not have any experience and, frankly, do



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1 not even have any knowledge with respect to the  
2 requirements, legal and regulatory requirements  
3 applicable to the handling of biomedical waste. That  
4 includes Mr. Olson, the president and general  
5 manager, it includes Mr. McCloskey, who is supposed  
6 to run this operation, and although Mr. Perrollaz has  
7 a modest amount of blood-borne pathogens training, he  
8 also, from his testimony, clearly does not have the  
9 kind of experience in dealing with the regulations  
10 that apply to the handling of biomedical waste to be  
11 a reliable manager of this service, nor is that his  
12 intended function in the ultimate end gain this  
13 applicant proposes.

14           So Your Honor, I believe that the case that  
15 was presented on the pre-filed testimony was  
16 misleading, the tariff that was filed was not a  
17 legitimate effort to cost out or to present rates and  
18 charges for the service to be provided. There is  
19 reference to use of a hydroclave facility in British  
20 Columbia that subsequent testimony has indicated that  
21 applicant has no intent to use on a regular basis,  
22 and the applicant has also testified that they have  
23 no contract with this hydroclave facility, they have  
24 not investigated Canadian regulations that would  
25 apply to the export of biomedical waste from the

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1 state of Washington to Canada, and they, frankly,  
2 don't know whether they could access that facility.  
3 There has been no testimony from anybody connected  
4 with that facility that they would accept the waste  
5 that the applicant might theoretically take them at  
6 some time in the future.

7           So frankly, there isn't even a backup  
8 facility identified for the Covanta facility, which  
9 is the primary facility that the applicant has  
10 indicated would be its disposal site.

11           So they have not provided any reliable  
12 evidence that the hydroclave facility in Port  
13 Coquitlam, British Columbia would be available as a  
14 backup facility. So again, they fail to meet the  
15 requirements of the Washington Administrative Code  
16 that provide that a backup facility is required for a  
17 medical waste collection operation.

18           So for all these reasons, on the basis of  
19 the applicant's own case, they have not established  
20 that they are fit, willing and able to provide the  
21 service. Thank you.

22           JUDGE RENDAHL: Mr. Sells.

23           MR. SELLS: We'll join in the motion, if  
24 Your Honor please, and just point out one further  
25 thing. This has to be more than an idea. At the

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1 very least, it has to be a plan and it has to be a  
2 workable plan, and there's been no testimony of  
3 anything approaching a workable plan to serve the  
4 area requested, which is the entire state of  
5 Washington. The testimony is that one driver and one  
6 truck is apparently going to go everywhere from  
7 Island County to Garfield County. That's simply  
8 impossible and it does not meet the standards, as Mr.  
9 Johnson indicates.

10 JUDGE RENDAHL: Mr. Trautman, are you  
11 joining in the motion?

12 MR. TRAUTMAN: No, not at this time.

13 JUDGE RENDAHL: Mr. Haffner.

14 MR. HAFFNER: Thank you, Your Honor.

15 Obviously, we disagree with this motion and ask Your  
16 Honor not grant it.

17 I guess, first, the assertion that we have  
18 finished presenting our direct case, obviously, we've  
19 not finished presenting our direct case. We still  
20 have shipper witnesses to put on. But if the  
21 statement is to the fact of whether we've finished  
22 presenting our direct case regarding fitness, I  
23 suppose maybe that might be true. There is still  
24 rebuttal testimony to come. And I think, in these  
25 types of proceedings, that is a significant part of

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1 the evidence that is important for Your Honor to  
2 consider in making this decision.

3 I believe they've indicated that we've not  
4 provided information or evidence on feasibility or  
5 the service that we're providing and the cost, and I  
6 disagree with that.

7 They may disagree with the evidence that  
8 we've put on in terms of whether it would support the  
9 type of business that we propose to do, but we have  
10 provided Your Honor with evidence of the feasibility  
11 of our service, the costs that we anticipate that  
12 service to be, and the types of services that we  
13 anticipate providing.

14 There have been changes made during this  
15 process, but that is the nature of this process. It  
16 identifies weaknesses in our initial proposal. We do  
17 have a plan. We did come in with an initial grander  
18 plan, and we've had to make modifications to that,  
19 but we do have a plan in place to go forward if this  
20 permit is granted. This is not just a dream or an  
21 idea that is beyond more of a developed concept.

22 The allegation that we don't have facilities  
23 is accurate. The facilities that we have currently  
24 are not adequate to provide this service, and we have  
25 admitted that. We do not intend to provide this

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1 service at the current facilities. We do not intend  
2 to violate the law by doing so. But we have  
3 identified, through the witnesses and their  
4 experience in these areas, that it is not going to be  
5 difficult to obtain the facilities that we need. And  
6 it doesn't make sense, it's not reasonable to require  
7 an applicant to go out and obtain the facilities  
8 necessary before you even have a permit.

9           This is not the development or creation of  
10 some nuclear facility. All we need to do is get  
11 warehouse space and a secure yard. There's a lot of  
12 that out there, and the testimony supports that. And  
13 we can get it at a cost that supports the service.  
14 We can still operate this business at a profit, based  
15 on the market rates for the facility that we need.

16           Same argument is true for the claim that we  
17 don't have the equipment. It's true that we do not  
18 intend to provide -- or it's true that we'll need  
19 additional equipment to provide this service, but it  
20 doesn't make sense for an applicant to go out and  
21 acquire that equipment before it is given a permit.  
22 And it's not difficult to obtain the type of  
23 equipment that's required to provide this service.

24           Contrary to Mr. Johnson's assertion, there  
25 is no evidence in this record that the equipment that

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1 we intend to obtain does not comply with any  
2 requirements of any regulations or laws. As far as I  
3 know, there's been no establishment of any laws or  
4 regulations that the equipment we intend to provide  
5 would violate. So I don't believe there's anything  
6 there to support that aspect of his motion.

7           With respect to the lack of qualified  
8 personnel, I think it's very difficult for any  
9 applicant in this area to have experience in  
10 transporting medical waste unless you're coming in  
11 from out of state or unless you're an existing  
12 garbage hauler. I think that this applicant has  
13 about as good a qualification as any applicant could  
14 in terms of handling material that is similar to  
15 biomedical waste, and that is that this company has  
16 many years of experience handling hazardous  
17 materials, which regulations are similar, if not more  
18 onerous than those for medical waste.

19           With respect to the hydroclave facility, it  
20 is, as I think Mr. Johnson even admits, it is not  
21 intended to be the primary facility for this service,  
22 it's not -- at best, it's intended to be a backup  
23 facility. The fact that there's a lack of a contract  
24 with that facility has no bearing on its availability  
25 as a backup. I think the evidence will establish

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1 later on in this proceeding that Stericycle relies on  
2 several facilities to which it has no contract with,  
3 either, and I don't think that that will affect the  
4 availability of a backup.

5 This applicant has indicated in their  
6 testimony that they intend to abide by all rules and  
7 regulations applicable to its service, and that will  
8 include the provision and identification of a backup.  
9 I think there's been testimony that there are  
10 available backups in addition to the hydroclave  
11 facility, including the Spokane incinerator. And I  
12 believe there is also -- there may also be other  
13 autoclave facilities that were testified to.

14 One last item, with respect to, I think, Mr.  
15 Sells' comment that this service isn't feasible  
16 because it's relying on one truck to serve the state,  
17 that's simply not true. The evidence is clear that  
18 this applicant proposes to add a truck and another  
19 one and a half employees for this service. I believe  
20 the first truck is added in the third -- or yes, the  
21 second truck is added in the third month, and a  
22 second employee is added either at that time or  
23 shortly thereafter.

24 Based on that information, Your Honor, I'd  
25 ask that you not grant the motion.

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1                   JUDGE RENDAHL: Thank you, Mr. Haffner. Do  
2 you have anything to add, Mr. Trautman?

3                   MR. TRAUTMAN: No, Your Honor.

4                   JUDGE RENDAHL: Mr. Johnson, anything in  
5 response?

6                   MR. JOHNSON: Just briefly, Your Honor. I  
7 think Mr. Haffner paints as good a picture as he can  
8 of the evidence that's been presented. However, from  
9 the evidence that we have in front of us, it appears  
10 to me that the entire proposal is speculative. In  
11 other words, if the application is granted, the  
12 applicant will, if it chooses to do so, go out and  
13 acquire additional equipment, additional facility,  
14 additional personnel and go into this business.

15                   What they're looking for is sort of an  
16 option to proceed, and I think that that kind of  
17 speculative application is not an appropriate basis  
18 for a grant of authority in an area as sensitive,  
19 with respect to public health and safety, as  
20 biomedical waste collection. This is not an area  
21 where it's anticipated that people with no  
22 experience, no knowledge of the regulations, no  
23 equipment, no facilities and no qualified personnel  
24 would jump into the business and proceed.

25                   With respect to the issue of the hydroclave



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1 situation, I think it was misleading for the  
2 applicant to rely as heavily as it seemed to in its  
3 pre-filed testimony on the hydroclave facility as an  
4 option that it was touting to the Commission when it  
5 actually had no intention of using that facility,  
6 according to the testimony we've had at the hearing.

7           And with respect to the issue of the  
8 contract there, I would just cite Your Honor to the  
9 Sureway Incineration case, in the matter of  
10 Application GA-868, Order MVG Number 1451, in which  
11 an applicant's application was denied in that case  
12 because there was no contract with a reliable  
13 disposal facility. It seems to me that, in that  
14 case, I think it was a primary disposal facility.  
15 But, nonetheless, that establishes, I believe, a  
16 Commission requirement that if you're going to hold  
17 yourself out as having access to a disposal facility,  
18 that you have to provide evidence that you have a  
19 disposal site available at a consistent, reliable  
20 basis.

21           And the evidence here just simply does not  
22 establish that the hydroclave facility is available  
23 as a backup in any way, shape or form.

24           JUDGE RENDAHL: All right. Well, having  
25 heard argument from all parties and having reviewed

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1 the statute upon which the Commission makes its  
2 determination and gives us guidance for how to  
3 proceed, I'm going to quote the statute:

4           Issuance of the certificate of necessity  
5 shall be determined upon, but not limited to, the  
6 following factors: Present service and the cost  
7 thereof for the contemplated area to be served, an  
8 estimate of the cost of the facilities to be utilized  
9 in the plant for solid waste collection and disposal,  
10 sworn to before a notary public; a statement of the  
11 assets on hand of the person, firm, association or  
12 corporation which will be expended on the purported  
13 plant for solid waste collection and disposal, sworn  
14 to before a notary public; a statement of prior  
15 experience, if any, in such field by the petitioner,  
16 sworn to by a notary public, and sentiment in the  
17 community contemplated to be served as to the  
18 necessity for such a service, and then it goes on to  
19 discuss the issue of whether the existing solid waste  
20 collection company or companies will not provide  
21 service to the satisfaction of the Commission.

22           In this case, that's one of the threshold  
23 issues, the latter issue, whether the current  
24 companies are providing service to the satisfaction  
25 of the Commission. We haven't even gotten to that

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1 issue yet.

2           So in a sense, I think it is premature to  
3 address the issues of sentiment in the community and  
4 whether the existing carriers are not providing  
5 service to the satisfaction of the Commission. We  
6 haven't even gotten to those issues yet.

7           And I don't believe that the statutory  
8 language requires the applicant to have everything in  
9 place prior to their starting.

10           And as to the Sureway case, I think that has  
11 to do with a primary facility, and I believe there's  
12 sufficient information on the record to indicate that  
13 the Covanta facility would be a reliable disposal  
14 facility for the applicant if the application is  
15 granted.

16           So at this point, I am not going to grant a  
17 motion to dismiss, because we haven't heard the  
18 entire case, and I don't think that, even though  
19 there may be questions by the parties, the  
20 protestants, as to whether the financial position and  
21 the facilities of the applicant are sufficient to  
22 provide the service, I don't think that they fail,  
23 under the requirements of the statute, to grant a  
24 motion to dismiss at this point.

25           So I think we should just get going, go

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1 through the case, and I understand you may feel it's  
2 a more appropriate use of resources to not proceed,  
3 but I think, under the terms of the statute, we need  
4 to proceed and hear the full case.

5 So thank you, Mr. Johnson.

6 MR. JOHNSON: Thank you, Your Honor.

7 JUDGE RENDAHL: Okay. So I think our next  
8 order of business is taking Ms. Walker; is that  
9 correct?

10 MR. JOHNSON: I believe that is correct,  
11 Your Honor.

12 JUDGE RENDAHL: Okay. Ms. Walker. Ms.  
13 Walker, do you have all the exhibits?

14 MS. WALKER: I have mine. What numbers are  
15 they in here? I see 115.

16 MR. HAFFNER: 115.

17 MS. WALKER: Just so that I know, when you  
18 call out numbers, which ones you're referring to.

19 JUDGE RENDAHL: Okay.

20 MR. JOHNSON: May I proceed, Your Honor?

21 JUDGE RENDAHL: Please go ahead. Actually,  
22 I need to swear in the witness. Could you state your  
23 full name and business address on the record, please?

24 MS. WALKER: Nanette M. Walker, and my  
25 business address is 745 South 21st Place, Richfield,

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1 Washington, 98642.

2 JUDGE RENDAHL: Thank you. And would you  
3 raise your right hand, please?

4 Whereupon,

5 NANETTE M. WALKER,  
6 having been first duly sworn, was called as a witness  
7 herein and was examined and testified as follows:

8 JUDGE RENDAHL: Okay. And actually, in this  
9 proceeding, as well, as a whole?

10 THE WITNESS: Yes.

11 JUDGE RENDAHL: Okay. Thank you. Please go  
12 ahead, Mr. Johnson.

13 MR. JOHNSON: 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. JOHNSON:

17 Q. Ms. Walker, I'm referring you to the  
18 exhibits in front of you here, and I'd like you to  
19 look at 115-T, which is here, and I'd like you to  
20 take a look at that and tell me what that is.

21 A. That is the written testimony for my -- for  
22 my -- I guess my part of the case.

23 Q. Okay.

24 A. It relates to all of the exhibits that are  
25 behind it.

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1 Q. Okay. And is this your signature on page  
2 nine of the testimony?

3 A. Yes, it is.

4 Q. And do you wish the Commission to accept  
5 this testimony as your testimony, with the exhibits  
6 attached? I guess the exhibits are Exhibit 116, 117,  
7 118, 119, 120, 121, 122 and 123. Take a moment and  
8 look at those and confirm that they all belong to  
9 your testimony and that they are part of your  
10 testimony.

11 A. Through 123?

12 Q. Right.

13 A. One-fifteen through 123, yes, those are all  
14 mine.

15 Q. Okay. Then, do you have any corrections or  
16 changes to make to your testimony?

17 A. No, there's no corrections or changes.

18 MR. JOHNSON: Okay. Thank you. Then we'll  
19 tender the witness.

20 JUDGE RENDAHL: All right. Please go ahead,  
21 Mr. Haffner.

22 MR. HAFFNER: Thank you, Your Honor. Do you  
23 want to move for admission of the exhibits, Mr.  
24 Johnson?

25 MR. JOHNSON: Certainly.

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1 MR. HAFFNER: I have no objection.

2 JUDGE RENDAHL: Any objection from other  
3 parties? No.

4 MR. SELLS: No, Your Honor.

5 JUDGE RENDAHL: All right. What's been  
6 marked as Exhibits 115-T through Exhibit 123 will be  
7 admitted. Please go ahead, Mr. Haffner.

8 MR. HAFFNER: Thank you, Your Honor.

9

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

11 BY MR. HAFFNER:

12 Q. Ms. Walker, my name is Greg Haffner. I'm  
13 the attorney for the applicant in this matter. Thank  
14 you for coming here today.

15 I have just a few questions, not very many,  
16 because I'm not a numbers person, so frankly, I'm  
17 impressed with the numbers that you've put together  
18 here, so I'm going to leave them at that and let them  
19 more or less speak for themselves. But I'd like to  
20 get on the record some of the reasoning or some of  
21 your comments on this analysis.

22 If we could look at Exhibit 119. And you  
23 have that in front of you now?

24 A. I do.

25 Q. Isn't it true that you assume that Kleen's

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1 average revenue per pickup should be \$116.09? And  
2 we'll see that on -- I think it's the -- kind of  
3 right there in the middle of the document. You're  
4 assuming \$116.09 per pickup there, whereas if we were  
5 to look at -- in Exhibit 118, it's my understanding  
6 from this document that the first number on Exhibit  
7 118, you are taking the position that, based on  
8 Kleen's pro formas, the average revenue per pickup is  
9 \$276.60?

10 A. The 116 is Stericycle's average, and the  
11 276.6 is the average revenue per pickup or stop,  
12 based on Kleen's pro forma that they originally  
13 filed.

14 Q. Okay. And then, do I understand that, by  
15 using Stericycle's average instead of Kleen's, you  
16 arrived at a net loss for Kleen, and this is on  
17 Exhibit 119, of \$178,504?

18 A. That's correct.

19 Q. Okay. And by using that corrected revenue  
20 per pickup, you're stating that Kleen's revenue would  
21 really only be \$165,777, instead of \$397,345; is that  
22 correct?

23 A. That's correct.

24 Q. Similarly, on the section just below that,  
25 on Exhibit 119, the -- you're assuming an average



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1 revenue per customer of \$102.10, but on Exhibit 118,  
2 Kleen's revenue per customer is actually projected in  
3 their pro formas at \$1,106.40?

4 A. Again, again, the 102.10 is Stericycle's  
5 average revenue per customer, per month. Based on  
6 Kleen's pro forma that they presented, their average  
7 revenue per customer, per month is \$1,106.40.

8 Q. Okay. And then, going back to Exhibit 119,  
9 using Stericycle's projected revenue, or Stericycle's  
10 revenue figures and applying them to Kleen's  
11 customers that they have in their pro forma, it's my  
12 understanding that you project a revenue for Kleen of  
13 only \$36,450; is that correct?

14 A. That's correct.

15 Q. Rather than the \$397,000 that they projected  
16 in their pro formas?

17 A. Correct.

18 Q. Or maybe -- I should probably be clear.  
19 That might not be what they projected. That might  
20 have been what you projected in your corrections of  
21 their pro formas?

22 A. The 397 is what I got when I added up their  
23 four regions.

24 Q. Okay. And we admitted making some mistakes.  
25 Now, if we can turn, then, to Exhibit 123, isn't it

0747

1 true that in this exhibit you're indicating that  
2 Kleen will divert revenue from Stericycle of  
3 \$1,289,089?

4 A. What we are representing here is trying to  
5 figure out what effect the diversion to Kleen would  
6 have on Stericycle of Washington operation. The  
7 1,289,089, if you go down to note 1W at the last page  
8 of that exhibit --

9 Q. Yes.

10 A. -- tells us that we looked at Kleen's  
11 proposal of taking 43 customers, all being large  
12 quantity generators. Stericycle of Washington only  
13 has 140 large generator customers.

14 Q. Mm-hmm.

15 A. That is over 30 percent of their large  
16 quantity generators. Stericycle does keep their  
17 internal accounting such that they know what the  
18 revenue is for large and small generators. So what  
19 we did was we took one -- you know, 30.71, I believe  
20 is the actual percentage, of those customers and said  
21 we would lose that revenue.

22 Q. Okay. Now, you're assuming that those 43  
23 customers are all of the type of customer that  
24 generates for you, or for Stericycle, an average  
25 revenue of almost \$30,000 a year, isn't it?

0748

1 A. Based on this percentage.

2 Q. When, in fact, Stericycle -- or Kleen's own  
3 pro formas only indicate that those same customers  
4 are going to generate only \$1,100 a month, which  
5 would be closer to about \$13,000 per year?

6 A. That's 11,000, yes, per customer.

7 Q. Okay.

8 A. We're merely trying to get a look.

9 Q. That's okay. If you could limit -- your  
10 attorney can ask you --

11 MR. JOHNSON: Your Honor, the witness is  
12 trying to clarify an answer. Shouldn't she not be  
13 permitted to do so?

14 JUDGE RENDAHL: Yes. As I did so with your  
15 witnesses, Mr. Haffner, I'm going to allow the  
16 witness to explain. And if you have additional cross  
17 based on that, you can pursue it.

18 MR. HAFFNER: Okay, Your Honor.

19 Q. Go ahead.

20 A. Like I said, we were trying to take a look  
21 at what effect this might have on Stericycle's  
22 activities. And you will find similar assumptions  
23 throughout the expenses, as well. So we were just  
24 trying to pull out a relationship of what that might  
25 be. So I would not suggest that you look to your

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1 possible revenue as being this high. We were looking  
2 at what our activity here is in Washington and what  
3 it would do to us. So you will find expenses also  
4 reduced appropriately, to get an idea of what it  
5 would do to our net activity.

6 Q. And I think you're -- so you're saying that  
7 we really should not anticipate Kleen's revenue to  
8 approximate 1.2 -- or \$1.3 million?

9 A. That's correct, you should not anticipate  
10 that.

11 Q. Nor should Stericycle anticipate that they  
12 should have a diversion of close to \$1.3 million?

13 A. That is very hard to say. We have no way of  
14 knowing actually which customers you would be  
15 diverting. We could only take a representative  
16 percentage of the large quantity generators.

17 Q. How can you claim that we shouldn't expect  
18 revenue of \$1.3 million, but Stericycle can't  
19 necessarily anticipate a diversion of \$1.3 million?

20 A. Again, I'm just -- we were trying to pull a  
21 representation of both revenue and expenses. You  
22 cannot take one number in a vacuum and look at it.  
23 You need to look at the entire effect to the  
24 activity.

25 Q. How do you also reconcile the fact that you

0750

1 claim a diversion of \$1.3 million of Stericycle's  
2 revenue when, by your estimate of the per customer  
3 revenue, Kleen should only generate \$36,450 in  
4 revenue? How do you justify a diversion of \$1.3  
5 million if you say that Kleen is only going to  
6 generate \$36,000?

7 A. The 36,000, let's take a look at that.

8 Q. That's on Exhibit 119.

9 A. Okay. The 36,000 is the average monthly  
10 revenue per customer. That is not just large  
11 quantity generator customers. What we were trying to  
12 do here was point out the fact that statewide service  
13 does not just include large quantity generators; it  
14 includes small and large. Ninety-seven percent of  
15 Stericycle's customers are small quantity generators.  
16 Therefore, it's highly unlikely that Kleen would be  
17 able to only service the large quantity generators.

18 The 102.10 is the average revenue per month  
19 for all customers. Looking back over at Exhibit 123,  
20 the \$1.2 million is merely the percentage of large  
21 quantity generators that Kleen purports to service as  
22 a percentage of Stericycle's total large quantity  
23 generators only. They're two completely separate  
24 calculations.

25 Q. They really project two extremes, don't

0751

1 they? What you consider to be the potential revenue  
2 of Stericycle -- of Kleen if they were to use your  
3 per customer revenue versus the extreme loss of 43  
4 \$33,000-a-year customers?

5 A. What we were trying to do was, in one case,  
6 look and see what we think Kleen would actually  
7 generate in revenue, and the other is what is the  
8 worst case that could happen to Stericycle of  
9 Washington, and what would that mean to the  
10 ratepayers currently.

11 Q. These are mutually exclusive situations,  
12 aren't they?

13 A. I don't know if I'd call them mutually  
14 exclusive. They are two different -- completely  
15 different views --

16 Q. I mean --

17 A. -- of two things.

18 Q. Kleen can't generate \$36,000 in revenue and  
19 divert \$1.3 million of revenue from Stericycle, can  
20 it?

21 A. You would think not.

22 Q. Thank you. Let's take a look at Exhibit  
23 120, and I realize that your analysis of these  
24 documents was made at a time when it was --

25 JUDGE RENDAHL: Let's be off the record for

0752

1 a moment. All right. Let's go back on the record.

2 MR. HAFFNER: Thank you, Your Honor.

3 Q. I realize that your analysis of Kleen's  
4 financial documents initially was based on an  
5 assumption that there would be some service to the  
6 hydroclave facility in British Columbia. And this  
7 document, as well as some of the other documents in  
8 your exhibits to your testimony, makes substantial  
9 reference to service and the cost of service to that  
10 hydroclave facility.

11 If we could look at Exhibit 120, would you  
12 agree that -- where we get down to about  
13 three-quarters of the way through that list, there's  
14 use of hydroclave facility, and you've got about four  
15 items listed there that all refer to notes 14, 15, 17  
16 and 10. Would you agree that if those items are not  
17 a cost that Kleen would be incurring, in other words,  
18 if they're not providing service that's going --  
19 taking them up to the hydroclave facility, those are  
20 costs that they would not incur?

21 A. If they were not going, they may not incur  
22 them, but their testimony says that they are making  
23 that available to their customers, so you have to  
24 anticipate that it is going to be used.

25 Q. If these costs, however, are not used, would

0753

1 that not change this number by approximately 40,000,  
2 and actually cause Kleen to recognize a profit?

3 A. It would change it by around 40,000, yes.

4 Q. Okay, thank you. And in your analysis of  
5 the use of the hydroclave facility, did you take into  
6 account anywhere that Kleen would not have to be  
7 making a similar trip to Oregon?

8 A. From the testimony given by Kleen people, it  
9 represented that it would have to continue going to  
10 Oregon, because not all customers would be using the  
11 hydroclave. As you can see here, I've never assumed  
12 that you would be using it 100 percent, the  
13 hydroclave.

14 The other factor is that it's my  
15 understanding that some waste cannot be taken to the  
16 hydroclave, but can be to Covanta, and vice versa.  
17 so my assumption is that you would still have to go  
18 to both facilities.

19 Q. But if they went to both facilities, and 25  
20 percent of the volume of boxes, which you're using  
21 here, was diverted to the hydroclave facility,  
22 wouldn't that reduce the expenses to the Oregon  
23 facility by 25 percent?

24 A. If you notice, the disposal cost that I have  
25 on here is only \$6 a box. That is the difference.



0754

1 So I have taken out the cost of going to Covanta, the  
2 disposal cost there, for any usage that might have  
3 been at the hydroclave.

4 Q. Isn't that \$6 per box figure the cost of  
5 actual disposal or -- let me back up, because we  
6 disagree with that number. Isn't that \$6 per box  
7 figure what you believe is the cost of actual  
8 disposal at the HSS facility?

9 A. No, it's not.

10 Q. That includes mileage to the HSS facility?

11 A. No, it does not.

12 Q. What else does it include, other than the  
13 cost of disposal at the HSS facility?

14 A. That is the difference between what it would  
15 cost at the HSS facility for disposal only, less the  
16 \$4 a box that you are paying to Covanta.

17 Q. So you're saying -- your assumption was that  
18 it cost \$10 per box for disposal at the HSS facility?

19 A. Based on a quote that we got from HSS, yes.

20 Q. Do you have a contract for that quote?

21 A. We have a -- no, because we decided not to  
22 use them, so we did not get a contract.

23 Q. Did you provide a written copy of that quote  
24 with your materials?

25 A. I don't -- not in mine.

0755

1 Q. Okay. And one final document, and I believe  
2 one exhibit, and that's Exhibit 122. And this  
3 document, as I understand it, analyzes the cash needs  
4 for Kleen Environmental's proposed business; correct?

5 A. Correct.

6 Q. And this document relies -- relies, I won't  
7 care to quantify it, but it does rely on use of the  
8 hydroclave facility, does it not?

9 A. Yes, it does.

10 Q. And it also relies, and I think I will  
11 quantify this a little bit more, maybe substantially  
12 on fund loss for revenue per pickup; correct?

13 A. That is in three of the columns, yes.

14 Q. And that's -- is that an additional loss of  
15 \$231,000, based on your analysis of revenue per  
16 pickup?

17 A. That is the difference between gross revenue  
18 that Kleen is projecting to generate versus what we  
19 calculate you would actually generate based upon that  
20 criteria.

21 Q. Similarly, you are using those same numbers  
22 based on monthly revenue per customer to show a  
23 difference in the analysis of \$360,000; is that  
24 correct?

25 A. That's correct.

0756

1 Q. Okay. And these numbers would -- again,  
2 these numbers, going back to the analysis that we had  
3 on Exhibit 119, really are mutually exclusive with  
4 your diversion numbers of \$1.3 million, aren't they?

5 A. Again, you have to remember, those diversion  
6 numbers are -- you're trying to compare apples with  
7 oranges. We're looking on 122 here. And on 118,  
8 we're looking at the total population of Stericycle's  
9 customers, which include all customers, large and  
10 small, which is, in our belief, a fair representation  
11 of what any statewide hauler would be exposed to.

12 When you are trying -- if you look at  
13 Stericycle of Washington, what the diversion might  
14 possibly do to our ratepayers, which is Exhibit 123,  
15 we are looking only at large quantity generators.  
16 Two completely different views and two different  
17 populations of criteria.

18 Q. And I couldn't agree with you more that they  
19 are two different views. And using your own  
20 terminology, I guess, would it be fair to  
21 characterize your analysis of how little revenue  
22 Kleen could generate as apples versus how large of a  
23 diversion you are proposing as oranges?

24 A. They -- those two analyses are apples and  
25 oranges. What Kleen is purporting to do is to divert

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1 all large quantity generators. So when we are  
2 talking about what it would divert from Stericycle's  
3 current activity, it would have to come out of only  
4 the large quantity generators.

5           When we are talking about what we believe  
6 Kleen would actually recognize as revenue, we're  
7 saying, hey, the average customer in Washington is  
8 not a large quantity generator. So if Kleen did take  
9 only the large quantity generators they are  
10 purporting to do, then, yes, you would see a larger  
11 diversion of revenue from Stericycle than what we  
12 believe Kleen's actual revenue will probably be,  
13 because we don't believe that the 43 can all be large  
14 quantity generators if you are going to be servicing  
15 the state.

16           MR. HAFFNER: Thank you, Your Honor. I have  
17 no other questions for the witness.

18           JUDGE RENDAHL: All right. Mr. Sells, do  
19 you have anything for the witness?

20           MR. SELLS: No, Your Honor.

21           JUDGE RENDAHL: Mr. Trautman, do you have  
22 anything for the witness?

23           MR. TRAUTMAN: No.

24

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

0758

1 BY JUDGE RENDAHL:

2 Q. Ms. Walker, I just have a clarification on  
3 your Exhibit 122. You have six different columns --

4 A. Yes.

5 Q. -- to the right. And can you explain how  
6 those might be labeled?

7 A. Sure.

8 Q. Or how to describe --

9 A. Sure.

10 Q. -- what flows through, because I'm having  
11 some difficulty.

12 A. Right. What we did was, the top part, you  
13 will notice, is all the same, and then what we -- the  
14 next section down, where it says fund loss-year one  
15 for underestimate of cost, with 25 percent hydroclave  
16 use, there are two columns that use that assumption.  
17 Then, if you drop to the next line and over two more  
18 columns, we've now assumed that we are using 50  
19 percent hydroclave usage. And drop down and over two  
20 more columns, we're now at 75 percent hydroclave  
21 usage.

22 Then the next section down says fund  
23 loss-year one for overestimate of revenue. Here we  
24 are showing what we believe to be the adjustments  
25 necessary in revenue for each of those scenarios --

0759

1 for each scenario using a different usage of  
2 hydroclave, and we had two different revenue  
3 adjustments. One was per pickup, or per stop, and  
4 the second one was per customer. And so you will see  
5 the first column uses 25 percent hydroclave use and a  
6 revenue adjustment for the per pickup assumption.

7 Q. Now, I'm going to stop you there for a  
8 minute. When you were talking about the two fund  
9 loss overestimates of revenue below --

10 A. Yes.

11 Q. -- one of those reflects usage -- I guess  
12 I'm confused as to how the hydroclave activity or use  
13 of the hydroclave fits in with those. Maybe I  
14 misunderstood what you were saying.

15 A. They don't necessarily fit in. What we were  
16 trying to do is say -- if you just look merely at the  
17 first column, we're saying if Kleen used the  
18 hydroclave for 25 percent of their waste disposal,  
19 and they actually recognized revenue as we believed  
20 they would, based on a per pickup revenue --

21 Q. And that's the one --

22 A. Then that's the first column.

23 Q. That's the 109 figure, 109 or -- from  
24 Exhibit 119, that's the -- I'm sorry, the  
25 one-sixteen-oh-nine figure? Is that what --

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1 A. That is correct. That is correct.

2 Q. That's based on the --

3 A. Yes.

4 Q. -- one-sixteen-oh-nine?

5 A. Yes.

6 Q. Okay.

7 A. And then, likewise, the next one, the  
8 average revenue per customer, if you go back to 119,  
9 that is the 102.10, yeah.

10 Q. All right. And then that flows through the  
11 other columns, just to show the difference, based on  
12 those two figures and the percent usage of the  
13 hydroclave?

14 A. That's correct.

15 Q. Okay. And then, can you go ahead with the  
16 next item on the left listed below?

17 A. In the first column?

18 Q. Yes.

19 A. All right. What we do then is we come down  
20 to a cash requirement that we believe necessary in  
21 year one for the -- just the new medical waste  
22 activity. Then we go to --

23 Q. Why does -- I'm sorry to interrupt. But why  
24 does that change as you go through? Is it just a  
25 total of the --

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1 A. Of above, yes.

2 Q. Right.

3 A. So it will change based on the hydroclave  
4 use and the assumption for the revenue.

5 Q. Okay. Thank you.

6 A. And the next line down is Kleen  
7 Environmental Technologies is an existing business  
8 that does carry some cash, but also requires some  
9 working capital, and their total expenses for the  
10 year are 916,000.

11 And what I have used here is, most  
12 businesses that I work with, and they're all very  
13 small businesses like Kleen, they need to have at  
14 least three months of operating capital accessible to  
15 be able to continue operating, especially when you  
16 have a project-oriented business like Kleen. So I  
17 would think it would be prudent business practice for  
18 them to keep enough money to continue their existing  
19 operation.

20 If you take their annual expenses, divide  
21 them by 12, and take three months, that is where I  
22 got the 229,234. The next line --

23 Q. I'm sorry. When you say their annual  
24 expenses, were you basing that on what was in their  
25 pro forma or the existing business' annual expenses?



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1           A.    This is the existing business' annual  
2    expense, based on their financial statement at  
3    September 30th of '03.

4           Q.    Okay.  Thank you.

5           A.    And then you -- then the next item is then  
6    just, again, a subtotal of what I believe they need  
7    as cash in the first year for the medical waste, plus  
8    what they would prudently hold for their business,  
9    current business.  That's the 687 in the first  
10   column, and then they have testified that they keep,  
11   on average, \$100,000 in cash in that existing  
12   business, so I'm assuming that's available for all  
13   these purposes, which leaves them, then, with the  
14   cash shortage that we've got on the bottom line.

15          Q.    Okay.  Thank you.

16          A.    You bet.

17                JUDGE RENDAHL:  Okay.  I had one other  
18   question.  Let me just check.  I think you've covered  
19   that with Mr. Haffner, so I have nothing further.

20                I'm sorry.  Mr. Trautman?

21                MR. TRAUTMAN:  Yeah, I do have a question.

22

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

24   BY MR. TRAUTMAN:

25          Q.    On the -- kind of following up on Mr.

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1 Haffner, he had gone through two scenarios, one in  
2 which Kleen would experience an average revenue per  
3 customer of \$102, and I believe you were basing that  
4 on Stericycle's average, and then you had another  
5 scenario in which there would be 43 large generators  
6 and, if that were the case, there'd be about \$1.3  
7 million diverted.

8 Have you assigned a likelihood to either one  
9 of those possibilities? Because, as you indicated  
10 they're --

11 A. No.

12 Q. -- not both going to happen. You have not?

13 A. No.

14 Q. When I read your testimony, you seem to  
15 assign a greater likelihood to the first scenario of  
16 \$102 per customer. You said that you've assumed the  
17 Commission would require Kleen to serve all  
18 generators without discrimination, and then, if they  
19 serve those generators, the monthly revenue would be  
20 similar to Stericycle's. So am I not correct that  
21 that is what you are assuming is more likely to  
22 happen?

23 A. That would be true. That is what we  
24 actually believe Kleen would experience. Again, the  
25 diversion calculation was merely done to try and get

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1 an idea of what effect it might have on our current  
2 ratepayers.

3 Q. Yes, but if -- so the alternative -- then  
4 the alternative assumption, which could lead to a  
5 revenue loss of \$1.3 million, which you say is 30.71  
6 percent of the large quantity revenue, and in fact,  
7 would cause Stericycle to operate at a net loss, how  
8 likely do you think that is to happen?

9 A. I'm not sure I'm qualified to tell you -- I  
10 mean, to answer that. I did not analyze whether or  
11 not --

12 Q. Well --

13 A. -- we thought this would really happen.

14 Q. Well, the reason I'm asking is because you  
15 portray -- well, because you portray two, it appears  
16 to me, two completely different possibilities.

17 A. Mm-hmm.

18 Q. And they both can't occur. I mean, if  
19 Stericycle's belief is that it's most likely that  
20 we'll have the \$102 per customer, can Stericycle -- I  
21 mean, how can you, at the same time, argue that  
22 there's a significant likelihood that you could --  
23 that you could lose \$1.3 million?

24 A. We were looking at what would really happen  
25 if they could take 43 large quantity generators. We

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1 do not believe that that, in fact, would happen.

2 MR. TRAUTMAN: Okay. Thank you.

3 JUDGE RENDAHL: All right. Mr. Johnson, any  
4 redirect?

5 MR. JOHNSON: I have no redirect, other than  
6 we had discussed the possibility of sort of going  
7 beyond the direct and asking a few questions about  
8 Exhibits 50 and 51 that Mr. Haffner offered  
9 yesterday, if I may.

10 JUDGE RENDAHL: Well, I'm thinking maybe  
11 this is a good time to take our break, and we'll  
12 break until 20 to 11:00. So we'll be off the record.  
13 We'll come back and finish up with Ms. Walker. So  
14 we'll be off the record.

15 (Recess taken.)

16 JUDGE RENDAHL: Let's be back on the record.  
17 While we were off the record, we were discussing the  
18 option of using the room next door for our October  
19 12th hearing and have determined that it's  
20 appropriate. So we will schedule a hearing, an  
21 additional hearing day for the 12th in Kent, in  
22 Chambers West, because we're in Chambers East now,  
23 and I'll send out a notice to that effect when I get  
24 back to the office.

25 So now we're going back to Ms. Walker. Mr.

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1 Johnson, I believe you had some rebuttal direct.

2 MR. JOHNSON: That's correct, Your Honor.

3 Thank you.

4

5 R E B U T T A L D I R E C T E X A M I N A T I O N

6 BY MR. JOHNSON:

7 Q. Ms. Walker, I am going to refer you to the  
8 pro forma filed as part of Mr. Lee's pre-filed  
9 testimony. It's found at Exhibit 44 currently in the  
10 record of this proceeding. And I would like to refer  
11 you to the regional analysis of Regions One, Two,  
12 Three, Four, and then they're combined at the end, I  
13 believe. In a -- in the last two pages of that  
14 exhibit, there's two sheets that are labeled Combined  
15 Regions One Through Four.

16 A. Got it, mm-hmm.

17 Q. In your testimony, I'm -- I guess I can  
18 refer you to Exhibit 119. You do a calculation, and  
19 actually, this calculation reappears several times.  
20 You start with the number 71,153 as revenue -- oh,  
21 I'm sorry, net profit per the Kleen pro forma. Is  
22 that referring to just the profits shown on Exhibit  
23 44?

24 A. Yes, it is.

25 Q. Okay. And then the first thing you do under

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1 -- on Exhibit 19 is adjustments to correct addition;  
2 is that right? And then there's a deduction of  
3 \$15,872?

4 A. That's correct.

5 Q. Could you explain what that deduction is,  
6 why you made it?

7 A. Yes. I was asked to look at Kleen's pro  
8 forma testimony to determine if it was reasonable,  
9 complete and accurate. And a combination page, as we  
10 see on the last two pages of Exhibit 44, is normally  
11 just a combination, as it says, of other pro formas,  
12 which were Region One through Four.

13 As I was working through the material, it  
14 became apparent to me that it was not adding up.

15 Q. That is, that the combined Region One  
16 through Four didn't show the sum of the numbers in  
17 the Region One through Four separate regional  
18 analysis?

19 A. That is correct, and it also did not even  
20 calculate properly within itself. So what I did was,  
21 to try and get to some real numbers, based on what  
22 they had assumed, was I took Region One through Four,  
23 each of which were -- had problems within themselves,  
24 as well, but that was their premise for starting and  
25 coming to a combined Region One through Four. So I

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1 added those together to come up with what I  
2 determined to be the correct combined Region One  
3 through Four, and that is how I came up, then, with  
4 my list of corrections to their 71,000 that they were  
5 using as their pro forma net income.

6 MR. HAFFNER: Your Honor, I'd like to object  
7 at this time, I guess maybe get a clarification of  
8 where we're going with this type of testimony, so  
9 that we're not rehashing her direct written  
10 testimony. It was my understanding that this was  
11 going to be rebuttal testimony, which would be  
12 directed towards Exhibits -- I believe 50 and 51, as  
13 opposed to having her explain her direct testimony  
14 that's in written form.

15 MR. JOHNSON: Your Honor, if I might  
16 explain, I'm trying to lay the foundation, because  
17 what -- for subsequent questions about Exhibits 50  
18 and 51, because what 50 and 51 do is modify Exhibit  
19 44, and I'm going to ask Ms. Walker how the  
20 modifications made to 50 -- in 50 and 51 affect the  
21 numbers that she has presented in her testimony, in  
22 exhibits to her testimony.

23 It's a little bit -- we need to separate out  
24 a couple of modifications to the figures in order to  
25 make it clear what the effect of the changes in 50

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1 and 51 would be with respect to her testimony, and  
2 I'm trying to progress in a way that will allow us to  
3 do that and make a record that's clear.

4 JUDGE RENDAHL: Mr. Haffner.

5 MR. HAFFNER: I think that's making an  
6 assumption that he needs to make a clarification. I  
7 think she has made a very detailed explanation of how  
8 she got to these numbers, we have submitted a couple  
9 of documents that have been revised in response to  
10 that, and that's what her rebuttal testimony is  
11 supposed to be in regards to.

12 MR. JOHNSON: We intend to show that the  
13 revisions do not respond and that additional  
14 deductions need to be made.

15 JUDGE RENDAHL: Well, then, I think you can  
16 do that. I appreciate your trying to sort of smooth  
17 this up, but I think the record is fairly clear with  
18 the exhibits in place and the testimony that's been  
19 filed, so if you want to just go into your questions  
20 about the new exhibits, then that's appropriate.

21 MR. JOHNSON: Well, I'll do my best, Your  
22 Honor.

23 Q. Ms. Walker, referring to Exhibit 51, which  
24 is a revised profit and loss -- pro forma profit and  
25 loss analysis presented by the applicant, do you see



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1 that it is presented on a combined basis for Regions  
2 One through Four?

3 A. Yes, I do.

4 Q. Does that pro forma, do the adjustments made  
5 on that pro forma reflect the arithmetic errors that  
6 you identified previously in your testimony --

7 A. No, it does not.

8 Q. -- when you -- excuse me -- when you  
9 critiqued Exhibit 44?

10 A. No, it does not.

11 Q. Okay. So Ms. Walker, I believe Mr. Lee's  
12 testimony with respect to Exhibit 51 was that he had  
13 made various adjustments that reduced the pro forma  
14 net profit for the first 12 months of operation to  
15 \$56,981.04. I believe that's the last figure on  
16 Exhibit 51. Does that take into account the  
17 arithmetic errors that you identified in Exhibit 44?

18 A. No, it does not.

19 Q. Okay. So Ms. Walker, if you were -- if I  
20 could refer you to the exhibits attached to your  
21 testimony, for example, Exhibit 119, the net profit  
22 for Kleen pro forma now, per Exhibit 51, instead of  
23 being \$71,153, would be \$56,981.04; correct?

24 A. That's correct.

25 Q. And would you still have to make these

0771

1 adjustments, the adjustments shown in the next line  
2 of Exhibit 119, to account for the addition errors  
3 made in Exhibit 44?

4 A. Yes, I would.

5 Q. And are those addition errors described  
6 elsewhere in your testimony?

7 A. They are part of Exhibit 117, the notes to  
8 my testimony. Note number six identifies those items  
9 that I found to be in error.

10 Q. Some were errors in Kleen's favor and some  
11 were errors not in Kleen's favor. The net was this  
12 number; is that right?

13 A. That's correct.

14 Q. Okay. So if we were to modify Exhibit 119  
15 to take into account the new pro forma, you would  
16 start with a new pro forma net profit figure of  
17 \$56,981.04, and then make the deductions and  
18 adjustments shown on this sheet of -- for Exhibit 19;  
19 is that right?

20 A. That's correct.

21 Q. And would that adjustment carry through to  
22 all your other exhibits?

23 A. Yes, it would.

24 Q. Could you point that out in each exhibit as  
25 we go through how that adjustment would work?

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1 A. All right.

2 Q. And remember we're trying to make a record  
3 that will be clear --

4 A. Right.

5 Q. -- long after we're finished in this room.

6 A. Right. Starting with Exhibit 115, which is  
7 the written testimony, there are references  
8 throughout this testimony to the exhibits behind.  
9 Since all of the exhibits behind will be an  
10 additional 15,000 plus additional loss, these numbers  
11 would change, as well. Going to 116, no change.  
12 117, the adjustments in Note Six would stay the same,  
13 because the beginning number was merely their  
14 incorrect number they started with, so we still have  
15 to make all the addition corrections. I don't  
16 believe any other of those notes are changed.

17 Moving to Exhibit 118, these numbers would  
18 not change. 119 is where we start showing analysis  
19 based on their original income, so each of these  
20 numbers would have to be -- each of these net loss  
21 numbers at the bottom would need to be increased by  
22 the \$15,000 that they have adjusted their pro forma.

23 Q. Now, Ms. Walker, am I correct that you're  
24 referring -- when you're talking about the 15,000  
25 that Kleen has adjusted its pro forma, that's the

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1 difference between their net profit in Exhibit 44 on  
2 the combined pages and the net profit on Exhibit 51;  
3 is that right?

4 A. That's correct.

5 Q. Okay.

6 A. That's correct. There were several items  
7 they changed on Exhibit 51, the net of which is  
8 \$14,991. So I'm rounding that off, I apologize, to  
9 \$15,000. It's very close to the other arithmetic  
10 errors, although they are different. They made  
11 adjustments to specific line items starting with a  
12 number that I believe was incorrect, so we would  
13 still need to make those.

14 So back to Exhibit 119, each of those net  
15 loss numbers would need to be increased by 15,000.  
16 Moving to Exhibit 120, the loss numbers here, the net  
17 loss based solely on cost adjustments, in the middle  
18 of the page, the 27,000 would need to be increased by  
19 15,000, as well as each of the three losses to the  
20 right. Each of those would need to be increased.  
21 The loss would need to be increased, in other words,  
22 a greater loss by 15,000.

23 Moving to Exhibit 121, we used the same  
24 assumption in the middle of the page, which, again,  
25 would need to be -- the loss would need to be

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1 increased by 15,000, as would each of the losses to  
2 the right.

3 Exhibit 122, in the middle of the page, we  
4 talk about funding the losses that they would incur.  
5 Those each would need to be increased by \$15,000,  
6 which would increase the bottom line cash shortage  
7 additional \$15,000 each line, making those larger  
8 losses.

9 Would not change Exhibit 123, and I believe  
10 that's the end of the -- my exhibits.

11 Q. Ms. Walker, referring you to Exhibit 50,  
12 which is a revised pro forma balance sheet analysis  
13 submitted by the applicant on a combined basis for  
14 Regions One through Four. Looking at the first  
15 column, where it says Initial Values, were you here  
16 for Mr. Lee's testimony with respect to the figure  
17 shown as stockholder loans?

18 A. Yes, I was.

19 Q. Would you please interpret this balance  
20 sheet in terms of what you believe it shows in terms  
21 of what the working capital requirements of this  
22 business would be?

23 A. To begin with, in the first column, let me  
24 get to the right exhibit, there is a column headed  
25 initial values, and this was the starting place for

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1 Mr. Lee to work through his balance sheet through the  
2 end of his first year. And he has got a beginning  
3 cash of 66,270, he has materials, he has supplies, he  
4 has equipment, and all of that, other than \$950,  
5 which is being paid by accounts payable, which means  
6 it's still due, still needs to be paid, he is showing  
7 a capital investment of \$5,000 and stockholder loans  
8 of 104,770. What that tells me is that they intend  
9 to supply the company on day one with \$66,000 in  
10 cash, \$950 in materials, 20,000 in supplies, and  
11 23,500 in equipment.

12 That money to provide those assets has to  
13 come from somewhere. And they're showing it as  
14 capital investment of 5,000, whether or not that is  
15 an additional loan by shareholders or just cash that  
16 they are putting in, it would have to come from the  
17 owners. The shareholder loans are either cash coming  
18 from the shareholders or loans that they're taking  
19 out elsewhere and funding the operation with cash.

20 Q. Ms. Walker, looking at Exhibit 51, is there  
21 any allowance for interest on stockholder loans or  
22 any other kind of loans?

23 A. There is not.

24 Q. And if there were loans to be made to the  
25 Kleen business to start up their biomedical waste

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1 business, would you expect there to be interest  
2 obligations?

3 A. Yes, I would. If they went to a bank, the  
4 bank is certainly going to charge them interest, plus  
5 loan fees, and if it is a stockholder loan, the  
6 Internal Revenue Service requires that interest be  
7 paid, at least annually, on stockholder loans.

8 MR. JOHNSON: Okay. I have no further  
9 questions, Your Honor.

10 JUDGE RENDAHL: Okay. Mr. Haffner.

11

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

13 BY MR. HAFFNER:

14 Q. Ms. Walker, in your evaluation of Exhibits  
15 50 and 51, and let me, I guess, focus on 51, did you  
16 take into account the starred items on that exhibit  
17 to note any recognized increases in expenses that  
18 reduced the revenue or the profit from 71,000 to  
19 \$56,000?

20 A. My understanding of Exhibit 51 is that the  
21 combined P&L that was presented as 44 was the  
22 starting place for this pro forma. No backup detail  
23 was used to change Region One through Four. Then  
24 adjustments were made for the -- on the starred line  
25 items.

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1           So what has happened is that these  
2 adjustments that have been made on 50 do affect the  
3 revenue that is being shown now as 56,981.04. They  
4 do not correct any of the prior addition errors,  
5 which were the starting place for this form.

6           Q. Now, let me walk through some of these. For  
7 instance, if we compare the -- on Exhibit 44, the  
8 Combined Regions One and Four Pro Forma Profit and  
9 Loss Analysis, and if we combine that to the Revised  
10 Pro Forma Profit and Loss Analysis, which is Exhibit  
11 51, we clearly indicated that we changed some of  
12 these figures, and these were submitted specifically  
13 in rebuttal to your prior testimony that said that we  
14 made some errors, and so we attempted to correct some  
15 of those mistakes.

16           For instance, in vehicle lease, under  
17 indirect cost of sales, it appears that we have -- I  
18 guess -- I think on that one we decreased the  
19 expense, and then on vehicle operating -- let's see.  
20 Is that right? Vehicle operating, we went from 22  
21 cents a mile to 30 cents a mile, and that went up in  
22 expense from 16,000 to 22,000.

23           I mean, that's a \$6,000 difference in  
24 expenses that would have accounted for the reduction  
25 in the projected revenue, or projected profit. Did



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1 you take that into account?

2 A. I don't believe the 30 cents was in one of  
3 my corrections, so you would have to -- my  
4 understanding is 51 started with the 71,000, and then  
5 he made these adjustments. Not all of the addition  
6 adjustments have been addressed in 51.

7 Q. Let me ask the question in a different way.  
8 When you just testified about how your exhibits to  
9 your pre-filed testimony would need to be -- how the  
10 net losses in those exhibits would need to be  
11 increased by the \$15,000 reduction in net profit that  
12 is demonstrated in the difference between Exhibits 51  
13 and Exhibit 44, when you make that statement, you're  
14 not taking into account, are you, that, in our  
15 revised pro formas, we increased some of the expenses  
16 to get to that reduced profit figure?

17 A. I'm seeing that there were changes made for  
18 various expenses in 51 that do not correct the  
19 addition errors.

20 Q. But the addition errors were not the only  
21 basis for your determination that our profit figures  
22 were incorrect in your initial pre-filed testimony;  
23 correct?

24 A. I think you will find that I have not only  
25 adjusted your profit for addition errors, but then I

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1 have also adjusted it for various assumptions above  
2 and beyond addition problems. The 15,872 that flows  
3 through all of my testimony exhibits only relates to  
4 the addition. So if any adjustments were made on  
5 your part for correcting the assumptions, those are  
6 two different things.

7 Q. Okay. And that's exactly my point, the  
8 question that I'm asking you. I think it's on  
9 Exhibit 120 where you list some of the assumptions  
10 that you feel we didn't make or that you disagree  
11 with; is that correct?

12 A. That's correct.

13 Q. Okay. So to the extent that we've addressed  
14 some of those assumptions and modified our revenue,  
15 our profit picture, that net loss of \$27,000 that you  
16 carry through all of your other exhibits wouldn't be  
17 exact -- wouldn't be the same anymore, would it?

18 A. That's assuming I agree with your  
19 assumptions, which I obviously don't.

20 Q. And I agree to that. I'm not asking you to  
21 agree or disagree with those. I'm just pointing out  
22 that you hadn't taken that into consideration when  
23 counsel asked you about adjusting all of these other  
24 exhibits?

25 A. The 15,872 addition error still needs to be

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1 made, I believe, to all of these exhibits. The  
2 adjustments made on 51 may address some of these  
3 further adjustments listed below that, and they will  
4 be in different amounts than what I have here,  
5 because your assumptions are different.

6 MR. HAFFNER: Correct. I don't have any  
7 other questions of the witness, Your Honor.

8 JUDGE RENDAHL: Mr. Sells.

9 MR. SELLS: None, Your Honor.

10 JUDGE RENDAHL: Mr. Trautman.

11 MR. TRAUTMAN: No.

12 JUDGE RENDAHL: Mr. Johnson, any redirect?

13 MR. JOHNSON: Your Honor, if I could.

14

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

16 BY MR. JOHNSON:

17 Q. Ms. Walker, perhaps the best way to do this  
18 is just to look through Exhibit 120 and go through  
19 those cost items in relation to the modifications  
20 made on Exhibit 151, and we can perhaps clarify how  
21 -- in detail how the changes in the cost assumptions  
22 in Exhibit 51 would affect this particular exhibit.

23 MR. HAFFNER: Your Honor, I'll object. I  
24 don't think it's necessary to do so. I think the  
25 evidence speaks for itself and we can make argument

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1 of that in briefing.

2 MR. JOHNSON: This is not argument; this is  
3 clarifying the record with respect to Exhibit 120.

4 MR. HAFFNER: But if all --

5 JUDGE RENDAHL: I think, looking over  
6 Exhibit 120, my understanding, and Ms. Walker, if you  
7 can correct me, the first number in the right-hand  
8 column, 71,153, would now be modified to 56,981, to  
9 reflect what is included in Exhibit 150, 151?

10 THE WITNESS: In 51.

11 JUDGE RENDAHL: All right. In your mind,  
12 you would still subtract the 15,872 for addition  
13 errors?

14 THE WITNESS: That's correct.

15 JUDGE RENDAHL: And then the remaining  
16 adjustments below is what we're talking about here,  
17 and the adjustments that Kleen has made are reflected  
18 in Exhibit 150.

19 MR. JOHNSON: I'm sorry, they're in Exhibit  
20 51, Your Honor.

21 JUDGE RENDAHL: In Exhibit 51. And what  
22 you're proposing to do in response, Mr. Johnson, to  
23 Exhibit 51, is to explain what would show differently  
24 based on Exhibit 51?

25 MR. JOHNSON: Right, Your Honor. My

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1 proposal was, based on Mr. Haffner's questions about  
2 the effect of Exhibit 51 adjustments on this  
3 particular exhibit, 120, was to go through those  
4 items and note the differences.

5 JUDGE RENDAHL: Okay. To the extent that  
6 you wanted to show what the changes from exhibit --  
7 from 120 due to Exhibit 51, I think we can do that on  
8 paper, but if there's something that you would do  
9 differently in response to 51, then that is the  
10 appropriate subject of rebuttal.

11 MR. JOHNSON: Right, and that's where I  
12 wanted Ms. Walker's comment, as we go through these  
13 cost items.

14 JUDGE RENDAHL: Okay. And I think that's  
15 appropriate, because that's what the rebuttal is  
16 about, so we can get ourselves to a proper place.

17 MR. HAFFNER: Okay.

18 JUDGE RENDAHL: And if we're just talking  
19 about how the addition carries through based on 51,  
20 then we don't need to do this.

21 MR. JOHNSON: Right, Your Honor.

22 JUDGE RENDAHL: All right.

23 Q. So the first item below the additions  
24 correction on Exhibit 120 is for the correction of  
25 the public utility tax rate and the WUTC fee.

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1 Exhibit 51, if you'll look at that, provides a public  
2 utility or a tax -- a tax obligation -- provides for  
3 a tax obligation. It says, on the line that says  
4 taxes (public utility) of zero. You had, in your  
5 Exhibit 120, proposed a combined WUTC fee and public  
6 utility tax correction of 2,217. What is your -- you  
7 were here for Mr. Lee's testimony with respect to the  
8 public utility tax. Do you believe that a zero  
9 public utility tax is appropriate?

10 A. No, I do not.

11 Q. Would you explain your position on that?

12 A. I -- without further research, I just cannot  
13 believe that it is zero. Every single solid waste,  
14 medical waste client that I've worked with since 1981  
15 pays public utility tax on all their activity here in  
16 Washington. Many of those transfer their waste to  
17 Oregon. They are still taxed in Washington on that  
18 revenue.

19 Q. So do you have an explanation for -- Mr. Lee  
20 testified that he called a couple people or called a  
21 couple of times to the Department of Revenue and got  
22 advice that the tax rate would be zero. What would  
23 your understanding of that kind of advice be?

24 A. My experience, when you are calling to any  
25 tax agency, is, number one, you're usually going to

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1 get a wrong answer. The percentages are not very  
2 good.

3           The second thing that's probably a little  
4 bit more appropriate is that not all of the  
5 information that is pertinent to the state of  
6 Washington is being given. And it's not that the  
7 person is not trying to give them all information;  
8 they just don't understand all of the various nuances  
9 to our state tax that would snare them into paying a  
10 tax. So if you've called and just asked, I'm going  
11 to pick up things in Washington and take them to  
12 Oregon, is that taxable? In many cases, that's true,  
13 it's not. It would be taxable in Oregon, but it  
14 wouldn't be taxable in Washington. I believe that  
15 the situation that Kleen is endeavoring to enter into  
16 is taxable in Washington.

17       Q. And is it your understanding that if Kleen  
18 was picking up from customers and transferring  
19 directly out of state, that would be exempt?

20       A. I've never seen a solid waste company not  
21 pay the PUT tax, and that would mean every single  
22 trip would have to go to Oregon with no stops in  
23 between at any facility for storage or overnight or  
24 --

25       Q. So what is your testimony now with respect

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1 to the applicable tax rate, public utility tax rate  
2 or otherwise, that Kleen would be required to pay, if  
3 any, on its revenues?

4 A. My belief is that they would be subject to  
5 the public utility tax rate of .642 percent.

6 Q. The next cost adjustment is for licensing  
7 fees, licensing and fees, and you showed an  
8 adjustment on Exhibit 120 of \$2,618. Kleen has  
9 adjusted their figure and they've added a figure of  
10 \$1,700, or they've adjusted their figure to \$1,700;  
11 is that correct?

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

13 Q. What's your view as to that adjustment? Is  
14 there any adjustment required in your figure here on  
15 Exhibit 120?

16 A. I'm assuming that they're picking up the  
17 licenses that I listed, so that would be an  
18 adjustment --

19 Q. So this should be --

20 A. -- of the 1,700.

21 Q. This should be \$1,700, then?

22 A. Right. Well, no, the 2,618 needs to be  
23 reduced by 1,700.

24 Q. And vehicle operating costs, if you look at  
25 Exhibit 51, you'll see that they adjusted their



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1 vehicle operating costs to 30 cents per mile, and I  
2 believe the annual cost item there now is 22,802.  
3 Would that affect the adjustment you made on Exhibit  
4 120?

5 A. Yes, it would. I still believe that they  
6 will incur more vehicle operating costs than they  
7 have got here.

8 There's another thing to factor in there. I  
9 don't believe that you can say the number that  
10 they've now added increased here covers everything  
11 that I have got in this adjustment. The adjustment  
12 that I made does not include repairs and maintenance,  
13 it does not include lease expense, it does not  
14 include vehicle insurance, and it does not include  
15 vehicle depreciation, so it is merely the fuel and  
16 oil, tires, that sort of thing.

17 So they indicated that their 30 cents per  
18 mile that they're using does not include  
19 depreciation, but that it might include repairs and  
20 maintenance. I'm not sure what they all -- what all  
21 that includes. What I deducted was giving them the  
22 benefit, I guess, that the insurance was being  
23 reported elsewhere, and that the repairs were being  
24 reported elsewhere, and that the -- what was the  
25 other thing -- depreciation. There is none on a

0787

1 lease.

2 Q. Okay. So in any event, they've now  
3 suggested 30 cents a mile as a figure, and you used  
4 39 cents. This would have to be adjusted at least to  
5 show the increase in the 30 cents from 22 cents,  
6 would it not?

7 A. Yes, it would.

8 Q. And I guess your other comments go to  
9 whether 30 cents is the right number; is that --

10 A. Right.

11 Q. How about management expenses,  
12 transportation, administration and management?

13 A. I don't see that they've added anything for  
14 that.

15 Q. Okay. The liability insurance?

16 A. They have increased that by \$4,300. I mean,  
17 I'm sorry, \$43.

18 Q. Forty-three dollars?

19 A. Forty-three dollars. I still believe that's  
20 grossly underestimated.

21 Q. What's the basis for that view?

22 A. I work with, as I said before, lots of small  
23 business owners, I have worked through the years with  
24 many solid waste disposal companies, I worked with  
25 hazardous waste clean-up companies, and I have yet to

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1 see an insurance rate, even on a marginal basis, of  
2 \$1.31 per 1,000. It is tending to run between 16 and  
3 \$46 per 1,000, on average. We got an actual quote to  
4 give us a better idea, of what they may experience,  
5 and that is how we came up with this adjustment on  
6 Exhibit 120.

7 Q. Okay. We talked about the hydroclave, and  
8 so I don't think we need to go through that. Perhaps  
9 we've made all the adjustments necessary, or at least  
10 noted where all the adjustments would need to be made  
11 on Exhibit 120.

12 A. Can I make one other comment? Back on those  
13 licenses, we've said that it needed to be adjusted by  
14 \$1,700. That's incorrect. It needs to be adjusted  
15 by \$1,600. They had originally in there \$100, and I  
16 had taken that into account in mine, so the  
17 adjustment is 1,600.

18 Q. Okay. Thank you very much, Ms. Walker.

19 A. You're welcome.

20 JUDGE RENDAHL: Mr. Haffner.

21 MR. HAFFNER: 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. HAFFNER:

25 Q. Ms. Walker, as long as we're pointing out

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1 some issues here with which items that we need to be  
2 aware of that were changed, I believe we talked about  
3 the public utility tax, but not a WUTC fee. And I  
4 thought on Exhibit 51 that there was an additional  
5 item for a UTC fee of \$1,579. Do you see that?

6 A. I do see that.

7 Q. And so would that item change your  
8 adjustment?

9 A. Between that and my belief you still owe the  
10 PUT tax, there is some adjustment. But if you look  
11 to note seven in Exhibit 117, in Kleen's original pro  
12 forma, there was \$1,923 of tax, which has now been  
13 removed, so we now have to add 1,923 back, take away  
14 the 1,583, and -- or the 1,580 that you've got here,  
15 and then add back the 2,551. So there is some  
16 adjustment there, but you have to take all three  
17 factors into account there.

18 Q. And I'm sorry, you've lost me on the 2,551.  
19 Where did that come from?

20 A. That is what I believe your public utility  
21 tax is going to be.

22 Q. Okay. So that's a matter of opinion between  
23 you, as an expert in this area, and our own financial  
24 adviser?

25 A. That's correct.

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1 Q. Okay. And I guess I should clarify, I don't  
2 know if you've been qualified as an expert in this  
3 area, so maybe I spoke incorrectly. I'll retract  
4 that.

5 JUDGE RENDAHL: Mr. Sells -- I'm sorry,  
6 you're done?

7 MR. HAFFNER: I'm sorry, I'm not done, Your  
8 Honor. I still have a couple more questions, a few  
9 more questions.

10 JUDGE RENDAHL: All right.

11 Q. You spoke about the requirements for  
12 licensing fees and the fees that would be anticipated  
13 for that. What knowledge do you have of what  
14 licensing requirements an operation like this will  
15 have?

16 A. There is a list of those requirements on --  
17 as Note 18 to Exhibit 117. And these are the  
18 required licenses that Kleen would have to incur in  
19 order to do business as they've proposed to do.

20 Q. Is there anything listed here for a transfer  
21 facility for the state of Washington, for King  
22 County?

23 A. I don't see one listed for King County.

24 Q. Okay. Are you aware of whether such a fee  
25 would be required of this applicant?

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1           A.    That one I'm not aware of.  That's not to  
2 say it's not due.  That would be an additional fee.

3           Q.    In your analysis, and I think this is back  
4 on Exhibit 120, you indicated that management  
5 expenses needed to be increased by approximately  
6 \$8,000, a little less than \$8,000.  When you made  
7 that analysis, did you observe -- and I'll refer to  
8 Exhibit 51.  Did you observe, under direct cost of  
9 sales, a line item for disposal administration,  
10 which, at the end of the year, provided for \$42,840?

11          A.    I see that on 51.

12          Q.    That's a significant difference in your  
13 management expense, isn't it?

14          A.    This was not related in your original  
15 testimony as being a person.  It says it's \$2 a box,  
16 which sounds like some sort of supply, which then, if  
17 it's not a supply, then there would be additional  
18 expenses to providing the service when I was  
19 comparing these expenses to what Stericycle has  
20 experienced.

21          Q.    I'm not quite sure I understand that, but  
22 let me -- so let me ask.  If this -- if the testimony  
23 in this hearing indicates that the figure of \$42,840  
24 is for management expenses, would that offset, by  
25 almost \$35,000, the management expense you claim

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1 needs to be adjusted?

2 A. It would be a replacement, and then we would  
3 have to add what I believe this disposal  
4 administration to cover.

5 Q. And what did you believe it covered?

6 A. In looking at Stericycle's experience of  
7 providing service, there are direct expenses that  
8 relate to providing that service that are not labor.  
9 They are other things, and that's going to be a whole  
10 list of things.

11 When I was comparing your original testimony  
12 to Stericycle's activity, I was trying to align what  
13 you were purporting to be your direct expenses versus  
14 what Stericycle of Washington experiences. Other  
15 than the items that I've noted on these -- Exhibit  
16 120, I believe them all to be included in this  
17 amount. So if this amount now does not include those  
18 items, then they would have to be added as additional  
19 expenses.

20 Q. And you've not listed --

21 A. And then this would be replaced for the  
22 admin.

23 Q. And you may want to submit that now, I  
24 suppose. I'm not sure. But you have not identified  
25 what those expenses would be anywhere, have you?

0793

1           A.    No, because until yesterday's testimony, I  
2 did not know that this disposal admin was a person.

3           Q.    Okay.  You mentioned a quote for liability  
4 insurance.  How did you obtain that liability  
5 insurance quote?

6           A.    That was requested through Steve Johnson of  
7 a local insurance agent.

8           Q.    So that was your -- Stericycle's attorney  
9 that made that quote, not you personally?  Made that  
10 request, pardon me.

11          A.    Yeah, he did not make the quote.  We have an  
12 actual quote from a legitimate insurance company,  
13 which is going to be a good -- a good estimate of  
14 what it would cost.  Stericycle's historical  
15 insurance was hard to use as an example, because it  
16 includes a lot of other facilities and could not be  
17 broken down by Washington only.  Based upon my  
18 experience with my other clients, your estimate was  
19 grossly under what I would believe insurance to be.

20          Q.    What information did you give your other  
21 clients about the type of operation that needed to be  
22 insured?

23          A.    I'm sorry.  Ask that again.

24          Q.    What type of information did you give to the  
25 insurance carrier that you asked for a quote for the



0794

1 type of business that needed to be insured?

2 A. I believe that is in the quote. Since I did  
3 not ask the question to the insurance agent, I cannot  
4 answer.

5 Q. I thought you just testified, though, that  
6 it's your knowledge that this type of insurance, as  
7 quoted by Kleen, grossly misrepresents the cost that  
8 the adequate insurance would require?

9 A. Based upon my experience, with all other  
10 clients that I work with, and based upon the quote  
11 that we received, with Kleen's particular industry  
12 being noted, the insurance quote and my experience  
13 with my clients leads me to believe that your  
14 estimate of insurance is grossly underestimated.

15 Q. But you --

16 A. So I had to make some basis for an  
17 adjustment.

18 Q. But you've not spoken to an insurance  
19 carrier about this particular service that's being  
20 provided and its insurance needs, have you?

21 A. I think -- again, I did not call. You  
22 would have to ask that of Mr. Johnson.

23 MR. HAFFNER: Thank you. No other  
24 questions, Your Honor.

25 JUDGE RENDAHL: All right. Nothing from

0795

1 you, Mr. Sells?

2 MR. SELLS: No, Your Honor.

3 JUDGE RENDAHL: Mr. Trautman.

4 MR. TRAUTMAN: No.

5 JUDGE RENDAHL: I don't have anything

6 further. Mr. Johnson, are we done?

7 MR. JOHNSON: I think we are. Thank you.

8 JUDGE RENDAHL: Okay. Thank you very much,

9 Ms. Walker --

10 THE WITNESS: You're welcome.

11 JUDGE RENDAHL: -- for appearing, and for  
12 your detailed descriptions, and my understanding is  
13 at this point you may remain under oath, because  
14 there may be a need to bring you back, but we'll  
15 determine that at a later date. But for now, you're  
16 excused and you can step down.

17 THE WITNESS: Thank you.

18 JUDGE RENDAHL: We'll take a five-minute  
19 break while we change witnesses. Let's be off the  
20 record.

21 (Recess taken.)

22 JUDGE RENDAHL: Let's be back on the record.  
23 All right. We're back on the record after our second  
24 break this morning, and now we're proceeding to  
25 testimony of Mr. Philpott. So Mr. Philpott, if you

0796

1 could state your full name for the record, spell your  
2 last name, and state your business address, that  
3 would be helpful.

4 MR. PHILPOTT: Michael Scott Philpott,  
5 that's P-h-i-l-p-o-t-t. And my business address is  
6 20320 80th Avenue South, Kent, Washington, 98032.

7 JUDGE RENDAHL: Okay. If you'd raise your  
8 right hand, please.

9 Whereupon,

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

13 JUDGE RENDAHL: Okay. Please go ahead, Mr.  
14 Johnson.

15 MR. JOHNSON: Thank you, Your Honor.

16

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

18 BY MR. JOHNSON:

19 Q. Mr. Philpott, I would refer you to Exhibit  
20 60-T, it's before you, and ask you to look at that.  
21 It looks like it's a 28-page document entitled  
22 Pre-filed Testimony of Michael Philpott. Is that  
23 your signature on page 28?

24 A. Yes.

25 Q. And is this your testimony, and would you

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1 like the Utilities and Transportation Commission to  
2 accept it as such?

3 A. Yes.

4 Q. And does that include the exhibits that are  
5 attached, which I believe are shown as Exhibits 61  
6 through 80? Please review those, see if they're  
7 correct exhibits.

8 A. Yes, those are the exhibits that were  
9 attached to my pre-filed testimony.

10 MR. JOHNSON: Okay. Your Honor, at this  
11 time we would offer Exhibit 60-T and Exhibits 61  
12 through 80 for admission into the record.

13 JUDGE RENDAHL: Mr. Haffner, do you have any  
14 objection?

15 MR. HAFFNER: I'd like to reserve ruling on  
16 all of those exhibits, and I would like to, however,  
17 move to strike a number of portions of the pre-filed  
18 testimony, specifically Paragraphs 30, 31, 32, 33,  
19 34, 36, 37.

20 JUDGE RENDAHL: I'm sorry, you're going too  
21 fast for me to take down.

22 MR. HAFFNER: I'm sorry.

23 JUDGE RENDAHL: So 30 through 34?

24 MR. HAFFNER: Yes, 30 through 34, 36 and 37,  
25 39 and 40, and subparagraphs A and B of 42.

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1           JUDGE RENDAHL: All right. Well, I guess at  
2 this time, I'll reserve ruling on the exhibits while  
3 we go -- after we go through the cross, as well as  
4 the motion to strike, which I will consider, if not  
5 today -- well, I guess it would be today. I'll  
6 consider today or resolve it next week.

7           MR. HAFFNER: Okay.

8           JUDGE RENDAHL: So with respect to 60-T, we  
9 may reserve ruling on that until next week, but I  
10 will take a look at that over the lunch hour, based  
11 on what we get into in cross today, and see if I can  
12 make a determination on that by the end of the day.  
13 Mr. Johnson, before I make a ruling, I'll allow you  
14 an opportunity to make an argument. So I guess what  
15 I'd suggest on the motion is that why don't we wait  
16 until Mr. Philpott has finished, we've finished  
17 examination, and then have an argument on the motion  
18 to strike. Is that appropriate?

19           MR. HAFFNER: I will try and remember, after  
20 my cross-examination, to raise that issue.

21           MR. JOHNSON: Could we go back to the  
22 paragraphs that Mr. Haffner referred to, make sure I  
23 have them?

24           JUDGE RENDAHL: Mr. Haffner, I understand  
25 you're objecting to Paragraphs 30 through 34, 36 to

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1 37 --

2 MR. JOHNSON: Excuse me. Let me just make a  
3 note here.

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

5 (Discussion off the record.)

6 JUDGE RENDAHL: Okay. Let's be back on the  
7 record. While we were off the record, we clarified  
8 that the objection is to Paragraphs 30 through 34,  
9 Paragraphs 36 and 37, Paragraphs 39 and 40, and  
10 Subparagraphs 42A and B of what's been marked as  
11 Exhibit 60-T, which is Mr. Philpott's pre-filed  
12 testimony.

13 So why don't we go ahead with any  
14 cross-examination, Mr. Haffner. We'll be breaking in  
15 about 15 minutes for lunch. We'll continue after  
16 lunch, and when you've concluded, we'll have an  
17 argument on the motion to strike.

18 MR. HAFFNER: Thank you, Your Honor. And I  
19 apologize, but after listening to Mr. Johnson's  
20 comment about the preamble to Paragraph 42, I would  
21 also include that in the motion to strike.

22 JUDGE RENDAHL: So basically the entire  
23 Paragraph 42? I'm not looking at it, so --

24 MR. HAFFNER: No, Your Honor, just the  
25 preamble. I believe the remaining Sections C and D

0800

1 are acceptable statements of fact, although I may  
2 disagree with them.

3 JUDGE RENDAHL: All right. Please go ahead,  
4 Mr. Haffner.

5 MR. HAFFNER: Thank you.

6

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

8 BY MR. HAFFNER:

9 Q. Mr. Philpott, what is the nature of the  
10 relationship between Stericycle, Inc. and Stericycle  
11 of Washington, Inc.?

12 A. Stericycle, Incorporated is the corporation  
13 that owns wholly Stericycle of Washington.  
14 Stericycle of Washington is a transportation arm, and  
15 that is the entity that's licensed by the UTC to haul  
16 medical waste in the state of Washington.

17 Q. And Stericycle, Inc., the parent company,  
18 can I call it?

19 A. Sure.

20 Q. It is a huge company, is it not?

21 A. Explain by -- what you mean by huge.

22 Q. I think I saw somewhere that it has 300,000  
23 customers in 48 different states, the District of  
24 Columbia, Puerto Rico, Canada and Mexico; is that  
25 correct?

0801

1 A. That's correct.

2 Q. Does a company like that have any  
3 competition in its service of biomedical waste?

4 A. Yes.

5 Q. Where? And how?

6 A. Virtually every state that Stericycle  
7 operates, there's competition.

8 Q. What type of competition?

9 A. I don't understand your question.

10 Q. I believe in this state, it's established  
11 that there is competition from local garbage haulers  
12 that will haul, I believe the testimony in this case,  
13 is probably anywhere from -- or that have up to 110  
14 medical waste customers.

15 MR. JOHNSON: Your Honor, I object to Mr.  
16 Haffner's characterization of the testimony. The  
17 only local haulers we've had here are those that are  
18 represented by Mr. Sells. I don't think he presumes  
19 to represent, nor has testimony been offered with  
20 respect to what other local haulers throughout the  
21 state may provide in the way of medical waste  
22 collection services.

23 JUDGE RENDAHL: Maybe, Mr. Haffner, you can  
24 clarify your question.

25 Q. Are there any companies that Stericycle



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1 competes with that are as big as Stericycle, that  
2 have as many customers as Stericycle does?

3 A. Yes.

4 Q. Who would that be?

5 A. It would depend on which marketplace you're  
6 speaking of.

7 Q. Can you identify who you believe the largest  
8 competitor of Stericycle is?

9 A. I personally cannot, because I don't run  
10 those divisions of the company in our other market  
11 areas.

12 Q. Are there competitors of Stericycle that are  
13 not traditional garbage companies, such as a LeMay or  
14 Rubatino or Consolidated, as in this case?

15 A. Where?

16 Q. Anywhere that you're aware of in the United  
17 States?

18 A. Yes.

19 Q. Where would that be?

20 A. Virtually anywhere across the United States.

21 Q. So there are other medical waste collection  
22 and transportation companies out there competing with  
23 Stericycle that don't do curbside pickup?

24 A. I would imagine, yes.

25 Q. Are there any marketplaces where Stericycle

0803

1 is not considered to be the premier or dominant  
2 carrier?

3 MR. JOHNSON: Your Honor, I have to object  
4 to these questions. They have nothing to do with the  
5 state of Washington, as far as I can figure out.  
6 What we're really talking about, I believe, is an  
7 application for medical waste collection service here  
8 in the state of Washington.

9 JUDGE RENDAHL: Mr. Haffner.

10 MR. HAFFNER: I believe that the -- they've  
11 established that they are a subsidiary, a  
12 wholly-owned subsidiary of an international medical  
13 waste collection and transportation service. To the  
14 extent that they face competition in other areas, I  
15 think it's relevant that they have the ability to  
16 withstand that competition through the strength of  
17 their parent company.

18 MR. JOHNSON: Well --

19 JUDGE RENDAHL: Mr. Johnson.

20 MR. JOHNSON: Your Honor, that goes more  
21 toward the issue of the Stericycle, Inc. cash flow or  
22 revenues, net profit, that kind of thing. I'm not  
23 sure Mr. Philpott is the person to answer those  
24 questions, but I don't believe your questions about  
25 competition go to the issue of whether Stericycle,

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1 Inc. has resources that it could use to support a  
2 service here in Washington.

3 JUDGE RENDAHL: Mr. Haffner, you're going to  
4 have to tie this in more to the state of Washington,  
5 especially if Mr. Philpott can't answer the financial  
6 questions.

7 MR. HAFFNER: Let me go directly, maybe, to  
8 the financial questions, see if he's able to answer  
9 it.

10 Q. Do you receive any financial assistance from  
11 Stericycle, Inc.? And let me rephrase it. Does your  
12 company receive any financial assistance from  
13 Stericycle, Inc.?

14 A. What do you mean by financial assistance?

15 Q. Does it receive any infusions of money,  
16 whether by loan or capital investment in this company  
17 in this state?

18 A. I believe at the inception, in 1992, when  
19 Stericycle of Washington was formed, it was formed by  
20 a loan from Stericycle, Inc.

21 Q. What was that date, again?

22 A. I believe it was 1992. And it may have been  
23 a year earlier when they started to do this. I  
24 didn't join Stericycle of Washington or Stericycle,  
25 Inc. until 1999, so those exact dates, I may not be

0805

1 exact on.

2 Q. Is it Stericycle, Inc. that owns the Morton  
3 facility?

4 A. Yes.

5 Q. And they own it entirely. In other words,  
6 your company doesn't have any ownership interest in  
7 that company -- in that facility, pardon me?

8 A. That's correct.

9 Q. And isn't it true that your company has a  
10 contract with Stericycle, Inc. for the use of that  
11 facility?

12 A. That is correct.

13 Q. Isn't it also true that that contract allows  
14 Stericycle, Inc. the right to control all the aspects  
15 of collection, transportation, and delivery functions  
16 by your company?

17 A. I don't understand your question.

18 Q. Doesn't the contract that your company has  
19 with Stericycle, Inc. provide Stericycle, Inc. the  
20 right to control all aspects of collection,  
21 transportation and delivery functions by your company  
22 in Washington?

23 MR. JOHNSON: Your Honor, I have to object  
24 to this question, because this contract speaks for  
25 itself. If Mr. Haffner wants to offer the contract,

0806

1 he may.

2 MR. HAFFNER: Okay. I was going to use it  
3 to just refresh his recollection, but I guess we can  
4 offer it as an exhibit. Unfortunately, I only have  
5 the one copy with me, but I can get copies for  
6 everybody. If I could just offer it to refresh his  
7 recollection, I think we could probably move on.

8 JUDGE RENDAHL: Let's be off the record for  
9 a moment.

10 (Discussion off the record.)

11 JUDGE RENDAHL: Let's go back on the record.  
12 While we were off the record, we marked as Exhibit 87  
13 a December 30th, 1993 agreement between Stericycle,  
14 Incorporated and Stericycle of Washington,  
15 Incorporated. Mr. Haffner, you're going to ask the  
16 witness some questions on this?

17 MR. HAFFNER: Yes, I'll simply ask the  
18 witness to authenticate and verify the document.

19 Q. Mr. Philpott, could you look at the last  
20 page of the document and tell me whether -- are  
21 either of those signatures yours?

22 A. No, they are not.

23 Q. Who signs there for Stericycle of  
24 Washington?

25 A. Currently?

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1 Q. Well, do you recall who that signature is, a  
2 Richard somebody?

3 A. No.

4 Q. Have you ever seen this agreement before?

5 A. I have seen it before, yes.

6 MR. HAFFNER: Okay. And I'll let the  
7 document speak for itself and ask that it be  
8 admitted.

9 JUDGE RENDAHL: Mr. Johnson.

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

12 JUDGE RENDAHL: All right. Exhibit 87 will  
13 be admitted. Do you have any other questions for the  
14 witness on the exhibit?

15 MR. HAFFNER: No, Your Honor. Again, I'll  
16 let the exhibit speak for itself. I believe it  
17 provides the provision that I was referencing  
18 earlier.

19 Q. Mr. Philpott, you were here earlier this  
20 morning when Ms. Walker was discussing the effects of  
21 this proposed service on Stericycle, were you not?

22 A. Yes.

23 Q. I believe in your testimony, on page 12, you  
24 indicated that your company has 140 large quantity  
25 generators as customers?

0808

1           A.    Correct.  Those would be customers that we  
2 would categorize as \$1,000 or more on a monthly  
3 revenue basis.

4           Q.    Okay.  I did some math earlier, I have a  
5 calculator with me if you'd like, but it's my  
6 understanding that the revenue of those 140 customers  
7 at almost \$4.2 million -- that's an annual revenue;  
8 is that correct?

9           A.    Correct.

10          Q.    And that would average out approximately  
11 \$2,500 per customer, per month?  Do you have any  
12 knowledge of that?

13          A.    I don't have a calculator in front of me,  
14 and I couldn't tell you if that's accurate or not.

15          Q.    Okay.

16                JUDGE RENDAHL:  Mr. Haffner, which page are  
17 you referring to?

18                MR. HAFFNER:  Page 12 of Mr. Philpott's  
19 testimony.

20                MR. JOHNSON:  I'm sorry, Mr. Haffner.  What  
21 sort of calculation are you proposing here?

22                MR. HAFFNER:  Let's see if I brought my  
23 calculator after all that or not.  The calculation  
24 I'm looking at was the revenue of \$4.2 million  
25 divided by the number of customers at 140, divided by

0809

1 12, I believe.

2 MR. JOHNSON: Well, the number I get, if  
3 that's something important to you, is \$2,498.24.

4 MR. HAFFNER: Okay. And I had down \$2,500  
5 in my notes, approximately \$2,500.

6 MR. JOHNSON: That would be an average  
7 monthly; is that what you're --

8 MR. HAFFNER: Correct.

9 Q. With that information, assuming that that  
10 number is correct, how many large quantity generators  
11 could be served with one driver and one vehicle by  
12 your company?

13 A. A hundred and forty large quantity generator  
14 customers?

15 Q. How many of those -- yes, you've identified  
16 that you have 140 large quantity generators. How  
17 many of those could be served with one driver and one  
18 truck?

19 A. Well, virtually -- to figure out how many  
20 customers that you could serve with one truck and one  
21 driver is based on where these customers are located  
22 and the type of containers they're giving him. For  
23 instance, if you're getting incinerate-only waste,  
24 your revenue would be a different volume than a large  
25 quantity generator giving you waste off of a sliding



0810

1 scale. So a generator giving you \$2,500 per month is  
2 different quantities of containers.

3 Q. What do you mean, waste off a sliding scale?

4 A. Well, obviously, you've seen the Stericycle  
5 tariff --

6 Q. Yes.

7 A. -- that we provided, because one looks  
8 similar to ours. Based on the volume of containers  
9 you provide, the amount you pay for that container  
10 drops.

11 Q. So you don't have any way to estimate how  
12 many drivers and vehicles it would take to serve --  
13 or how many large quantity generators one driver and  
14 one vehicle could serve?

15 A. In a transportation business, we don't  
16 estimate. We need to know where the stops are and  
17 what we're picking up. We use Map Point and we find  
18 out the quantities, and that's how we figure out what  
19 our routes are.

20 Q. Okay. I guess, with that being said, if you  
21 don't know where your routes are or where your points  
22 are, how would you expect somebody to come up  
23 with a proposal for estimating their cost?

24 A. I don't understand your question.

25 Q. If you're saying that, in order for you to

0811

1 tell me whether you could -- and I may be  
2 mischaracterizing his testimony, but I think you're  
3 saying that you need to know where your specific  
4 points of pickup are before you can state what the  
5 costs are for providing that service; right?

6 A. Absolutely.

7 Q. So are you saying, then, it would be  
8 impossible for somebody who's proposing a service,  
9 that doesn't know where their specific points of  
10 pickup are, to determine what their costs are going  
11 to be?

12 A. No. If you're asking me if, to make up a  
13 model, I would assume that if I had statewide  
14 authority, that I'd be picking up in every reach of  
15 the state. I would include those figures in merely a  
16 pro forma or proposal that I was making at that time.

17 Q. But if you don't know the specific points,  
18 you pretty much have to guess, don't you?

19 A. I'm fairly aware of the geographic area of  
20 the state of Washington, so I can assume where my  
21 stops would be coming from within somewhat of a  
22 reason.

23 Q. And what kind of a reason?

24 A. I couldn't estimate.

25 Q. Okay.

0812

1 JUDGE RENDAHL: Mr. Haffner, is this a good  
2 time to stop or do you have more in this vein?

3 MR. HAFFNER: We can stop and pick this up  
4 later. It doesn't need to continue at this point.

5 JUDGE RENDAHL: Okay. Then let's take our  
6 lunch break at this time. We'll be back at about  
7 1:30, 1:35. So we'll be off the record for our lunch  
8 break.

9 (Lunch recess taken.)

10 JUDGE RENDAHL: Let's be back on the record  
11 after our lunch break. We're continuing with  
12 cross-examination of Mr. Philpott.

13 MR. HAFFNER: Thank you, Your Honor.

14 Q. Mr. Philpott, we were exploring the area of  
15 diversion of revenue from your company if this  
16 application is granted, and let me try and rephrase  
17 things in maybe a more simpler manner. If your  
18 company were to lose \$1.3 million in revenue, how  
19 many drivers would you need to lay off? And let me  
20 complete that maybe by saying in order to retain a  
21 viable company?

22 A. I don't think, just looking at it that way,  
23 you'd necessarily say you could lay any drivers off.  
24 By taking stops away in a particular city, I'm  
25 assuming that we wouldn't lose every account that's

0813

1 there, which would require our trucks to still go  
2 there. So basically what you'd do is you'd still be  
3 required to make those trips without gathering as  
4 much revenue as you normally would.

5 Q. Would you make an attempt to reduce your  
6 expenses if it were possible to reroute those trips  
7 and make more efficient use of your equipment and  
8 labor?

9 A. Well, you would always, in a transportation  
10 business, try to limit your expenses, but if your  
11 truck is already going to that location, you're still  
12 going to incur the cost of needing to own the truck  
13 and pay the insurance on it, pay your employee, and  
14 to get to that location. And in a transportation  
15 business, where you get the savings is by having more  
16 stops in one particular location.

17 Q. How many vehicles do you operate?

18 A. My testimony that was provided, basically,  
19 right now, we're operating 23 route trucks.

20 Q. And I think, according to your testimony,  
21 you have almost 6,000 customers?

22 A. Correct, give or take, depending on the  
23 month.

24 Q. And am I hearing you say that if you lost  
25 \$1.3 million in revenue, that would not affect your

0814

1 expenses of operation?

2 A. Not necessarily. The one thing that would  
3 affect is I think our stops probably average  
4 somewhere in the ballpark of 15 minutes a stop. So  
5 if we lost one stop in a particular city, we'd save  
6 15 minutes of hourly wage or, you know, the time that  
7 that truck is running. So it would be, you know, 15  
8 minutes difference for one stop in a particular city.

9 Q. So you're saying one stop would take  
10 approximately 15 minutes?

11 A. Ballpark. That's generally what the average  
12 -- 15 minutes a stop.

13 Q. So you're just running in, picking up stuff,  
14 and taking it out, and giving the documentation that  
15 you provide?

16 A. Correct.

17 Q. If you could take a look at Exhibit 67.  
18 Towards the bottom of the upper section, there's a  
19 message center box.

20 A. Mm-hmm.

21 Q. And it says, Thank you for keeping your  
22 account current. And then the next line says, Due to  
23 rising fuel costs, your invoice may reflect a  
24 temporary energy charge. Do you see that?

25 A. Yes.

0815

1 Q. Is that a provision that is included in your  
2 tariff?

3 A. Well, we have never charged a energy charge  
4 or a fuel cost. This invoice is an invoice that's  
5 generated by our corporate office and is a general  
6 invoice, and we've never charged a fuel cost to  
7 anybody in the state of Washington at any point in  
8 time.

9 Q. Are all of your billing procedures handled  
10 by your corporate office? And when I say your  
11 corporate office, I see here there's an address of  
12 Sun Valley, California. Is your billing handled by  
13 Stericycle, Inc.?

14 A. It depends on what portion of billing you're  
15 speaking of.

16 Q. Well, for instance, I look at this  
17 particular bill, and down at the bottom there, it  
18 says, Please send payment to Stericycle, Inc. in  
19 Phoenix, Arizona. Are all the -- is the revenue for  
20 medical waste that you collect from customers, do the  
21 customers pay those bills to Stericycle, Inc. instead  
22 of Stericycle of Washington?

23 A. No, the bill is paid to -- Stericycle does  
24 the billing function, but the revenue is reported to  
25 Stericycle of Washington.

0816

1 Q. You say reported, but it initially goes  
2 directly to Stericycle, Inc. in Phoenix, Arizona,  
3 doesn't it?

4 A. Sure.

5 Q. And then Stericycle, Inc. allocates back the  
6 revenue to you in some form?

7 A. Well, if you look on our invoice, it's going  
8 to tell you what the customer number is and the  
9 location, and it's not very difficult for them to  
10 figure that this is a generator from Washington, and  
11 that's where the money would be applied.

12 Q. Sure. It would be properly allocated --

13 A. Correct.

14 Q. -- based on the volume that you generated.  
15 But, again, this claim to be able to increase rates  
16 is not allowed in your tariff, is it, or it's not  
17 provided for in your tariff here in Washington, is  
18 it?

19 A. It's not, but that's why it says it may  
20 reflect. It doesn't say it does reflect; it says  
21 may. So if somebody isn't charged, it's not  
22 affecting their charge whatsoever.

23 Q. Now, this is the bill for services rendered.  
24 This isn't any form of manifest or certificate of  
25 destruction, is it?

0817

1           A.    Actually, this is a certificate of  
2   destruction, as well.

3           Q.    How does this establish that the waste has  
4   been destroyed?

5           A.    Well, if you'll look up at the top of the  
6   invoice, it's going to tell you the generator's name,  
7   that has obviously been crossed out, and it's going  
8   to tell you their site number, which is 001, okay.  
9   If you go down below, it gives you a date of  
10  5/03/2004.  You can see that that's a manifest  
11  number, and it says, on that particular date the  
12  quantity of two containers were picked up that were  
13  40-gallon red square tubs for disposal, and they're  
14  telling you what the charge is for it.

15                    If you'll turn to the other -- I don't know  
16  what order they're in here, that are provided to you,  
17  there's going to be a printout.  It looks like it's  
18  166.

19           Q.    Mm-hmm.

20           A.    On 66, it will show you this is what our  
21  handheld scanners print out for the generator, and  
22  it's a receipt.  And what this will tell you is it's  
23  going to tell you a manifest number, that you can see  
24  shipping document, manifest number, the shipping  
25  date, the time that regulated medical waste was



0818

1 picked up, the number of containers, and it's going  
2 to give you a specific container code.

3 Q. Mm-hmm.

4 A. See that?

5 Q. I'm not sure I quite follow where the  
6 container code is, but --

7 A. Right below, it's going to give you a type,  
8 TYO4.

9 Q. I see.

10 A. And it's going to give you a number that's  
11 associated with it. Next to it, 1YA0021. The next  
12 one below it is 23, next one below it, 25. If you go  
13 back to the invoice, you're going to see the manifest  
14 number that matches up to your ticket that was given  
15 to you at the time of pickup, and it's -- and then,  
16 if you go below this, below the box, it will say,  
17 This material listed on the manifest number detailed  
18 above --

19 JUDGE RENDAHL: When you read, Mr. Philpott,  
20 when you read, if you can slow down.

21 THE WITNESS: Okay. I'm sorry.

22 JUDGE RENDAHL: People tend to read faster  
23 than they speak.

24 THE WITNESS: The material listed on the  
25 manifest or manifests detailed above, infectious

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1 medical waste, has been treated in accordance with  
2 the requirements of federal, state and local  
3 regulations governing the treatment of such waste. A  
4 copy of the certificate, applicable manifests and the  
5 appropriate logs remain on file with the company. So  
6 this is closing the loop, telling you that the  
7 particular manifest numbers listed above that we  
8 leave a copy of with the generator and the receipt  
9 that's printed out by the PDT have --

10 MR. JOHNSON: Excuse me, what is PDT?

11 THE WITNESS: It's a handheld scanner that  
12 is stapled to the manifest -- has been properly  
13 treated.

14 Q. Okay. Thank you. And is this the only  
15 documentation of destruction that the customer  
16 receives?

17 A. This is generally what most generators  
18 receive. There are particular generators, government  
19 agencies and other facilities, that at times request  
20 further documentation, which we provide on request,  
21 and that would be a copy of a container detail  
22 report.

23 Q. Can you --

24 A. It's provided under Item Number 68.

25 MR. JOHNSON: Exhibit 68?

0820

1           THE WITNESS: Exhibit, yes, I'm sorry,  
2 Exhibit 68, which this is a further detail of this  
3 customer's waste being processed. What Stericycle  
4 uses is a proprietary bar code tracking system called  
5 Biotrack, and this generates bar codes in numbers  
6 that are never repeated ever again in a cycle. We  
7 print up stickers with the generator's name, address,  
8 phone number, and the type of waste they're  
9 generating to put on their particular containers, and  
10 they're scanned at the time of pickup, and that is  
11 where the original print receipt that we spoke about  
12 earlier comes from.

13           These scanners, at the end of the route,  
14 they are uploaded into our Biotrack system, which is  
15 tied into our processing facilities, and this  
16 container detail report will actually give you the  
17 invoice number that this was attributed to, the  
18 service date, what the manifest number was, the total  
19 containers, container weight, and it can get down to  
20 the detail of actually the time of day that this  
21 container was processed.

22           Q. Is there ever a document that you produce  
23 that has a sworn statement from the person that  
24 observed the destruction of the material?

25           A. That is not something that's required by

0821

1 Washington State law. We sign the manifest at the  
2 processing facility and hold the manifest for the  
3 required three years as proof that it's been  
4 processed. That also is available, by request, if a  
5 generator would actually like to request that.

6 Q. The manifest that you're referring to, is  
7 that what we have a copy of in Exhibit 65?

8 A. Yes.

9 Q. And I see there it has a provision for  
10 treatment facility and treatment by incineration.  
11 Who would sign that, that treatment facility  
12 provision of Exhibit 65?

13 A. That would be signed by a representative at  
14 the processing facility.

15 Q. And the processing facility would be either  
16 -- I guess, for incineration, it would be in north  
17 Salt Lake?

18 A. Correct.

19 Q. And if it were your ETD processing, it would  
20 be in Morton?

21 A. Morton is either a ETD or an autoclave.

22 Q. Why don't you provide that manifest or a  
23 copy of that manifest to your shippers?

24 A. Because this particular manifest is not  
25 required for the shippers to have back in their

0822

1 possession. It's required to be kept for three years  
2 on file if it's needed for proof of destruction.  
3 What they've received back with their invoice is  
4 proof that their material has been destroyed in  
5 accordance with all applicable laws.

6 Q. Let's take a look at Exhibit 69. This is  
7 your promotional material on your Bio Systems  
8 Program. Have you ever looked into whether this  
9 program should be exempt from UTC regulation?

10 A. What do you mean by exempt from UTC  
11 regulations?

12 Q. Not subject to regulation by the Utilities  
13 and Transportation Commission?

14 A. Currently, we are offering this program in  
15 the state of Washington, and we do have rates filed  
16 with the UTC regarding the pricing.

17 Q. It is in your tariff, is it not?

18 A. Correct.

19 Q. Right. I think it's Item 95 in your tariff,  
20 which, as long as we're referencing it, why don't we  
21 take a look at it. I think that's Exhibit 62, about  
22 in the middle.

23 A. This thing's upside down.

24 JUDGE RENDAHL: All right. For the record,  
25 Exhibit 62 is a multi-page document with a variety of

0823

1 materials, and the tariff, they're not numerically  
2 paginated as a total. The tariff appears about  
3 two-thirds of the way -- or about a third -- half of  
4 the way in. Which page of the tariff are you looking  
5 at?

6 MR. HAFFNER: This would be Item 95, which I  
7 believe is page -- original page nine.

8 THE WITNESS: Now, what was your question,  
9 again, regarding that?

10 Q. Before I go to that, let me clarify for the  
11 record, I believe it was your counsel's  
12 representation, and correct me if I'm wrong, Mr.  
13 Johnson, that Exhibit 62 was promotional material  
14 that Stericycle uses, and the reason we have a mix of  
15 documents is that not only does Stericycle give the  
16 customer its promotional literature, but it includes  
17 with that a copy of its tariff and some of these  
18 other samples of service it can provide.

19 MR. JOHNSON: Mr. Haffner, I believe Mr.  
20 Philpott's testimony refers to Exhibit 62.

21 MR. HAFFNER: Okay.

22 MR. JOHNSON: I believe the correct  
23 reference is a package of materials that are provided  
24 to customers at the beginning of service, and  
25 therefore it includes some descriptors of the service

0824

1 and it also includes the tariff.

2 MR. HAFFNER: Okay. Certainly the testimony  
3 can speak for itself there, then.

4 Q. So on Item 95, this is referring to the Bio  
5 Systems service that you are offering your customers;  
6 correct?

7 A. Correct.

8 Q. And as I understand it -- well, can you just  
9 describe what that service is?

10 A. The Bio Systems service?

11 Q. Yes.

12 A. The Bio Systems service is a separate  
13 company that was purchased by Stericycle, Inc.  
14 within the last couple years. And what they do is  
15 they provide proactive management of sharps  
16 containers within health facilities. What I mean by  
17 proactive is the typical method for monitoring sharps  
18 containers is that it's a reactive basis, that people  
19 usually change them when they're to the fill line at  
20 the top, and -- which can lead to needle stick  
21 injuries and incorrect placement of sharps and other  
22 vessels not designed to receive them.

23 The Bio Systems program is a program that  
24 uses sharps containers that are reusable, but are  
25 regulated by the FDA. They have to go through a

0825

1 special cleaning process, lids removed by robotic  
2 means, and they're re-cleaned and sanitized and  
3 placed back in the health facility. And what this  
4 does is it diverts their plastics that would normally  
5 be filled with the medical waste and decreases the  
6 volume of the medical waste that they're disposing  
7 and paying for and decreases their opportunity to  
8 have health care workers stuck or injured by these  
9 needles.

10 Q. Now, if this is a service that is actually  
11 provided by another company that is owned by  
12 Stericycle, Inc., why is it a service that your  
13 company is touting as providing and is included in  
14 your tariff?

15 A. Stericycle of Washington is actually  
16 collecting the racks and sending the waste in for  
17 processing. Therefore, they're billing for that  
18 portion of the service that they're providing.

19 Q. Does Stericycle of Washington have a written  
20 contract with this other company? And I guess we  
21 should get on the record what this other company's  
22 name is.

23 A. Bio Systems.

24 Q. Is that the name of the company, Bio  
25 Systems, Inc.?



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1           A.    Bio Systems, Inc.  It is wholly-owned by  
2 Stericycle, Inc.

3           Q.    Does Stericycle of Washington have a written  
4 contract with Bio Systems, Inc. for this service?

5           A.    I would assume so.

6           Q.    You have no knowledge of that?

7           A.    I don't.

8           Q.    If we could go back to Exhibit 69, can you  
9 point out to me if there is anything in that document  
10 that explains how you treat these containers that  
11 you're transporting?  And I will offer that I've  
12 looked through here and I couldn't find anything, but  
13 I'm trying to find out if I just missed something.

14           MR. JOHNSON:  Sorry, Mr. Haffner.  Which  
15 exhibit are you referring to?

16           MR. HAFFNER:  Sixty-nine.

17           THE WITNESS:  And your question, one more  
18 time, is?

19           Q.    Is there something in this document that  
20 describes how you treat the containers?

21           A.    It doesn't describe how it's treated, no.

22           Q.    Okay.  And I think you just testified that  
23 you essentially wash the containers, is that correct,  
24 or actually, this other company washes the containers  
25 and returns them?

0827

1           A.    Actually, Stericycle, Inc. washes the  
2 containers at their processing facility.

3           Q.    And that facility's in California?

4           A.    There is multiple facilities.  Where it's  
5 currently being sent are to Vernon, California.

6           Q.    Did you say Vernon?

7           A.    Vernon, V-e-r-n-o-n.

8           Q.    Would this item -- would this service, when  
9 a customer receives this service -- and I assume you  
10 have some customers that are receiving this service  
11 currently?

12          A.    Yes.

13          Q.    When a customer receives this service, are  
14 they receiving a bill from Stericycle, Inc. for this  
15 service?

16          A.    They're going to receive their normal bill  
17 from Stericycle, charging them for any fees that are  
18 associated with the transportation of any of their  
19 waste.  They may receive another bill, depending on  
20 the level of the program they sign up, that's a  
21 service fee, based on any other work that a Bio  
22 Systems representative would be doing within their  
23 facility.

24          Q.    So would this Bio Systems service show up as  
25 a separate bill?

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1 A. Correct.

2 Q. And would that bill direct the customer to  
3 make payment to Stericycle, Inc.?

4 A. I believe that the bill is -- the heading on  
5 the bill is Bio Systems, it comes from actual Bio  
6 Systems.

7 Q. So they would be asked to make payment -- if  
8 they would pay by check, they would make the check  
9 out to Bio Systems, Inc.?

10 A. I honestly don't know.

11 Q. Okay. Do you pick up these containers on  
12 vehicles that are currently authorized to operate  
13 under the G permit issued to Stericycle of  
14 Washington?

15 A. Yes.

16 Q. Are they brought back to a central  
17 collection point and then transferred off in larger  
18 containers?

19 A. No, there's no -- basically, the full racks,  
20 that it's required to have full racks for  
21 transportation, according to the DOT, are brought  
22 back to a transfer facility, whichever one they may  
23 come back to, they're offloaded onto a trailer that  
24 is taken to our Morton processing facility where, at  
25 that time, they're placed on a trailer that's sent to

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1 Vernon.

2 Q. Now, it sounded like there may have been a  
3 couple of transfer points in that description. If  
4 you -- I assume hospitals are a place where this type  
5 of system might be in use; is that correct?

6 A. It could be any health care facility.

7 Q. So your truck goes to a health care facility  
8 and picks up a full rack. Where does that rack next  
9 go to?

10 A. The rack will be on that route truck or, if  
11 it was picked up by a route truck or a straight  
12 truck, meaning a semi, 28-foot or 53-foot trailer on  
13 it. And at the point in time that that trailer comes  
14 back to the yard at the end of the day or the route  
15 truck comes back, all of our material is cross-loaded  
16 into a truck designated to go to the processing  
17 facility.

18 Q. And where does that cross-load take place?

19 A. In the -- we have a yard in Kent. That is  
20 typically where the hospital that we currently are  
21 servicing is cross-loaded.

22 Q. And then, from Kent, did you say that it  
23 would possibly go to Morton?

24 A. It would travel to Morton, yes.

25 Q. It wouldn't be treated at Morton, however,

0830

1 would it?

2 A. No.

3 Q. It would be cross-loaded again into another  
4 vehicle?

5 A. Correct.

6 Q. Okay. And then, from Morton, it would be  
7 transported to Vernon, California, where it would be  
8 treated?

9 A. It can either go straight to Vernon, or it  
10 may go to Salt Lake City before it goes to Vernon.

11 Q. During the time that it's being transported  
12 from the original generator to its departure for  
13 Morton, how long is that rack in the custody of  
14 Stericycle of Washington?

15 A. I'm not following your question.

16 Q. How long will it typically take a rack to  
17 leave the state of Washington once Stericycle has  
18 picked one up?

19 A. Well, we -- currently, all of our waste  
20 that's picked up in the Puget Sound region is  
21 transferred to the Morton facility, in essence,  
22 daily. Our current loads that we send to Salt Lake  
23 are going in the long haul. Could be from two to  
24 three trucks a week could be sent to Salt Lake City.  
25 So depending on the timing of when the route truck

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1 got back to Kent to offload and when the next  
2 scheduled trailer and if it was full of waste already  
3 that was scheduled to go to Salt Lake or to Vernon  
4 was either there or they missed that scheduled day,  
5 it would be either -- could go the same day and it  
6 could be two days.

7 Q. And did you say you had a facility in Salt  
8 Lake that handled Bio Systems?

9 A. No, it's an incinerator in Salt Lake.

10 Q. You wouldn't put Bio Systems material in an  
11 incineration vehicle, would you? You wouldn't send  
12 it for incineration, would you?

13 A. No.

14 Q. So how often does the -- how often will the  
15 truckload of Bio Systems material go to Vernon?

16 A. I believe I just answered your question. I  
17 said that the trucks, we either have two or three  
18 refer trailers, 48-foot refer trailers a week that  
19 travel outbound from Morton.

20 Q. So would they go to Salt Lake and then on to  
21 Vernon?

22 A. Correct.

23 Q. Okay. I didn't understand that. I thought  
24 you were saying they just went to Salt Lake?

25 A. No.

0832

1 Q. Okay.

2 A. Salt Lake is a regional processing facility  
3 for Stericycle. There's vehicles traveling into Salt  
4 Lake from hubs all over the country.

5 Q. Is this revenue from the Bio Systems program  
6 reported in your annual report to the UTC?

7 A. It will be, yes.

8 Q. How are you going to allocate costs?

9 A. The same fashion we allocate our costs  
10 currently for our transportation. There's nothing  
11 that's going to change with how we report our costs.

12 Q. So you will be allocating costs for the  
13 shipment from Morton to Salt Lake to Vernon and back  
14 again?

15 A. For the long haul portion?

16 Q. Correct.

17 A. Anything that is involved in getting that  
18 particular waste stream to a processing facility is  
19 charged to that waste.

20 Q. And Stericycle charges -- Stericycle, Inc.  
21 makes a charge to you for those costs?

22 A. No. Those particular charges are managed  
23 and they come out of Stericycle of Washington's  
24 financial statements.

25 Q. So are you paying for the truck out of your

0833

1 own expenses?

2 A. Correct, because I'm realizing the revenue  
3 from that stop, as well. It's the same as if I'm  
4 picking up a 40-gallon tub from a doctor's office. I  
5 realize that revenue, but I also realize the expense  
6 for having to pick it up and get it processed at the  
7 processing facility.

8 Q. Do you pay Bio Systems, Inc. some sort of a  
9 fee for the use of this service, then?

10 A. Pay for what service?

11 Q. For being able to use their washing systems,  
12 having them treat this material?

13 A. The wash systems and the processing  
14 facilities are owned by Stericycle. Bio Systems is  
15 the service end of what they do in the hospitals and  
16 the clinics and facilities they work in. What Bio  
17 Systems' portion does for this is they hire  
18 individuals that actually are the individuals that go  
19 into the health care facilities and provide the  
20 exchange of the material for them. In essence, doing  
21 the duty of an environmental services person that  
22 they currently have on staff.

23 So a Bio Systems employee would be in the  
24 health care setting, swapping out those particular  
25 sharps containers for them and filling the rack.



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1 That's what Bio Systems bills for.

2 Q. Okay. And that's very helpful. That might  
3 clear up a few things. Now, when you talk about  
4 swapping out material, are you talking about  
5 physically taking a used sharps instrument and  
6 putting it on the rack, or are you talking about  
7 changing the sharps equipment that the customer is  
8 using with a proprietary equipment that Stericycle is  
9 offering for this program?

10 A. Bio Systems placed proprietary equipment  
11 within the health care facility. These are vertical  
12 drop sharps containers that are changed out on a  
13 basis before they're a third full and on a regular  
14 cycle, whether they're empty, have one sharp in them,  
15 whether a third full, they're changed on a regular  
16 basis.

17 Currently, health care facilities will only  
18 change a sharps container unless it's at the maximum  
19 fill line. The Bio Systems proactive management is  
20 they provide an individual that comes into your  
21 health care facility, has a rack of sharps  
22 containers, and will move through an entire patient  
23 room and change every sharps container on the wall,  
24 whether it's empty, full, two sharps in it or  
25 whatever it may be, and put an empty, clean, reusable

0835

1 sharps container back in that place in the rack.

2 Q. And these are containers that they can only  
3 acquire through Stericycle, Inc.?

4 A. Correct, the container is an FDA-approved  
5 device. Once it's a reasonable sharps container,  
6 it's no longer a medical waste container. It's a  
7 class two medical device that has to be cleaned in  
8 accordance with FDA requirements.

9 Q. Okay. So you're providing the  
10 transportation service for Bio Systems, Inc. to get  
11 the material to Stericycle, Inc.?

12 A. Correct.

13 Q. But you're not aware of a contract that you  
14 have -- well, strike that.

15 Wouldn't the customer in that case be Bio  
16 Systems, Inc., as opposed to the health care  
17 facility?

18 A. I don't understand what you mean.

19 Q. Well, Bio Systems, Inc. is going in and  
20 swapping out the material. Isn't that part of the  
21 service that they're providing the hospital, which  
22 they would bill the health care facility and then  
23 provide the used containers for you to pick up?

24 A. Well, if I'm understanding what you're  
25 asking me, is you're asking me if Bio Systems is our

0836

1 customer?

2 Q. Right.

3 A. In essence, we are processing waste for Bio  
4 Systems, yes. In the particular marketplace we're  
5 in, as you can tell, it's a regulated marketplace for  
6 anything you do with this type of material.

7 Q. Mm-hmm.

8 A. And the portion of the work that is done as  
9 a transportation arm of this has to be reported, for  
10 year end reporting purposes, to the UTC. That  
11 portion of it is kept separate from the service end  
12 of the business that Bio Systems does.

13 Q. Correct, I understand now, okay. Does Bio  
14 Systems charge the health care facility for the work  
15 that they do, swapping out the units?

16 A. Yes, they do.

17 Q. And that's a separate bill from what you  
18 charge the health care facility for transporting the  
19 containers?

20 A. Correct. What they may receive at the  
21 facility is they're going to receive -- the way that  
22 the system works is it helps them manage their waste  
23 better and to budget for their sharps management.  
24 The bill may be, for easy math, their charge is  
25 \$10,000 a month for this service. The bill may come

0837

1 and \$6,000 of that portion may be medical waste  
2 processing or handling fees or transportation  
3 associated with the sharps, and 4,000 of it would be  
4 a service fee for the person that's changing out the  
5 material in the facility.

6 Q. Okay. And that bill would come from  
7 Stericycle, Inc.; correct?

8 A. The charging for the processing is a bill  
9 that's done internally.

10 Q. Internally, by its --

11 A. Within the corporation. I can tell you I'm  
12 not sure how they bill each other per se, but the  
13 bill -- they're going to receive a bill that's going  
14 to spell out what their charges are to the facility.

15 Q. And when you refer to the corporation and  
16 internally within the corporation, you're meaning  
17 Stericycle, Inc.?

18 A. Correct.

19 Q. Okay. What certification -- and I probably  
20 am using the wrong word. What certification of  
21 sterility do you offer the customer or does Bio  
22 Systems offer the customer in this service?

23 A. Well, I think that is probably something  
24 better answered by our environmental safety health  
25 manager, Chris Stromerson, that is coming up next,

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1 because he also is the FDA compliance manager for  
2 this program.

3 Q. All right. Thank you. Let's turn to  
4 Exhibit 70. This is a document referring to  
5 Stericycle's mail-back program. In fact, actually, I  
6 think we have maybe three sets of exhibits, 70, 71  
7 and 72. Am I correct that these are all some sort of  
8 service that Stericycle offers for handling hazardous  
9 materials or maybe, in some cases, hazardous waste  
10 through the mail?

11 A. Well, if you're looking at the same section  
12 I am, you have one that's Stericycle's mail-back  
13 program, which is a sharps management program.

14 MR. JOHNSON: Exhibit 70?

15 THE WITNESS: That would be Exhibit 70. And  
16 sharps are not a hazardous waste.

17 Q. But they are a medical waste; correct?

18 A. That is true.

19 Q. Okay. And 71 refers to mercury waste?

20 A. Seventy-one does refer to amalgam, or  
21 mercury waste, yes.

22 Q. Which would be a hazardous waste or a  
23 medical waste?

24 A. It's going to be a hazardous waste.

25 Q. And 72 refers to -- was this for

0839

1 pharmaceuticals?

2 A. Correct.

3 Q. And pharmaceuticals would be considered what  
4 type of waste?

5 A. Currently, in the state of Washington,  
6 they're all considered a controlled substance in this  
7 particular state.

8 Q. And is that a third category, differentiated  
9 from hazardous waste and medical waste?

10 A. Depending on -- well, pharmaceuticals are  
11 never considered medical waste, and some portions,  
12 depending on what the makeup is of the  
13 pharmaceutical, it could be a hazardous waste, yes.

14 Q. Now, these are services that are actually  
15 provided by Stericycle, Inc., aren't they?

16 A. Correct.

17 Q. And the customer would be dealing with  
18 Stericycle, Inc. when they sent this material  
19 somewhere?

20 A. Correct.

21 Q. And they would be receiving a bill from  
22 Stericycle, Inc. for these services?

23 A. It would depend on which service. The  
24 mail-back program -- in any of these, you may be  
25 aware that our mail-back programs aren't regulated by

0840

1 the UTC in the state of Washington, because nothing's  
2 traveling across the roadways.

3 The mail-back program and the other programs  
4 we have are programs that were put together by  
5 request of some generators to help them dispose of  
6 some of the materials they have. Not every customer  
7 in the state of Washington generates enough waste to  
8 be on a regular scheduled service or wants to be on  
9 an on-call service.

10 The mail-back program provides them with a  
11 container that they can ship back by the U.S. Postal  
12 Service for their sharps, and when they buy the kit,  
13 there's a prepaid return stamp with it that they  
14 basically put on the container and it's sent back.  
15 So everything's paid for at the time they purchase  
16 the kit.

17 Q. Now, assuming that a -- any individual or  
18 company obtained the required packaging and labeling  
19 to satisfy federal, state, local regulations, anybody  
20 could really provide this type of a service to a  
21 medical facility, couldn't they?

22 A. They already do.

23 Q. So you have competition in this area  
24 already, don't you?

25 A. Yes.

0841

1 Q. Similarly, could anybody suggest that if  
2 they wanted to assist a medical facility with how  
3 their waste is being handled, couldn't that person  
4 simply say, Contact Stericycle and use their  
5 mail-back program, if it fell within your parameters?

6 A. I'm not sure what your question is.

7 Q. If somebody was asked about how to handle a  
8 small, irregular pickup or handling of medical waste,  
9 Stericycle would be able to handle that through this  
10 mail-back program, couldn't they, if it fell within  
11 these parameters of these three programs?

12 A. Well, if you mean within the parameters of  
13 the program, the mail-back program for sharps merely  
14 takes sharps.

15 Q. Correct.

16 A. No other medical waste can go into that  
17 container.

18 Q. Right.

19 A. So if they had a small amount of sharps and  
20 they wanted to use a mail-back program, well, then  
21 yes, they could sign up for the program, if that's  
22 what you're asking.

23 Q. Let's take a look at Exhibit 83. And these  
24 are -- there's, I believe, three documents here,  
25 three sets of documents that were provided in



0842

1 response to some discovery requests. Are you  
2 familiar with these documents?

3 A. The three documents you're speaking of is a  
4 service agreement?

5 Q. Yes.

6 A. And acceptance policy. Well, there's more  
7 than three documents in here.

8 Q. Well, let me clarify. Is the acceptance  
9 policy generally given to the customer with the  
10 service agreement?

11 A. It depends on when they signed up to be a  
12 customer of Stericycle. The current version of the  
13 Stericycle service agreement contains a waste  
14 acceptance policy within it.

15 Q. So do any of these documents currently  
16 reflect the service agreement used by Stericycle of  
17 Washington?

18 MR. JOHNSON: Mr. Haffner, I'm having  
19 trouble telling these apart.

20 MR. HAFFNER: I have a hard time with that,  
21 too. I think they were documents used over a series  
22 of years that were modified. Our request was for  
23 documents used since 2000, or something, and I think  
24 it was a repeat of your question. And so I think  
25 they correctly provided us with the different

0843

1 documents they used in different years. I'm trying  
2 to find out if there's one.

3 MR. JOHNSON: Slight differences, if I can  
4 --

5 MR. HAFFNER: I don't want to identify the  
6 differences. I'm trying to find out which one is the  
7 current one.

8 Q. So maybe I should just ask if any of those  
9 in Exhibit 83, which I think I just did, is the  
10 current service agreement being used?

11 A. Well, I'm going to have to take some time to  
12 read through them, because, just from glancing at  
13 them, like you were just discussing, they contain  
14 different changes within the wording and some nuances  
15 in them that -- I'm not an attorney and I didn't  
16 write them, so I would have to glance and look at  
17 what I think the latest version is.

18 Q. Okay. I'm not going to ask you in that kind  
19 of detail, so I won't ask you to be comparing the  
20 documents. Let me, for the sake of laying a  
21 foundation for the documents, is it your  
22 understanding that these are copies of service  
23 agreements that your company has used over the last  
24 few years?

25 A. Yes, they are.

0844

1 Q. And likewise, look at, please, Exhibit 84,  
2 which is I think another service agreement. Is that  
3 one that might have been used more recently, or is  
4 that one that's even older or just one that was used  
5 in the past?

6 A. As I stated before, I would have to read  
7 through the whole agreement to get an idea of what  
8 version I thought this was.

9 Q. Okay.

10 JUDGE RENDAHL: Mr. Haffner, do you need  
11 this information or are you just -- I mean, because  
12 if you do, there's a format to do that. You can make  
13 what's called a records requisition and Stericycle  
14 can get back to you or Mr. Philpott can back to you.  
15 So I'm just asking what you need.

16 MR. HAFFNER: Thank you, Your Honor. I  
17 don't need it for knowing the exact agreement that  
18 they're using. I can refer to these agreements, I  
19 believe, as examples of some provisions and see if  
20 they're still applicable for how they're used.

21 JUDGE RENDAHL: All right.

22 Q. How does Stericycle use these agreements or  
23 its current service agreement with its customers?

24 A. What do you mean by how do we use them?  
25 Could you rephrase your question so it --

0845

1 Q. Sure. Let me, first of all, start off by  
2 saying that it looks like -- or asking you whether or  
3 not the party with whom the customer is entering into  
4 a contract is Stericycle, Inc. or Stericycle of  
5 Washington, because on this first document, it  
6 indicates that the contracting entity is Stericycle,  
7 Inc., but then it refers to Stericycle of Washington  
8 with your address.

9 MR. JOHNSON: Your Honor, I object to the  
10 characterization of the document.

11 JUDGE RENDAHL: Well, let's first have an  
12 identification of the document. Which exhibit were  
13 you referring to?

14 MR. HAFFNER: I'm sorry. This is Exhibit  
15 83, the first page of that exhibit.

16 JUDGE RENDAHL: Okay. And Mr. Johnson, what  
17 is your objection?

18 MR. JOHNSON: My objection is that if you  
19 look at -- Mr. Haffner is saying that this document  
20 identifies -- well, first of all, the document speaks  
21 for itself. Secondly, he suggested that it  
22 identifies the contracting entity of Stericycle, Inc.  
23 Whereas if you look down at the bottom, you know,  
24 below the date of service agreement, it does have the  
25 Stericycle, Inc. name, then it says name of

0846

1 contracting entity, Stericycle of Washington, and  
2 gives the address.

3 JUDGE RENDAHL: Sorry. Where are you  
4 referring to the date, date of service agreement  
5 here?

6 MR. JOHNSON: If I could point to you. Then  
7 there's this.

8 JUDGE RENDAHL: I think, Mr. Johnson, I  
9 think this is information that you're -- I don't  
10 understand the objection, per se. I think this is  
11 something that your witness can discuss. I guess I'm  
12 not understanding what the nature of the objection  
13 is.

14 MR. JOHNSON: My objection is that Mr.  
15 Haffner mischaracterized the actual words of the text  
16 when he said that it identified the contracting  
17 entity as Stericycle, Inc., which it does not.

18 JUDGE RENDAHL: Right. Well, why don't we  
19 have Mr. Haffner ask his question again, so we can be  
20 clear what he's asking, instead of having you testify  
21 as to what's in the document.

22 MR. JOHNSON: Thank you.

23 MR. HAFFNER: Thank you, Your Honor.

24 MR. JOHNSON: Or either of us, perhaps.

25 Q. And I may have misspoken. I think Mr.

0847

1 Johnson may be correct that I identified Stericycle,  
2 Inc. as the contracting entity. What I would like to  
3 find out -- it's confusing to me, because above and  
4 below that are two different companies. What is your  
5 understanding of who the customer enters into a  
6 contract with when they sign this agreement?

7 A. Stericycle of Washington.

8 Q. And do you have all of your customers sign  
9 these types of agreements?

10 A. Yes. Well, let me restate that. Most of  
11 our customers sign these types of agreements, unless  
12 we're dealing with a federal facility or a state  
13 facility that may want to write their own service  
14 agreement.

15 Q. Okay. Under Article Two on the second page,  
16 it says, Terms -- term and payment for service, and  
17 it provides that this agreement is for the term of 36  
18 months, unless earlier terminated, in accordance with  
19 applicable law.

20 Now, I can't ask you what the legal  
21 interpretation or legal meaning of that provision is,  
22 but is it your understanding that when your contract  
23 -- when your customers sign these agreements that  
24 they are signing up for a three-year contract with  
25 you?

0848

1           A.    No, it's my understanding, in the state of  
2 Washington, that any individual that signs a service  
3 agreement signs up for a three-day contract, because  
4 that is a cancellation provision under the Washington  
5 State law.

6           Q.    Under Washington State law.  Is that a UTC  
7 law or is that a common law that you're aware of?

8           A.    It's a WAC code that applies to garbage  
9 companies, and we're classified as a garbage company.  
10 They can cancel with three days written notice.

11          Q.    Is there a reason why that WAC code, which  
12 apparently is pretty well known to you, is not  
13 identified in this agreement?

14          A.    Well, I'm not an attorney and I didn't write  
15 this agreement, but I'm sure that's why they have it  
16 in accordance with applicable law.  Basically, the  
17 reason that we have generators sign a service  
18 agreement is, in order to transport biomedical waste  
19 in the state of Washington, it's our way of opening  
20 up a relationship with them in order to transport  
21 their waste.

22                    Many customers request service agreements to  
23 have on file in instances they're audited by any one  
24 of the agencies that come in, like WISHA, JAHCO --

25           MR. JOHNSON:  Could you spell that out?

0849

1 WISHA is W-I-S-H-A?

2 THE WITNESS: Correct.

3 MR. JOHNSON: And that stands for what?

4 THE WITNESS: It is the Washington arm of  
5 Occupational Health and Safety Administration.

6 MR. JOHNSON: And then you said something  
7 about JAHCO?

8 THE WITNESS: JAHCO.

9 MR. JOHNSON: How do you spell that?

10 THE WITNESS: I'm not even go going to try  
11 to butcher it. It's the joint accreditation for  
12 hospitals, J -- I don't know the acronym of what it  
13 spells out.

14 MR. HAFFNER: Do we want to go on the record  
15 and just say J-A-C-O or --

16 THE WITNESS: I think it's J-H-C-O.

17 MR. JOHNSON: J-A-H-C-O?

18 THE WITNESS: J-A-C-H, yes.

19 MR. HAFFNER: J-A-H-C-O?

20 JUDGE RENDAHL: I think there's some -- at  
21 this point, let's not waste the time. It's one of  
22 those variations.

23 MR. JOHNSON: But would you then proceed  
24 with your testimony?

25 THE WITNESS: And typically, the -- these



0850

1 agencies require that they have some sort of a  
2 service agreement or an agreement with the biomedical  
3 waste disposal facility.

4 Q. And you would be that facility?

5 A. If they had a service agreement with us,  
6 yes.

7 Q. Correct. And I guess I'll clarify that.  
8 You don't actually operate a disposal facility,  
9 though, do you? Your company does not, Stericycle of  
10 Washington?

11 A. No.

12 Q. Let's turn to Exhibit 73. This is one of  
13 your exhibits. It's your annual report, is it not?

14 A. Correct.

15 Q. And I apologize for always using the word  
16 your. I'm referring during those times to your  
17 company, Stericycle of Washington, Inc. If we could  
18 look on page four of this exhibit, and this has the  
19 income statement for your company, which I believe  
20 this is for the year 2003; is that correct?

21 A. Yes.

22 Q. On item ten, there's a line item for selling  
23 and advertising. What does your company do for  
24 selling and advertising?

25 A. Well, selling and advertising line item, I

0851

1 would assume, would be for any sales representatives  
2 we have employed with our company for their  
3 compensation and any trade shows we attend. We try  
4 to be proactive and solicit business and go anywhere  
5 in the state where they may have trade shows, dental  
6 trade shows, health care shows, we put on seminars to  
7 educate people, and I would imagine that's where all  
8 of that is dropping into in a bucket there.

9 Q. Okay, thank you. What about taxes and  
10 licenses? Do you know what taxes and licenses are  
11 included in that \$15,000 figure?

12 A. I could only guess. This is a document that  
13 I personally don't prepare. This is prepared by our  
14 corporate finance individuals, so I couldn't tell you  
15 what those are.

16 Q. When you say corporate finance individuals,  
17 are you talking about Stericycle, Inc. or Stericycle  
18 of Washington?

19 A. All of our corporate functions and finance  
20 and billing is handled by the corporate office.

21 Q. Which is Stericycle, Inc. or Stericycle of  
22 Washington?

23 A. Stericycle, Inc.

24 Q. There's been some question about backup  
25 facilities in this proceeding. What backup

0852

1 facilities does Stericycle of Washington offer if the  
2 Morton facility were to shut down?

3 A. Well, the Morton facility, it would be a  
4 rarity that it would shut down, since we have two  
5 different processes operating up there just for that  
6 reason alone. We have an autoclave and we have an  
7 ETD. We have a monthly capacity at that facility of  
8 4.5 million pounds. We currently process roughly one  
9 and a half million pounds. We also have, in  
10 conjunction with that, Stericycle has 26 other  
11 processing facilities located throughout the U.S.  
12 that we have the opportunity to use if we need to.  
13 We also have the ability, as you know, and we do use  
14 Covanta in Oregon, as well.

15 Q. By 28 other facilities that you mentioned,  
16 those would be --

17 A. I said 26.

18 Q. Twenty-six, pardon me. Those would be  
19 facilities like the incinerator in north Salt Lake?

20 A. It could be an incinerator or it could be an  
21 autoclave, yes.

22 Q. Do you have contracts with each of those  
23 facilities?

24 A. What do you mean, do we have contracts with  
25 each of those facilities?

0853

1 Q. Do you have a written agreement with each of  
2 those facilities to use them?

3 A. I would imagine, since Stericycle, Inc.,  
4 that processes our -- we have an agreement with  
5 Stericycle, Inc. to process our waste and they have a  
6 responsibility to process the waste however they need  
7 to, so Stericycle of Washington, yes, does have a  
8 contract with every location of Stericycle, Inc., in  
9 essence by having a contract to have our waste  
10 processed in Morton.

11 Q. And that's assuming that the contract that  
12 you have for the Morton facility would oblige  
13 Stericycle, Inc. to process that waste in some other  
14 location if they weren't able to do it at Morton; is  
15 that correct?

16 A. That would be your assumption.

17 Q. What -- under what assumption are you making  
18 that there would be a contractual obligation for  
19 Stericycle, Inc. to provide that service?

20 A. Our contract, I would assume, states, and  
21 you provided a copy of it, that for \$5.46 a  
22 container, they will process the waste we deliver to  
23 them.

24 Q. And what happens if, for some reason,  
25 Stericycle, Inc. decides not to perform that

0854

1 obligation? Where would your backup facility be?

2 A. If Stericycle, Inc. didn't exist and all 26  
3 plants miraculously shut down in one day, I'd assume  
4 we'd go to Covanta.

5 Q. Okay. Do you have a contract with Covanta?

6 A. Yes, we do.

7 Q. Has that been produced in this hearing?

8 A. I am not sure if it has or has not.

9 MR. JOHNSON: Want an answer to that  
10 question, Mr. Haffner?

11 MR. HAFFNER: Yes.

12 MR. JOHNSON: Maybe we could go off the  
13 record for a second.

14 JUDGE RENDAHL: Be off the record.

15 (Discussion off the record.)

16 JUDGE RENDAHL: Let's go back on the record.  
17 While we were off the record, we determined that that  
18 contract with Covanta was produced in discovery, but  
19 Mr. Haffner indicates it's not necessary to include  
20 in the record at this point.

21 MR. HAFFNER: I don't know if I agree that  
22 it was produced in discovery. It may very well have  
23 been, but I have not reviewed my discovery responses  
24 from Stericycle, so I don't want to go on the record  
25 as stipulating them as produced, if Your Honor

0855

1 wouldn't mind.

2 JUDGE RENDAHL: All right. Thanks for the  
3 clarification.

4 Q. Mr. Philpott, isn't it true that the Morton  
5 facility was shut down in the past because of an  
6 outbreak of tuberculosis?

7 A. I believe, at a point in time there, they  
8 had some issues at the facility there, yes. As I  
9 stated earlier, I started with Stericycle in 1999. I  
10 was not there when this incident took place, so I can  
11 honestly tell you I don't have all the details of  
12 exactly what transpired.

13 Q. Okay. Since 1999, how many violations has  
14 your company, again, Stericycle of Washington, had  
15 for its operations in the state of Washington?

16 A. None that I'm aware of.

17 Q. It wasn't cited by the Tacoma Pierce County  
18 Health Department in October of 2000?

19 A. There was an incident, I think, if this is  
20 what you're speaking of, by Pierce County where we  
21 had a failed latch on the back of a door and two  
22 containers came off of the trailer. And our company  
23 actually contacted them and we retrieved the two  
24 containers and the integrity of the containers was  
25 never -- you know, they were never opened or exposed.

0856

1 Is that what you're referring to?

2 Q. That is the incident that I'm referring to,  
3 yes. Was there an issue with the Tacoma Pierce  
4 County Health Department about the immediacy of their  
5 contact -- their being contacted about the spill?

6 A. I believe that that was the issue.

7 Q. Okay. Let's please look at Exhibit 79. Are  
8 you familiar with that document? I guess it's part  
9 of your exhibit.

10 A. Yes, I am.

11 Q. How was that document obtained?

12 A. How was it obtained by where I first saw the  
13 document, or how was it obtained?

14 Q. How did you first become aware of the  
15 document?

16 A. This was provided to me by our legal  
17 counsel.

18 Q. And did your legal counsel explain how he  
19 obtained the document?

20 A. I think that the documents speaks for  
21 itself. It's from a insurance broker, Kibble and  
22 Prentice, in Bellevue.

23 Q. The last sentence in this document indicates  
24 that I look forward to working with you and the  
25 owners of Kleen Environmental Technologies as this

0857

1 project goes forward. Do you know what information  
2 your attorney gave to this insurance person about the  
3 -- about who he was representing and his affiliation  
4 with Kleen Environmental Technologies?

5 A. Once again, I'd answer that I believe the  
6 document speaks for itself. I obviously wasn't  
7 present during this conversation, so I couldn't tell  
8 you.

9 Q. And you don't know, other than what's  
10 provided in this document, what information your  
11 attorney gave the insurance person about the type of  
12 business that was seeking to be insured?

13 A. Well, I believe, in the text of this  
14 document, it states, in the second paragraph, a  
15 general liability for any company involved in waste  
16 management will require a specialty market. I would  
17 imagine he told them he was involved in waste  
18 management.

19 Q. You don't happen to know whether he told  
20 them this company was already involved in hazardous  
21 waste management, do you?

22 A. I do not.

23 Q. When Ms. Walker was testifying, she  
24 identified a number of licenses and permits, I  
25 believe, that she felt that Kleen had not adequately



0858

1 listed in their pro formas. Do you recall that --

2 A. Yes.

3 Q. -- testimony? There's also been some  
4 question about whether Kleen has investigated its  
5 need for a -- I believe it was called a solid waste  
6 transfer permit. Are you -- first of all, does  
7 Stericycle have a solid waste transfer permit?

8 A. We do not, because we do not take waste off  
9 of our vehicles and put them inside a building. We  
10 have a biomedical waste transportation permit for  
11 transporting in King County medical waste.

12 Q. When you bring waste to your Kent facility,  
13 I think you've indicated that you do some  
14 cross-loading there; correct?

15 A. Correct.

16 Q. By cross-loading, you mean you take it from  
17 one truck to another truck?

18 A. Yes.

19 Q. Pardon me. One truck to either another  
20 truck or possibly to a trailer that might be pulled  
21 by a tractor?

22 A. Backed up to each other.

23 Q. Okay.

24 A. And they're offloaded.

25 Q. Right. So that the waste never touches the

0859

1 ground?

2 A. Never.

3 Q. And it's your understanding that if that  
4 type of transfer, for purposes of storage, is  
5 conducted, that a transfer permit, a solid waste  
6 transfer permit is not required; is that correct?

7 A. That is correct.

8 Q. Is that a permit that is for King County  
9 only or is that a statewide permit?

10 A. That's for King County only. Each different  
11 county has different requirements.

12 Q. Okay. Does your Morton facility grind, as I  
13 think the word was, or maybe it was in your  
14 testimony, grind the treated material before, during,  
15 or after it is decontaminated?

16 A. Before. If it's going in the ETD process,  
17 it's ground before, electrothermal deactivation.

18 Q. Now, as I understand the ETD process, it's  
19 more or less like a big microwave, is that correct,  
20 where the material goes into a chamber, it's  
21 bombarded with some sort of wave energy --

22 A. Radio waves, correct.

23 Q. Radio waves, and the heat of that sterilizes  
24 the material?

25 A. The radio waves attack the pathogens and

0860

1 kill the pathogens, rendering the waste  
2 noninfectious.

3 Q. Okay.

4 A. Stericycle's proprietary technology.

5 Q. How is the grinding performed before, when  
6 it is still contaminated?

7 A. The Stericycle facility is a -- once the  
8 medical waste enters the treatment chamber through  
9 the chute, it's a closed air loop system, and by  
10 suction, the waste is drug through and pushed through  
11 extruders, where it's put through a extruder and it's  
12 ground to put in the vessels for processing.

13 Q. Do those extruders ever gum up or get jammed  
14 or anything like that?

15 A. They do.

16 Q. And how is that problem corrected?

17 A. Maintenance staff corrects the issue.

18 Q. So they would go in and physically correct  
19 the problem in the chamber?

20 A. For the specific process of how it's done, I  
21 think that the next witness, Chris Stromerson, would  
22 be the proper individual to speak to, since he is the  
23 environmental safety and health manager and can  
24 answer all those questions for you.

25 Q. All right. There was testimony from Ms.

0861

1 Walker, I believe, that your company had a quote from  
2 the hydroclave facility in Canada for a cost of -- I  
3 think it was \$10 per box?

4 A. Well, I think she basically was applying a  
5 -- I personally met with individuals from Hospital  
6 Sterilization Services in Port Coquitlam. They  
7 approached us regarding processing waste that we  
8 generally pick up in the Canadian marketplace to be  
9 processed at their facility. I think on my pre-filed  
10 testimony, on page 19 --

11 MR. JOHNSON: This is Exhibit 60-T.

12 THE WITNESS: Myself and my general manager  
13 in the Canadian marketplace met with Richard Haynes  
14 from HSS, and inspected his facility, saw his two  
15 hydroclaves in operation, looked to see what they  
16 were capable of and to see what they could do for us.  
17 At the time of the pricing offered from the  
18 hydroclave and their inability to handle the 200,000  
19 pounds of waste that we were currently generating in  
20 the B.C. marketplace and the high cost of processing,  
21 it wasn't a viable option for us to use them for  
22 processing.

23 Q. So the quote that Ms. Walker referred to was  
24 not actually a firm quote of \$10 per box, but it was  
25 more of a calculation based on your calculation that

0862

1 the rate for going to HSS would be approximately 28  
2 cents per pound?

3 A. It was -- basically, I believe what she did  
4 is she took the container size in the pro forma that  
5 was offered in the pro forma and multiplied it by the  
6 cost per pound that was offered to us by HSS.

7 Q. Do you have a written quote from HSS for  
8 that 28 cents per pound cost?

9 A. I do not.

10 Q. Let me refer back to your tariff again,  
11 which goes back to Exhibit 62.

12 A. Which part of the tariff are you looking at?

13 Q. Oh, I'm trying to remember myself. Item 90.

14 JUDGE RENDAHL: Are you looking at first  
15 revised page eight?

16 MR. HAFFNER: Yes, Your Honor.

17 Q. My question has to do with some testimony  
18 from Mr. Graves yesterday. In his pre-filed  
19 testimony, he listed the types of waste that they --  
20 that were able to be handled at Port Coquitlam,  
21 C-o-q-u-i-t-l-a-m. One of them was cytotoxic waste,  
22 c-y-t-o-t-o-x-i-c.

23 It wasn't clarified, I don't think then, or  
24 at least, if it was, maybe I missed it. Is cytotoxic  
25 waste the same as chemotherapy waste?

0863

1           A.    Correct.  And I think he did clarify and  
2   said that the hydroclave cannot process cytotoxic  
3   waste.  If I recall, in his testimony, he stated that  
4   in order to accept the material at their facility, it  
5   would have to be segregated into pathological waste  
6   container, sharps container, regular waste and  
7   cytotoxic waste.

8           Q.    And I'll let his testimony stand as it is.  
9   I won't disagree or agree with you there.  So you are  
10  able to handle -- your company is able to handle  
11  chemotherapy waste, but in a different fashion from  
12  its other waste stream; is that correct?

13          A.    Well, we receive trace chemotherapy waste,  
14  which is considered three percent or less of its  
15  original volume.  Residual chemotherapy is what we  
16  accept and the only acceptable means for processing  
17  of that waste for disposal is incineration.

18          Q.    And that would have to be then segregated  
19  from your other biomedical waste by the generator?

20          A.    Yes, but that waste -- trace chemotherapy  
21  can be commingled with regular pathological waste to  
22  go for incineration.  It does not require segregation  
23  with Stericycle.

24          Q.    Right.  And I think you identified that in  
25  your Item 90, where you have all three, pathological

0864

1 waste, chemotherapy waste and pharmaceutical waste  
2 could be grouped together, but they'd have to be  
3 segregated from other forms of medical waste;  
4 correct?

5 A. That is correct, from regular medical waste;  
6 that's correct.

7 Q. How is that typically done by a generator?  
8 How do they physically separate those different types  
9 of waste?

10 A. I'm not sure how they, you know, physically  
11 separate it, but we provide them two different  
12 containers. With Stericycle's proprietary bar code  
13 tracking system, we provide generators that generate  
14 incinerate waste with a different colored container,  
15 which is a gray container, that comes with a  
16 different color label that's provided to them, which  
17 is bright yellow, that goes in the outer container.

18 The regular medical waste is in a different  
19 colored container, which is either red, or there's a  
20 black container or a cardboard box, and that  
21 container has a white label on it, and that's how  
22 it's designated to be separate. And how they do that  
23 in their particular facilities, I couldn't tell you,  
24 but they do.

25 Q. That's okay. Okay. In the medical waste

0865

1 container that I -- and I don't want to try and  
2 remember what color it is, because I'll get it wrong,  
3 but in the regular medical waste container, are your  
4 customers able to put sharps in those containers?

5 A. Yes, they are.

6 Q. Unless they're on the Bio Systems program?

7 A. Well, if they're on a Bio Systems program,  
8 they would never put one in, because they don't ever  
9 touch the sharps containers. And that's a reusable  
10 container. So no, they would not put those  
11 particular containers in, but they still could put  
12 containers of sharps in.

13 Q. Okay. So a customer that you have signed up  
14 for the Bio Systems program and that has waste  
15 involving other biomedical waste and potentially  
16 trace chemotherapy waste would be required, in order  
17 to comply with your programs, to segregate those  
18 wastes into three different containers, would they  
19 not?

20 A. No.

21 Q. No. Where am I wrong?

22 A. I think I have two containers. What's your  
23 third container?

24 Q. Bio Systems. Those actually don't go in a  
25 container; they go in a rack; right?



0866

1           A.    Right.  I believe what you said is that our  
2 generators would be required to segregate into three  
3 separate containers; correct?

4           Q.    If they're on the Bio Systems program?

5           A.    Right.  And you said that they would be  
6 required to segregate; correct?

7           Q.    Well, yeah, that's my question.

8           A.    Okay.  Let me -- let's back up a little bit.  
9 Basically, if a generator is providing medical waste  
10 to Stericycle currently and they're generating  
11 pathological waste and regular waste, they have two  
12 containers.  Signing up for the Bio Systems program  
13 wouldn't change that.  They would still have two  
14 containers.  But the difference that they would have  
15 is that a Bio Systems employee would exchange their  
16 sharps containers off their walls and their employees  
17 would never touch it, so they wouldn't segregate into  
18 a third container, because they don't touch that.

19                   And what that would do is it would reduce  
20 their volume of medical waste they're generating for  
21 either container, and their volume would reduce  
22 because there's no plastics in that mix.

23           Q.    Fair enough.

24           A.    So that would be two containers, the same  
25 they had previously.

0867

1 Q. Good distinction. However, I think it's --  
2 nonetheless, isn't it correct to state that a  
3 customer that's involved in the Bio Systems program  
4 is voluntarily segregating their biomedical waste  
5 into three different path streams?

6 A. No.

7 Q. No?

8 A. I would say that a facility that's signed up  
9 for the Bio Systems program is participating in a  
10 waste reduction program that is a cost savings to  
11 them by reducing plastics into landfills and also  
12 reducing the volume of medical waste they're  
13 generating in their regular medical waste stream.  
14 There's no segregating required of them because they  
15 don't actually touch anything at that point in time.

16 Q. But they don't benefit from that program if  
17 they don't put those -- if they don't separate their  
18 sharps from their regular biomedical waste, do they?

19 A. I think perhaps you might be confused,  
20 because they don't ever touch the sharps that are on  
21 the wall. It's a completely different program. A  
22 typical facility buys single-use sharps containers  
23 and disposes of them within the medical waste. The  
24 Bio Systems program is an FDA-approved device that  
25 can be reused up to 500 times. That particular

0868

1 sharps never goes into the waste stream, because it's  
2 taken for reprocessing after it's emptied and it's  
3 reprocessed and reintroduced back in the system.

4 Q. Thank you. Are there any unique segregation  
5 requirements by any of the counties in the state of  
6 Washington? When I say unique, I mean, are there  
7 differences in the county requirements for  
8 segregation in the state of Washington?

9 A. I think particular counties have different  
10 medical waste regulations and guidelines. I don't  
11 think that I'm aware of any unique segregation  
12 requirements. For instance, King County requires  
13 that, from the point you put medical waste into a  
14 medical waste container, that it has to be disposed  
15 of within 14 days. That may be different in a  
16 different county. It's how they've written the  
17 rules.

18 Q. You're not aware of any differences in the  
19 handling of sharps amongst the different counties?

20 A. Well, once again, there is requirements,  
21 different descriptions in each county's medical waste  
22 handling guidelines. There's different time limits  
23 that you have to dispose of a sharps container once  
24 it's deemed full, which is when the cap is placed on  
25 the container. So it could vary from county to

0869

1 county. Pierce County and King County have different  
2 requirements.

3 MR. JOHNSON: Mr. Haffner, could I ask you  
4 if you could clarify, when you say segregated,  
5 segregation by whom, by what kind of enterprise,  
6 because that might help clarify. I think there may  
7 be some confusion there.

8 MR. HAFFNER: Fair point.

9 Q. Are you aware of any regulations in any of  
10 the counties in Washington that require the generator  
11 to segregate sharps from biomedical waste?

12 A. I am not aware of any requirements that  
13 would have them segregate them in a different  
14 fashion. The generator of medical waste is  
15 responsible for all aspects of how they handle their  
16 medical waste. Stericycle is a company, Stericycle  
17 of Washington, that they contract with to transport  
18 their medical waste and process it for them. They're  
19 responsible for all of the applicable laws that apply  
20 to a generator of medical waste.

21 MR. HAFFNER: Fair enough. I have no other  
22 questions of the witness, Your Honor.

23 JUDGE RENDAHL: Okay. Mr. Trautman, do you  
24 have any questions for the witness?

25 MR. TRAUTMAN: I have a few.

0870

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

2 BY MR. TRAUTMAN:

3 Q. I was looking first at -- oh, before I  
4 start, I'm Greg Trautman, Assistant Attorney General,  
5 for the Commission Staff.

6 Mr. Philpott, I was looking at Exhibit 60-T,  
7 your testimony, and I'm looking on page six, and it's  
8 Paragraph 13. And you indicate here that Stericycle  
9 transports all biomedical waste it collects from  
10 Washington generators to Stericycle, Inc.'s  
11 processing facility in Morton, and then you further  
12 say that it's processed there and then some of --  
13 then some of the other waste that has to be  
14 incinerated goes to Utah, and some of the waste  
15 that's rendered inert or -- that's treated at Morton  
16 goes to Oregon; is that correct? Is that a fair  
17 summation?

18 A. Yes.

19 Q. Okay. Now, you say that you transport all  
20 the medical waste that you collect. Now, I believe  
21 Mr. Wash, who was the witness for Consolidated, Mark  
22 Wash, and his testimony was admitted into evidence.  
23 It was Exhibit 160-T.

24 MR. HAFFNER: He won't have it.

25 THE WITNESS: I don't have a 160.

0871

1 MR. JOHNSON: We can find it.

2 Q. Okay.

3 A. Okay.

4 Q. And I'm on page three, near the bottom. And  
5 the question, second to the last question, How is  
6 your medical waste disposed of? Mr. Wash says, We  
7 collect the waste and transport it to our yard in  
8 bags and boxes, which are loaded onto a Stericycle  
9 trailer and transported to an incinerator in Oregon.  
10 Do you see that?

11 A. Yes, I do.

12 Q. Now, that doesn't -- that sounds  
13 inconsistent with your --

14 A. That would be an incorrect statement on his  
15 part.

16 Q. And what is the correct statement?

17 A. The correct statement is that the medical  
18 waste that is collected from CDSI in Moses Lake, they  
19 have different containers. Some are reusable, some  
20 are boxes. Anything that's designated as a waste for  
21 -- that's not incinerated is processed at the Morton  
22 facility and anything that is an incinerate waste is  
23 cross-loaded into a trailer and processed at Salt  
24 Lake City.

25 Q. So whatever's transported to Oregon, would

0872

1 that be transported to the landfill that you referred  
2 to?

3 A. Yes, all of our residual material that's  
4 done after processing is taken down to the Coffin  
5 Butte landfill.

6 Q. Is this service that you do for  
7 Consolidated, is that under Stericycle's tariff or --

8 A. Yes, it is.

9 Q. It is?

10 A. Correct.

11 Q. There's a tariffed rate for that?

12 A. We charge -- CDSI, they're basically a  
13 customer of ours, and we pick up medical waste from  
14 CDSI. It's my understanding CDSI has a separate  
15 tariff filed that they charge their customers, and  
16 CDSI is charged the same amount for their containers  
17 as anybody else in the state of Washington would be  
18 off of the Stericycle tariff.

19 Q. Okay. Along the same line of reasoning --  
20 now, I have an order, and I unfortunately don't have  
21 a copy of it. I don't know if you're familiar with  
22 it or not. This was an application in 2002 by a  
23 company called Ludtke Pacific Trucking, Inc. Are you  
24 familiar with them?

25 A. Yes, I am.

0873

1 Q. And the application number is GA-079042, and  
2 the docket number was TG-011675. And this was the  
3 first supplemental order, Commission order and  
4 decision granting application. Are you familiar with  
5 Ludtke's application?

6 A. Yes, I am.

7 Q. All right.

8 JUDGE RENDAHL: If you can wait till he's  
9 finished his question, that will be helpful. Thank  
10 you.

11 Q. And in the background to the order, the  
12 order states that Stericycle and Ludtke had entered  
13 into a transportation services agreement in 2001, and  
14 it says, According to the agreement, Stericycle will  
15 tender loaded highway trailers containing biomedical  
16 waste to Ludtke at locations in Washington for  
17 transportation to designated destinations, both  
18 inside and outside of Washington State.

19 It also says in the order that Stericycle  
20 holds statewide authority to issue -- holds statewide  
21 authority issued to transport medical waste and  
22 serves approximately 7,800 customers. Stericycle  
23 needs an additional carrier to support certain  
24 limited aspects of its intrastate and interstate  
25 operations throughout its service area. Is this



0874

1 agreement still in effect with Ludtke?

2 A. Yes, it is.

3 Q. And how many locations in the state does  
4 Ludtke serve, do you know?

5 A. Ludtke is a transportation company that  
6 filed for that authority underneath Stericycle's G  
7 certificate. We have used Ludtke and we're filed for  
8 Ludtke to make virtually any haul that any of our --  
9 that, you know, to mirror any haul that we could  
10 possibly make from within the state to each other or  
11 going outside of the state.

12 And the reason we use Ludtke to do this at  
13 times is in the event that -- we don't want to buy a  
14 tractor-trailer to make one trip a week and sit idle  
15 for the rest of the time, because that's not the best  
16 use of the assets of the company, and we try not to  
17 affect the rates that people pay for the service we  
18 provide. And it's the most cost-effective means to  
19 transport waste at times if we have extra pulls that  
20 are needed to be made.

21 Q. Now, is it accurate to say that Stericycle  
22 needed the additional carrier to do some of the  
23 hauling, as the order states?

24 A. At the time that we applied for that? I  
25 guess --

0875

1 Q. Well, Ludtke applied for it.

2 A. It would depend on what you would define  
3 needed by. Surely Stericycle could have purchased or  
4 leased a new tractor and done these hauls themselves  
5 and hired a qualified driver, but using a backup  
6 hauling company like that was the best use of our  
7 assets at the time.

8 Q. And Stericycle supported this application of  
9 Ludtke; correct?

10 A. Yes.

11 Q. And I note in the findings of fact, on page  
12 four, that it says that the existing certificated  
13 carriers in the state of Washington do not currently  
14 provide the service proposed by Ludtke to the  
15 Commission's satisfaction?

16 A. Ludtke does no hauling directly between any  
17 of our generators. The hauls that Ludtke does would  
18 move empty trailers from yard to yard, would deliver  
19 a trailer with supplies in it to Spokane, could make  
20 a long haul for us if needed, if a driver was injured  
21 and was off duty for two weeks, you know, or sick or  
22 something to that effect. They never have any  
23 interaction or deal with any of our customers  
24 directly whatsoever.

25 Q. But is it -- I believe it's correct, as the

0876

1 order states, that Ludtke's certificate could not  
2 have been granted unless the Commission had found  
3 that the existing carrier, that being Stericycle,  
4 could not provide the service proposed by Ludtke to  
5 the Commission's satisfaction.

6 MR. JOHNSON: Your Honor, I'm going to  
7 object to Mr. Trautman's question. The order speaks  
8 for itself. Whatever the Commission found is on the  
9 face of the order.

10 MR. TRAUTMAN: Right.

11 MR. JOHNSON: I don't think it's appropriate  
12 to have Mr. Philpott testify about what the  
13 Commission must have found when we have an order.

14 MR. TRAUTMAN: Well, I simply asked if he  
15 was familiar with the application and the order, and  
16 he indicated that he was. So if he's not -- if he  
17 doesn't know, he can say.

18 MR. JOHNSON: But nonetheless, Mr. Trautman  
19 --

20 JUDGE RENDAHL: Go ahead.

21 MR. JOHNSON: My point is simply he is  
22 familiar with the general service that Ludtke  
23 provides, he's testified about that, and now you're  
24 asking him details about the legal conclusions drawn  
25 or factual findings in the order, and I don't think

0877

1 it's appropriate.

2 JUDGE RENDAHL: I think the legal  
3 conclusions in the order are stated in the order, so  
4 I think that's sufficient.

5 MR. TRAUTMAN: All right.

6 Q. I believe you did indicate, to your  
7 knowledge, the certificate is still in effect, the  
8 Ludtke certificate?

9 A. That's what I said, yes.

10 Q. All right. I had one other question. In  
11 Exhibit 60-T, on page 22 --

12 MR. JOHNSON: Mr. Trautman, I don't have  
13 mine numbered. Could you tell me what document  
14 you're looking at?

15 JUDGE RENDAHL: This is Exhibit 60-T.

16 MR. TRAUTMAN: 60-T. This is Mr. Philpott's  
17 testimony.

18 MR. JOHNSON: Oh, 60-T.

19 JUDGE RENDAHL: Not 62, 60-T.

20 MR. TRAUTMAN: I'm sorry, 60-T. My  
21 apologies.

22 JUDGE RENDAHL: You said page --

23 MR. TRAUTMAN: Page 22, yes.

24 Q. And basically, it's a continuation of  
25 Paragraph E from -- a carryover from page 21, and you

0878

1 talk about the hydroclave facility at HSS, and then  
2 the Covanta facility at Oregon, and one is a  
3 hydroclave, one's an incinerator, correct, and they  
4 have different segregation requirements and --

5 A. Correct.

6 Q. -- that neither facility could serve as a  
7 backup for the other; correct? Is that correct?

8 A. Correct.

9 Q. Now, Mr. Meany, who was the witness for  
10 LeMay, in his Exhibit 130-T, I don't know that we  
11 have to get into this in detail, he simply states  
12 that they have a backup facility which is an  
13 autoclave at Bland Recovery, Inc. in Puyallup;  
14 correct?

15 A. If that's what he testified.

16 Q. Okay. Could you explain why the autoclave  
17 can work as a backup facility, but the hydroclave  
18 cannot?

19 A. For whom?

20 Q. Their primary -- for LeMay, their primary  
21 disposal site is the Covanta incinerator.

22 A. Okay.

23 Q. And they say that their backup facility is  
24 an autoclave.

25 A. Correct.

0879

1 Q. All right. Now, in your testimony, you had  
2 said that the hydroclave cannot work as a backup  
3 facility for the Covanta incinerator. Are those  
4 different situations?

5 A. Well, I think you're comparing two  
6 different companies and how they pick up their waste.  
7 I can't speak for LeMay or Mr. Meany, but my  
8 understanding of how they pick up their waste is  
9 exclusively in cardboard boxes, okay.

10 MR. JOHNSON: When you say they, who are you  
11 speaking of?

12 THE WITNESS: I'm speaking of LeMay. It's  
13 my understanding they use cardboard boxes to pick up  
14 their waste and they have their generators segregate  
15 path from regular waste. Their regular waste could  
16 be processed at a autoclave. Speaking in -- on page  
17 22 of my pre-filed testimony, the original  
18 application, as stated by Kleen, stated that they  
19 were going to have their waste incinerated, and they  
20 said nothing in their application of segregation,  
21 which would imply that all waste types were going to  
22 be commingled in one container.

23 So if you have all of your waste commingled  
24 in one container on its way to Covanta and the  
25 incinerator goes down, you can't turn that waste

0880

1 around on the truck and send it to HSS for  
2 processing, because, according to them, everything in  
3 there could be trace chemotherapy or pathological  
4 waste or sharps or regular waste mixed together.  
5 So they could not process at the hydroclave that  
6 waste that was destined for Covanta.

7 Q. So in your opinion, do the difficulties that  
8 you identify with the HSS hydroclave, would those  
9 problems be present if waste were taken to the  
10 autoclave?

11 A. No.

12 Q. So --

13 A. You're comparing LeMay versus Kleen?

14 Q. I'm comparing the two backup facilities.  
15 They both use Covanta as a primary facility. In one  
16 case, the backup is said to be HSS, the hydroclave.  
17 You say that's not workable?

18 A. Okay. You've got me confused on who you're  
19 talking about here now. We're talking Kleen right  
20 now or are we talking LeMay?

21 Q. I'm talking, okay, both Kleen and LeMay have  
22 identified Covanta as the primary disposal site.

23 A. Correct.

24 Q. In the one instance, the alternative  
25 disposal site might be HSS. That's Kleen. You've

0881

1 indicated that that cannot be done. That's not  
2 practical; correct?

3 A. In my written testimony?

4 Q. Yes.

5 A. Correct. That is what I said.

6 Q. All right. In the case of LeMay, they also  
7 use Covanta as a primary site, but they have the --  
8 they have an autoclave as their backup?

9 A. That is what Mr. Meany said, yes.

10 Q. So my question was do the problems you've  
11 identified with trying to use a hydroclave in the  
12 case of Kleen, would those problems be present if one  
13 were to use the autoclave?

14 A. You're saying if one were to use --

15 Q. I'm having trouble why this is that  
16 confusing.

17 A. Well, are you saying if LeMay was to use the  
18 autoclave or if Kleen was to use the autoclave?

19 Q. Does it make a difference?

20 A. Yes, it would.

21 Q. Why?

22 A. It depends on how they segregate the waste.

23 Q. Does it depend on the generator or does it  
24 depend on the requirements of the disposal site?

25 A. It would be -- from the testimony that I've



0882

1 heard from Kleen, they have different waste  
2 segregation requirements than what I understand  
3 LeMay's segregation requirements are.

4 Q. Okay.

5 A. LeMay's segregation requirements are  
6 regulated medical waste in one container, incinerate  
7 waste in another container that contains -- could be  
8 trace chemotherapy or regular pathological waste.

9 Q. So -- go ahead.

10 A. The Kleen's segregation requirements that  
11 they are stating now that they have after, you know,  
12 this is different than their written testimony that  
13 they provided earlier, is trace chemotherapy is going  
14 into one container, sharps are going into one  
15 container, regular pathological waste in one  
16 container, and med waste. They have four containers  
17 that they plan on segregating into.

18 Q. So are you saying that the problems that  
19 you've identified, those are caused by the way in  
20 which the generator is -- the way in which either  
21 Kleen or LeMay are segregating the waste?

22 A. Correct.

23 Q. It's not -- they're not caused by the  
24 differing requirements of the hydroclave versus the  
25 autoclave?

0883

1           A.    Correct.  I believe that the hydroclave and  
2  autoclave can process the same types of waste, which  
3  is just regular medical waste.  They cannot -- either  
4  one of them can process trace chemotherapy or  
5  pathological.  They can both process sharps waste,  
6  but in the case of the HSS hydroclave in Port  
7  Coquitlam, the reason that they segregate their  
8  sharps waste is they only process on certain days  
9  that type of waste because the Provincial laws in  
10 Canada don't allow them to landfill sharps in the  
11 landfills in British Columbia, so they have to long  
12 haul them a long ways away.  That's why they have to  
13 segregate differently than other people do.

14                 MR. TRAUTMAN:  That's all I have.  Thank  
15 you.

16

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

18 BY JUDGE RENDAHL:

19           Q.    Okay.  I have a few questions for you, Mr.  
20 Philpott, and I'm just going to go through the pages  
21 of your testimony, because that's where I have  
22 written my notes.

23                 If you turn to page three of 60-T.  At the  
24 very bottom, in paragraph four, you talk about the  
25 innovations and give various subnumberings.  I'm

0884

1 looking at the use of non-incinerative waste  
2 processing. Where does Stericycle dispose of the  
3 treated waste for Morton?

4 A. That would be the Coffin Butte landfill in  
5 Oregon.

6 Q. And who owns the Coffin Butte landfill?

7 A. That is a Allied Waste-owned landfill. It's  
8 a -- our waste is disposed -- it's a subtitle D  
9 landfill, which is a limed landfill.

10 Q. So allied is not affiliated in any way with  
11 Stericycle?

12 A. No, it isn't.

13 Q. And does Stericycle have a contract with the  
14 Coffin Butte landfill?

15 A. Yes, we do.

16 Q. And if the waste is not treated at Morton  
17 and either designated by the generator for  
18 incineration or required to be incinerated, as in the  
19 case of pathological chemo waste that we've been  
20 talking about, where -- you're saying that waste goes  
21 to the Salt Lake City facility?

22 A. Yes.

23 Q. And possibly Covanta, in a backup situation?

24 A. Yes, if it was needed.

25 Q. In your time with Stericycle, since 1999,

0885

1 has Stericycle used the Covanta facility?

2 A. For Washington --

3 Q. For Washington?

4 A. -- incinerate waste?

5 Q. For Washington incinerated waste?

6 A. Well, we used to exclusively send all of our  
7 Washington waste to the Covanta landfill for  
8 processing.

9 MR. JOHNSON: I'm sorry, did you say Covanta  
10 landfill?

11 THE WITNESS: I'm sorry, Covanta, the  
12 Covanta incinerator, I'm sorry. But we were  
13 contacted in -- roughly in 2000, 2001 by Jeff  
14 Bickford, from Marion County, who was in charge of  
15 the Covanta incinerator. Marion County, it's a  
16 county-run incinerator.

17 And at that time, with the volume of waste  
18 that we were delivering to the facility, they were  
19 going to be over their limit of what they could  
20 accept at that facility. So at that time, we, in  
21 conjunction with generators wanting waste to be put  
22 in leak-resistant, puncture-resistant, reusable  
23 containers, converted to send our waste to the  
24 incinerator in Salt Lake City. Because then, as is  
25 now, the unused capacity they have, roughly, at the

0886

1 incinerator a month that they can accept is 88,000  
2 pounds a month of medical waste that's unused.

3           And the way their cap works is it's an  
4 annual cap, and if the first three months of the year  
5 you provided them with that volume of waste to equal  
6 88,000 pounds times 12, they can't accept the waste  
7 for the rest of the year.

8       Q.    Okay.

9       A.    So it wasn't a viable option.

10       Q.   Okay.  So since 19 -- since the switchover  
11 to using the Salt Lake facility, have you -- has  
12 Stericycle of Washington used the Covanta facility at  
13 all?

14       A.    We currently send our incinerate waste from  
15 Oregon generators to that facility, so yes.

16       Q.    But is that Stericycle of Washington  
17 collected waste or is that a different company in  
18 Oregon?

19       A.    No, we only send Oregon waste.  We do use  
20 the Covanta incinerator, but only for Oregon waste.  
21 The waste that we collect in reusable gray tubs in  
22 Washington cannot be processed in Covanta, so no, we  
23 have not sent that waste to them from Washington.

24       Q.    Okay.  And when you say we, are you speaking  
25 of Stericycle, Inc. or Stericycle of Washington?

0887

1           A.    Stericycle of Washington.  Well, Stericycle,  
2  Inc. has not delivered the waste to them.  I'm sorry.

3           Q.    Okay.  On page five of the testimony, in  
4  paragraph nine, you speak to six equipment yards in  
5  four different cities, and then in Portland, Oregon.  
6  Which of those cities has two yards?  Because I only  
7  see five locations, Kent, Woodinville, Spokane,  
8  Pasco, and in Portland, and you speak to six  
9  equipment yards.  I was wondering if there was one  
10 city that had two different equipment yards or if  
11 there's a particular city that's been omitted from  
12 your list?

13          A.    It looks to me as if what would be omitted  
14 is Morton has one route truck.

15          Q.    And the Morton, you'd consider Morton to  
16 have an equipment yard?

17          A.    Yes, there's one truck based in Morton.

18          Q.    Okay.  Looking to the next page, page six,  
19 and Paragraph 12, and you're discussing temporary  
20 storage.  Is the temporary storage at any one of  
21 those six equipment yards?

22          A.    Yes, at the yard the driver transfers  
23 containers -- sorry, I won't read it out loud.  Yes,  
24 that basically -- at every yard we operate, there's  
25 no long-term storage.  Temporary storage would be

0888

1 backing up to a trailer that is going to haul the  
2 waste to the processing facility in Morton.

3 Q. Okay. And in the next paragraph, going back  
4 to this issue of waste that's designated for  
5 incineration, and you include in that the  
6 pathological waste, trace chemotherapy waste, and  
7 then other biomedical waste designated by the  
8 generator. Do certain generators designate their  
9 medical waste for incineration, rather than going to  
10 the Morton facility?

11 A. Some generators will put waste other than  
12 waste that is required to be incinerated into an  
13 incinerate waste container, yes. We try to educate  
14 our customers that the most prudent means of disposal  
15 is in the regular waste stream, if you're going to go  
16 that route. There are some generators that put waste  
17 other than incinerate only waste in those containers,  
18 yes.

19 Q. Can you assign in your knowledge any kind of  
20 a percentage of those generators who would do that?  
21 Instead of having waste go to the Morton facility,  
22 but just put all their waste in an incinerate box?

23 A. I couldn't. You know, segregation is done  
24 at the -- you know, the point of disposal. We're not  
25 present when they dispose of their waste. We have

0889

1 very few customers, if any, that are incinerate only,  
2 all of their containers.

3 Q. Okay. If you look at page nine of your  
4 testimony, and look at Paragraph 21. In this  
5 paragraph, you talk about Stericycle's offering of  
6 the Bio Systems program, and indicate that Stericycle  
7 began offering that service in 2003. Can you look,  
8 also, then, at page -- I'm looking at Exhibit 62,  
9 which is the tariff, and original page nine.

10 A. Page nine?

11 Q. Yes.

12 A. Okay.

13 Q. If you look at the bottom, under your name,  
14 issued by, it says issue date, and it has a date of  
15 June 25th, 2004, with an effective date of June 29th,  
16 2004. Since this is the original page and hasn't  
17 been revised, I'm assuming that this is when the  
18 Commission approved the tariff rates for this  
19 process?

20 A. Correct.

21 Q. So would you say in your testimony that it's  
22 more correct to say that you began to offer it in  
23 2004, rather than 2003?

24 A. No, I wouldn't. It was offered in 2003, and  
25 when we originally offered it in the state, until we



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1 could get the issues worked out with the tariff, with  
2 the UTC, the containers we were providing, we were  
3 going to use as a single-use item and still provide  
4 the service.

5 Q. I don't understand what you mean by a  
6 single-use item.

7 A. Well, the containers in the Bio Systems  
8 operation are designed to be used up to 500 times,  
9 based on FDA requirements of the particular  
10 container. So they have a bar code on them and they  
11 can be used up to a life, and when they hit a certain  
12 amount, they're required to be disposed of. And it's  
13 -- you know, and disposed of completely, not to be  
14 used again, because they have a shelf life of how  
15 many cycles they can be cleaned before the integrity  
16 breaks down of the container.

17 So when this program was originally offered  
18 in 2003, since we did not have rates filed with the  
19 UTC, and until the rates were figured out of how it  
20 was going to be charged, the program was still going  
21 to be offered by Bio Systems, but the containers they  
22 removed from the health care facilities, from the  
23 wall, were not going to be reused or recycled; they  
24 were going to be put into the regular medical waste  
25 container and just disposed of as if they were their

0891

1 regular single-use containers. But they would still  
2 have the benefit of them being changed out in a  
3 proactive fashion in the hospital.

4 Q. So the recycling aspect didn't really happen  
5 until June of this year?

6 A. Correct.

7 Q. Okay.

8 A. But at that point, when it was offered in  
9 2003, there weren't any customers who signed up for  
10 the service at that time to be recycling, but that is  
11 correct.

12 Q. And do you know how many of your customers  
13 are currently taking advantage of the Item 95?

14 A. Are we in the tariff?

15 Q. In the tariff, yes.

16 A. I'm sorry.

17 Q. And that's the Bio Systems.

18 A. Bio Systems. Currently, in Washington, we  
19 have four hospitals signed up for the service. There  
20 is one actively receiving the service now, with two  
21 locations receiving service within the health care  
22 facility, two different locations, and the  
23 installation of three more facilities is taking place  
24 next month. We anticipate, within the next three  
25 months, in the ballpark of another six to nine

0892

1 hospitals coming on board with the program.

2 Q. All right.

3 A. And there's also some people in Oregon  
4 participating.

5 Q. But that's not part of Stericycle of  
6 Washington, is it?

7 A. No.

8 Q. And that's what I'm trying to focus on.  
9 Again, on page 10 of your testimony, Exhibit 60-T,  
10 Paragraph 22, I think you make a statement that you  
11 began offering the program to Washington generators  
12 in 2003. I guess what I'd clarify there is you're  
13 referring to the management aspect, as opposed to the  
14 recycling aspect?

15 A. Correct.

16 Q. If you look at the next page, page 11 of  
17 your testimony, in Paragraph 25, this is referring to  
18 the new Direct Returns program. You state, Recently  
19 Stericycle has also begun offering this program.  
20 When did Stericycle begin offering the program?

21 A. Direct Returns is a pharmaceutical return  
22 program that Stericycle, Inc. has had in the works  
23 for well over the last year. The program has been  
24 offered here to individuals directly from Stericycle,  
25 Inc. Stericycle of Washington is not dealing

0893

1 directly with the generators on this. It's a  
2 corporate program.

3 Q. Do you know when Stericycle, Inc. started  
4 offering this program in Washington?

5 A. I could not give you an exact date, no.

6 Q. Was it in 2004 or 2003?

7 A. I would think it would be in 2004.

8 Q. If you look at page 12, and Paragraph 29,  
9 you reference investments in the equipment containers  
10 and supplies used in serving Washington generators,  
11 and then, in addition, invested certain amount in  
12 developing Morton facility. That 2.5 million  
13 investment, that's all investment prior to 2004;  
14 isn't that correct? Or is there any portion of that  
15 that has occurred in 2004?

16 A. Yes, there are portions that have occurred  
17 in 2004.

18 Q. And what would that be?

19 A. There was additional land purchased adjacent  
20 to the property in Morton to stage the Bio Systems  
21 plant, the tub wash system warehouse, adjacent to the  
22 existing facility.

23 Q. And how much of that \$2.5 million is  
24 reflected in the land, to your knowledge?

25 A. I personally didn't do the real estate deal.

0894

1 I would assume a couple hundred thousand dollars,  
2 that ballpark.

3 Q. Is there any other major investment as part  
4 of that 2.5 million that was made in 2004?

5 A. Yes.

6 Q. And what would that be?

7 A. The equipment, the robot for removing the  
8 lids for the reusable sharps containers, the wash  
9 station, and most of the equipment has already been  
10 built for the plant.

11 Q. Well, let me ask you. In the next sentence  
12 after that, you talk about, in connection with the  
13 Bio Systems -- you talk about another 1.2 million  
14 being used to build this processing and wash  
15 facility. Is the information just given me about  
16 equipment part of that 1.2 million, or is it a part  
17 of the 2.5 million?

18 A. Okay. I think we're one step behind  
19 ourselves. The 1.2 million would include the washing  
20 station, yes.

21 Q. Okay. And the land? And you know, I think  
22 you understand the reason why I'm asking. There's a  
23 standard used in evaluating applications where  
24 improvements made after the date the application is  
25 filed are not really appropriate to use in comparing

0895

1 the two companies in terms of satisfactory service,  
2 and so that's the reason why I'm asking you.

3 A. The 2.5 million would already be the  
4 investment that's been in place at the facility. The  
5 1.2 million would reflect the new investment in the  
6 facility.

7 Q. All right.

8 A. For Bio Systems.

9 (Recess taken.)

10 JUDGE RENDAHL: All right. Let's go back on  
11 the record.

12 Q. Mr. Philpott, thank you for bearing with me.  
13 I just have one other question for you. If you look  
14 at your Exhibit 74, which is a financial picture of  
15 the company for the last -- for 2003.

16 If you'll look at the third page in, the  
17 header for this section appears on the second page as  
18 general and administrative expenses. If you go down  
19 to just before the total of other general and  
20 administrative expenses, there's a line reading  
21 corporate regional district office expenses of  
22 \$360,000, approximately. What does that amount  
23 represent, if you know? Is that an allocation of  
24 Stericycle, Incorporated expenses to Stericycle of  
25 Washington?

0896

1           A.    Give me one moment.  I'm going to look  
2 through it.  Yes, I would assume that this would be  
3 the allocation for the work that's done by the  
4 corporate office for Stericycle of Washington.

5           JUDGE RENDAHL:  And that's all I have.  So  
6 let's take our afternoon break.  We'll be back at 10  
7 to 4:00.  Be off the record till then.  Thank you.

8           (Recess taken.)

9           JUDGE RENDAHL:  Let's be back on the record.  
10 We're back after our afternoon break, and I believe,  
11 Mr. Johnson, you may have some redirect?

12           MR. JOHNSON:  Yes, thank you, Your Honor.

13

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

15 BY MR. JOHNSON:

16           Q.    Mr. Philpott, when Mr. Haffner was asking  
17 you about the impacts, I think he was asking about  
18 the potential impacts on Stericycle of Washington of  
19 the grant of the Kleen application.  He asked you  
20 whether, you know, questions that go to whether one  
21 driver and one truck could impose significant impacts  
22 on Stericycle of Washington.  Did you analyze the  
23 question of impacts based on one driver and one  
24 truck?  And how do you believe Kleen's -- the impact  
25 of Kleen --

0897

1                   JUDGE RENDAHL: Let's have him answer your  
2 first question.

3                   THE WITNESS: I don't understand the  
4 question from you, Steve.

5           Q. I'll try again. How do you believe Kleen's  
6 application should be analyzed in terms of potential  
7 impact on Stericycle of Washington? Should it be  
8 analyzed on the basis of one driver and one truck?

9           A. I don't think that it should be based off of  
10 one truck, one driver, because to truly offer service  
11 to the entire state of Washington, if that's the  
12 service they intend to provide, I don't think it's  
13 feasible to cover the entire area with one driver and  
14 one truck, and the application they're requesting  
15 doesn't limit their service to only providing one  
16 driver and one truck.

17                   They could end up, like Stericycle does,  
18 with, you know, 26, 27 trucks and multiple drivers,  
19 so that it obviously would impact our business.

20           Q. In your discussion with Mr. Haffner  
21 concerning the hazardous -- I'm sorry, the shipping  
22 manifest, which is Exhibit 66, I think that your  
23 testimony was that the original shipping manifest,  
24 signed by the processing facility, is retained by the  
25 processing facility; is that correct?



0898

1 A. Correct.

2 Q. If the generator wants a copy, can he get a  
3 copy?

4 A. Yes, they can.

5 Q. How do they do that?

6 A. They request a copy, and the copy is  
7 provided to them.

8 Q. Mr. Philpott, I think you clarified what you  
9 meant by proactive sharps management at some point  
10 during your testimony, so I guess I don't need to go  
11 through that with you. The first time around seemed  
12 a little confusing.

13 Under the Bio Systems program, who pays  
14 Stericycle of Washington's tariff charges?

15 A. Bio Systems pays for the tariff, our filed  
16 tariff. The bill for the complete service is  
17 provided to the facility, and the portion of the work  
18 that is done by Stericycle of Washington is billed  
19 off of the tariff to Bio Systems.

20 Q. So as far as your compensation for the  
21 services provided by Stericycle of Washington, Inc.  
22 for collection and disposal, is that all stated in  
23 the tariff?

24 A. The charges for Stericycle of Washington,  
25 Inc.?

0899

1 Q. Yeah, for collection and disposal of the  
2 sharps containers?

3 A. Yes, it is.

4 Q. All right. Now, in your testimony, Judge  
5 Rendahl asked you several questions about when the  
6 Bio Systems service was first offered to customers in  
7 Washington, and I think you used the term offered at  
8 several points in your written pre-filed testimony,  
9 and I believe those are the points that she  
10 identified and asked you questions about.

11 Would you please state when the Bio Systems  
12 program was first offered to Stericycle -- I'm sorry,  
13 to customers in Washington State?

14 A. The Bio Systems program was first offered to  
15 customers in December of '03. It was a Washington  
16 Hospital Association meeting that was attended by Bio  
17 Systems executives and the local Bio Systems major  
18 account executive. And the service was offered with  
19 the recycling element, as well, as part of the  
20 program.

21 Q. One question. Were you in attendance at  
22 this meeting?

23 A. Yes, I was.

24 Q. Okay. Please proceed.

25 A. And the complete element of the program was

0900

1 offered, the changing of the sharps containers  
2 proactively and the recycling element of this  
3 program. It was initially deemed by the corporation  
4 of Stericycle, Inc. that this particular activity  
5 would not be regulated by the Utilities and  
6 Transportation Commission because the sharps  
7 containers, at the point in time that they're reused,  
8 are classified as class two medical devices and  
9 regulated by the FDA and not as a biohazard waste at  
10 that point in time.

11 I personally was in discussions with the UTC  
12 regarding how to implement these containers the best  
13 way into the state and follow all the guidelines, and  
14 we came to the conclusion, of speaking to  
15 representatives of the UTC, that it would be best if  
16 it was a regulated waste, similar to our existing  
17 regulated medical waste charges. And when we signed  
18 up our first customer in the second quarter of this  
19 year, we filed rates so they could be offered to the  
20 generator in July, I think is when they became  
21 effective.

22 I may be off a little bit by my day, but the  
23 rates were in effect when our first customer came on  
24 board to provide the service to, and they were filed  
25 in accordance with our tariff at the UTC.

0901

1 Q. So Mr. Philpott, there's sort of a Bio  
2 Systems promotional blush attached as Exhibit 69 to  
3 your testimony. Was that -- maybe we can call it a  
4 brochure. Was that brochure available in 2003, and  
5 was it passed out?

6 A. Yes.

7 Q. I'm sorry, it was?

8 A. Yes, it was.

9 Q. Was it passed out at this meeting that we're  
10 referring to, of the Hospital Association?

11 A. This would have been passed out at the  
12 meeting, as well as a slide presentation on what the  
13 system looked like, and what it looked like  
14 implemented in existing hospitals throughout the  
15 country that it was in already, and they may have  
16 received some other literature, I'm not positive, but  
17 this is something they would have received at the  
18 time.

19 Q. So the Bio Systems program around the  
20 country was already in existence, already being  
21 offered around the country by Stericycle, Inc.?

22 A. That is correct. In the East Coast, where  
23 the Bio Systems program started, 95 percent of the  
24 hospitals currently utilize this system of sharps  
25 management.

0902

1 Q. Okay. Now, the reusable tub wash system  
2 that I believe you indicated is being currently used  
3 in Vernon, California, was that facility up and  
4 running in December 2003?

5 A. That particular facility was not running in  
6 December 2003, but there were facilities throughout  
7 the country that could have been utilized.

8 Q. When did the Vernon facility come online?

9 A. In 2004.

10 Q. About when?

11 A. That would be another question that Mr.  
12 Stromerson could give you an exact date. I could  
13 only approximate.

14 Q. Okay. Well, maybe we'll defer. Mr.  
15 Philpott, there was a certain amount of discussion  
16 during Mr. Haffner's cross-examination about costs of  
17 transportation between Morton and north Salt Lake, or  
18 between north Salt Lake and Vernon, California. Do  
19 you remember that discussion?

20 A. Yes.

21 Q. Who's responsible for the costs of that kind  
22 of long haul transportation?

23 A. All of that transportation is all-inclusive  
24 of the \$5.46 we pay per container. Stericycle of  
25 Washington pays Stericycle, Inc. per container to

0903

1 process and dispose of the waste.

2 Q. So the cost to Stericycle of Washington is  
3 not affected by the movement of the waste after  
4 Morton; is that right?

5 A. That is correct.

6 Q. And does the cost to Stericycle of  
7 Washington depend or vary whether the waste is  
8 processed at Morton or taken to north Salt Lake for  
9 incineration?

10 A. No, it does not.

11 Q. And that amount is the \$5.46 you've  
12 mentioned?

13 A. Correct.

14 Q. And is that the rate that's stated in the  
15 contract that Mr. Haffner offered in -- let's see.  
16 It's Exhibit 87. You can look at Exhibit 87, if  
17 you'd like.

18 A. Is that this?

19 MR. HAFFNER: Yes.

20 THE WITNESS: Yes.

21 Q. Mr. Philpott, I think there may have been  
22 some confusion at different points in your  
23 cross-examination with respect to discussion of waste  
24 segregation. And when you are referring to waste  
25 segregation as it affects transportation of

0904

1 biomedical waste, and you're referring to waste  
2 segregation requirements, whose requirements are you  
3 referring to?

4 A. Well, the requirements could be either  
5 requirements based off of the particular processing  
6 facility the waste is going to or they could be  
7 segregation requirements based off of your medical  
8 waste carrier.

9 Q. Right. But we're not talking about  
10 generator segregation requirements that may apply  
11 inside a health care facility?

12 A. Correct.

13 Q. Mr. Philpott, when there was -- when Mr.  
14 Trautman was asking you questions about the  
15 suitability of an autoclave facility as a backup for  
16 waste designated or waste packaged originally for  
17 incineration, I think you -- I guess Mr. Trautman  
18 asked you some questions about what the Harold LeMay  
19 Enterprises folks do in terms of waste segregation.  
20 Do you know what they do?

21 A. They have one cardboard box they provide for  
22 disposal, for incineration, and it's my understanding  
23 that all of their waste currently is incinerated.

24 Q. Assuming that LeMay packages everything in a  
25 single box or that that's their requirement and that

0905

1 they don't require segregation into different waste  
2 streams, would an autoclave be a suitable backup  
3 facility for waste so packaged?

4 A. No.

5 Q. Why is that?

6 A. Because a autoclave is not a suitable way to  
7 process trace chemotherapy or pathological waste, and  
8 by being commingled, it wouldn't be prepared to use  
9 an autoclave as a backup facility.

10 Q. And if, then, for example, a facility, a  
11 processing facility shuts down, how much notice of  
12 that does a carrier usually get?

13 A. None.

14 Q. So -- and if you get no notice and you have  
15 a system that's based on no segregation, I would  
16 assume you've got quite a bit of waste in the  
17 pipeline that needs to be handled in some fashion?

18 A. That is correct. For example, Covanta's  
19 facility shut down the first of September. It was  
20 closed for two weeks this month, unannounced. Waste  
21 designated for that facility from Oregon for us had  
22 to be transported to Salt Lake City for disposal.

23 Q. Mr. Philpott, I'm not sure that this is  
24 strictly relevant, but I think there was some  
25 confusion in your testimony or might have arisen from



0906

1 your testimony with respect to the operations of  
2 biomedical waste collection operations in Oregon.  
3 Which entity performs biomedical waste collection  
4 services in Oregon for the Stericycle family?

5 A. Stericycle, Inc.

6 Q. Not Stericycle of Washington?

7 A. Stericycle of Washington, some vehicles, if  
8 they ever do provide service there, it's allocated to  
9 Stericycle, Inc., the revenue from those generators.

10 Q. I'm sorry to return to this, and maybe it  
11 isn't necessary, but it's where it shows up again in  
12 my notes. With respect to the Bio Systems program,  
13 you didn't have a customer for that program until the  
14 tariff was filed; is that correct?

15 A. That is correct.

16 Q. But the system was actually offered, it was  
17 marketed prior to that time?

18 A. It was marketed and offered. As I stated  
19 before, when this program was originally offered, the  
20 sharps containers that we are -- or Bio Systems is  
21 removing from the health care facilities are  
22 classified as a class two medical device, such as  
23 scalpels, other reusable medical devices currently in  
24 hospitals that are not a regulated product by the  
25 UTC.

0907

1           When these scalpels and other medical  
2 devices are removed from the hospital to be taken for  
3 decontamination, it's not a regulated business that  
4 is a tariff filed with the UTC. When it was  
5 originally looked at by the corporation, Stericycle,  
6 Inc., to provide the service here, that was the basis  
7 that this program was going to be offered and didn't  
8 need to go through the channels of filing a tariff,  
9 but after the program was initially offered in  
10 December, and discussions started with customers that  
11 were very interested in the program, I personally  
12 spoke to the UTC and explained what we were offering,  
13 and we both felt that it would be better served to  
14 have it as a regulated service with a rate filed, and  
15 we filed a tariff prior to us receiving our first  
16 customer and servicing them.

17       Q. Then I think that the confusion was  
18 clarified ultimately with respect to the investment  
19 by Stericycle, Inc. That's referred to on page 12 of  
20 Paragraph 29, but let me just make sure it was.

21           JUDGE RENDAHL: Page 12 of which exhibit?

22           MR. JOHNSON: I'm sorry, Exhibit 60-T, page  
23 12, Paragraph 29.

24       Q. In the second sentence there, there's a  
25 reference to Stericycle, Inc.'s investment of \$2.5

0908

1 million in the development of its biomedical waste  
2 processing facility at Morton. Was all of that  
3 investment done prior to 2004?

4 A. Yes, it was.

5 Q. Okay. So when you're referring to the  
6 investment related to the Bio Systems program that  
7 took place in 2004, that's encompassed within the 1.2  
8 million referred to in the last sentence of that  
9 paragraph?

10 A. That would be correct.

11 Q. Okay. And when did the process of  
12 identifying land and obtaining the land and, you  
13 know, putting the plant together for that facility  
14 begin?

15 A. When did the idea for --

16 Q. Well, when were the first steps taken to  
17 implement this plan?

18 A. Well, the acquisition of the property was  
19 done in 2004. I think that property deal closed  
20 within the last six months. And the building of the  
21 equipment needed for this facility in Morton has  
22 already been completed, and that was done within the  
23 last three months.

24 Q. Okay. Obviously, land acquisition can take  
25 time. Were you involved in that aspect of the

0909

1 development of this facility in any way?

2 A. Yes.

3 Q. Okay. Could you tell us in what way, and if  
4 you can, when the process started in terms of  
5 acquiring the land?

6 A. I was involved in identifying how to place  
7 this particular program within the structure of the  
8 existing footprint of --

9 Q. Now, when you say the existing footprint,  
10 you're referring to the existing land at Morton  
11 that's owned by Stericycle, Inc.?

12 A. Correct. And when we came to the conclusion  
13 that we were at a loss for space to do this, we  
14 searched for other avenues and acquired a piece of  
15 property adjacent to the building and decided that  
16 this is where this building would be attached.

17 Q. When did the evaluation take place of  
18 whether the new wash facility could be installed  
19 within the existing footprint?

20 A. It was a continuous -- involved over the  
21 first two quarters of '04.

22 Q. Did it start in January of '04?

23 A. Yes.

24 Q. And are you sure of that? I mean, the key  
25 point here, this is no game, that the application

0910

1 was filed in early February, I'm not sure exactly  
2 when. Did the process of acquiring the land for this  
3 wash facility begin before that?

4 A. Well, the planning for the placing of the  
5 facility obviously took place before the program was  
6 offered to generators in the state of Washington,  
7 because we felt that this existing processing  
8 facility could be placed within the building. So the  
9 initial thought was there was no other land needed to  
10 be purchased, and when we went to the table in  
11 December to the Washington Hospital Association, it  
12 was already within our plan to place the structure --  
13 or not the structure, the wash station and the robot  
14 and all of the devices needed to perform this  
15 operation within the existing building.

16 Within the first couple of quarters of the  
17 2004, through further research and measuring and  
18 getting the equipment done, we came to the conclusion  
19 that it can't fit in there, and we had to acquire a  
20 piece of property to fit this equipment into and  
21 build a new building.

22 Q. When you met with the Washington Hospital  
23 Association in December of 2003, did you explain your  
24 plan to build the new Bio Systems facility at the  
25 Morton site?

0911

1 A. Yes.

2 MR. JOHNSON: I have no further questions.

3 I do have one question I might take off the record,  
4 if I could, with you, Your Honor.

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

6 (Discussion off the record.)

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

8 Mr. Haffner, do you have my re-cross?

9 MR. HAFFNER: Yes, I do, Your Honor. I have  
10 a few questions.

11

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

13 BY MR. HAFFNER:

14 Q. Mr. Philpott, when you were talking to me  
15 about the cross-loading of waste from I believe your  
16 route truck to another truck at one of your  
17 facilities, for instance, here in Kent, are either of  
18 those trucks kept under refrigeration?

19 A. No.

20 Q. Neither van is refrigerated?

21 A. No.

22 Q. How long is the waste on the route truck  
23 before it transfers the waste to the first vehicle?

24 A. Every route truck that is run in the state  
25 of Washington, the waste is completely offloaded at

0912

1 the end of the route day.

2 Q. So --

3 A. Which could be, you know, anywhere from 1:00  
4 to 6:00 p.m., whenever their route is completed.

5 Q. But it's offloaded at least once every day?

6 In other words --

7 A. Absolutely.

8 Q. So you don't have any waste staying on the  
9 route truck for more than 24 hours?

10 A. No.

11 MR. JOHNSON: Twenty-four hours? Excuse me.

12 THE WITNESS: It is all unloaded at the end  
13 of the route at the end of the day.

14 Q. And that is loaded into another vehicle.

15 How long does the waste remain in that next vehicle?

16 A. The next vehicle would be either a 53-foot  
17 or a 28-foot trailer. It could be a 48-foot refer  
18 trailer, but it's not something that's required. You  
19 could use it if that's all there was. It's  
20 immediately driven the same day to the processing  
21 facility and processed within generally a day or two.

22 Q. Now, if it's going to incineration, it's not  
23 going to be processed that day that it arrives at  
24 Morton, is it?

25 A. No.

0913

1 Q. How long does it take for the incineration  
2 material to arrive at its point of incineration?

3 A. We spoke about that earlier when I said that  
4 we have two to three trucks or two to three trailers  
5 leaving weekly to Salt Lake City. And it's generally  
6 almost a day pull to Salt Lake City, to get there,  
7 and then it's processed within a couple days of being  
8 in Salt Lake. And those are refrigerated trucks that  
9 that's transported on.

10 Q. So from Morton to Salt Lake, they are  
11 refrigerated?

12 A. Correct.

13 JUDGE RENDAHL: Mr. Philpott, when you  
14 discussed a refer truck, is that a refrigerated  
15 truck?

16 THE WITNESS: Yes, it's a 48-foot  
17 refrigerated trailer.

18 JUDGE RENDAHL: Thank you.

19 THE REPORTER: How do you spell "refer?"

20 THE WITNESS: R-e-f-e-r.

21 JUDGE RENDAHL: As opposed to what might  
22 otherwise be referred to as reefer.

23 Q. We're in the trucking business. We're not  
24 allowed to do that when we're trucking; right? Okay.  
25 Mr. Philpott, if I can get you to look at -- back to



0914

1 your testimony at Exhibit 60-T, page 12, Paragraph  
2 29. This is the investment that has been made in  
3 your facilities or somebody's facilities, and that's  
4 where I want to ask you some clarifying questions.

5 First sentence says that Stericycle has  
6 invested more than one and a half million dollars in  
7 the equipment, containers and supplies it uses in  
8 serving Washington generators. Has any of that one  
9 and a half million dollars been invested since  
10 January 1 of 2004? And if you don't know, you may  
11 say you don't know.

12 A. Oh, I do know. I would say no, it hasn't.  
13 I was just thinking if there was any container  
14 purchases since then. That would be the only  
15 investment. But 1.5 million in equipment, that would  
16 have already have been acquired before 2004.

17 Q. All right. Now, I believe that the second  
18 and third sentences, they clearly speak for  
19 themselves, but I want to clarify. They say, In  
20 addition, Stericycle, Inc. has invested over two and  
21 a half million dollars in the development of its  
22 biomedical waste processing facility at Morton,  
23 Washington.

24 Has Stericycle of Washington spent any money  
25 at the Morton facility since January 1, 2004?

0915

1           A.    Stericycle of Washington doesn't own the  
2 facility. Stericycle, Inc. owns the facility in  
3 Morton. So no.

4           Q.    And in sentence three, In connection with  
5 the Bio Systems program for reusable sharps  
6 containers Stericycle, Inc. is in the process of  
7 investing another \$1.2 million at Morton. Has  
8 Stericycle of Washington invested any amount at the  
9 Morton facility -- I guess you've already answered  
10 that. So your answer or your -- I'm assuming, then,  
11 that none of the \$1.2 million spent by Stericycle,  
12 Inc. includes any funds from Stericycle of  
13 Washington?

14          A.    That is correct.

15          Q.    If I could ask you to look at Exhibit 81,  
16 can you identify that document? Do you recall seeing  
17 that?

18          A.    Let's see. I believe this is one of the  
19 responses to a data request, initially in this  
20 process, back a ways.

21          Q.    And were you involved in the preparation or  
22 at least some submitting of answers for these data  
23 requests?

24          A.    Some of the data requests, yes, I was.

25          Q.    Okay. On exhibit -- if you could turn to

0916

1 Exhibit 82, there was some testimony earlier about a  
2 transportation services agreement with Ludtke  
3 Pacific. Ludtke is L-u-d-t-k-e. Is that a copy of  
4 that agreement between Stericycle of Washington and  
5 Ludtke?

6 A. It looks as if it is.

7 Q. Is that your signature on the last page of  
8 that agreement, prior to the attachment?

9 A. It looks as if it is.

10 Q. And then, finally, I need to identify one  
11 more exhibit, which is, I believe, Exhibit 85, which  
12 I don't think I included when I was referencing the  
13 other waste agreements.

14 A. I think you did.

15 Q. Is that also one of the form waste  
16 agreements that you have used in the past few years  
17 for your customers?

18 A. It looks like it is.

19 MR. HAFFNER: Okay. Those are all the  
20 questions I have for the witness, Your Honor.

21 JUDGE RENDAHL: All right. Mr. Trautman, do  
22 you have anything?

23 MR. TRAUTMAN: No, I don't.

24 JUDGE RENDAHL: I have nothing. Mr.  
25 Johnson, do you have anything further?

0917

1 MR. JOHNSON: Just the one thing.

2

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

4 BY MR. JOHNSON:

5 Q. With respect to the length of time of a  
6 route, what is a -- what is the longest route that  
7 you -- that your collection trucks undertake in a day  
8 or in any period of time?

9 A. Well, under the DOT hours of service  
10 regulations, a driver cannot drive for any more than  
11 11 continuous hours or be on duty, continuous duty,  
12 for more than 14 hours. If they're on duty for 14  
13 hours, they have to take 10 hours off before they can  
14 report to duty, and cannot report for duty in a seven  
15 day period for more than 60 hours.

16 Typically -- or not typically. All of our  
17 routes are designed as such where they never infringe  
18 on DOT service hours, and all of our routes are  
19 generally run during the day and all of our drivers  
20 leave in the morning and are back in late afternoon  
21 and are done.

22 Q. Okay. So the length of time waste might be  
23 in a route truck would be, if I understand you  
24 correctly, no more than 10 hours?

25 A. That would be a correct statement.

0918

1 Q. And typically, how long?

2 A. You just stated no more than 10 hours. All  
3 of our drivers leave in the morning, come back in the  
4 afternoon, they're within the DOT hours of service  
5 requirements, and the longest duration they may have  
6 is, you know, a little over 10 hours for the day. So  
7 their waste from their very first stop would still be  
8 on the trailer when they get back. All of the waste  
9 would not have been on the trailer all day long; just  
10 their first stop would have been. And then it's  
11 offloaded onto the long haul trailer destined for a  
12 processing facility. That is there no longer than  
13 another 24 hours.

14 MR. JOHNSON: Okay. Thank you.

15 JUDGE RENDAHL: Anything further?

16 MR. HAFFNER: No, Your Honor.

17 JUDGE RENDAHL: Okay. Thank you, Mr.  
18 Philpott. You can step down, and if we have to bring  
19 you back, you'll remain under oath for that part of  
20 your testimony.

21 THE WITNESS: Okay.

22 JUDGE RENDAHL: So let's be off the record.

23 (Discussion off the record.)

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

25 So Mr. Haffner, with the exception of Exhibit --

0919

1 what's been marked as Exhibit 60-T, you've indicated  
2 off the record that you don't object to admitting  
3 what's been marked as Exhibits 61 through 80; is that  
4 my understanding?

5 MR. HAFFNER: Yes, Your Honor.

6 JUDGE RENDAHL: All right. Mr. Trautman,  
7 any objection to admitting those?

8 MR. TRAUTMAN: No, no.

9 JUDGE RENDAHL: All right. Then Exhibits 61  
10 through 80 will be admitted. And then I understand  
11 you have other exhibits you wish to offer?

12 MR. HAFFNER: Yes, Your Honor. I would like  
13 to offer for admission Exhibit 81, 82, 83, 84, and  
14 85, but not 86.

15 JUDGE RENDAHL: So you'll be withdrawing 86?

16 MR. HAFFNER: Yes.

17 JUDGE RENDAHL: Any objection, Mr. Johnson,  
18 to admission of what's been marked as Exhibits 81  
19 through 85?

20 MR. JOHNSON: My only question would relate  
21 to Exhibits 83 and 84. I'm sorry, also seems to be  
22 -- let's see -- 85. Are they all versions,  
23 different, slightly different, maybe slightly  
24 different versions of the Stericycle service  
25 agreement?

0920

1           MR. HAFFNER: Yes, that's my understanding,  
2 that they are all slightly different.

3           MR. JOHNSON: Do we need -- and one of them  
4 has three apparently slightly different versions. Is  
5 there some reason to have them all?

6           MR. HAFFNER: I think it's significant to  
7 have all of them because they were all produced in  
8 response to a discovery request. They describe terms  
9 of the agreement with the service customers and they  
10 describe who the contracting party is and references  
11 to other entities, all in various forms. I think  
12 they're more or less consistent, but I think it's  
13 important to see how that is dealt with over the  
14 years of those agreements.

15           MR. JOHNSON: The only problem I see, Your  
16 Honor, I mean, they seem to be redundant insofar as  
17 we're talking about the way they describe the  
18 contracting entity. I'm flipping through them and I  
19 can see no difference.

20           JUDGE RENDAHL: Well, there's no date in any  
21 of them. I guess I'd admit them with a bench request  
22 from myself to Stericycle to identify the dates of  
23 the various versions in Exhibits 83, 84 and 85, so  
24 there is some reference in the record as to what --  
25 whether all of those five are still applicable or

0921

1 only one is. With that explanation in the record,  
2 after I receive the response, I could admit the bench  
3 request response for clarification.

4 MR. JOHNSON: Are we trying to find the  
5 currently applicable service agreement or the service  
6 agreement that was in effect on the magic date of  
7 February 9, or whatever that date is, or if we knew  
8 exactly what we were trying to reach, I could -- we  
9 could perhaps identify that particular document.

10 MR. HAFFNER: I am simply, with these  
11 documents, I'm trying to give an example of a way  
12 that Stericycle of Washington is holding itself out  
13 to its customers over the period of time that our  
14 data request covered, which was -- I don't recall the  
15 specific date, but I think it was either 2000 or 2001  
16 to the present date.

17 JUDGE RENDAHL: Okay. And so with that  
18 respect, I think I would admit them. But again, I'm  
19 going to make the bench request, which is Bench  
20 Request Number 1, and I'll put it in writing tomorrow  
21 or early next week, for Stericycle to identify the  
22 dates of the particular agreements, and if they're  
23 all still valid, then that's a valid answer. So I  
24 will put that in writing.

25 MR. JOHNSON: Your Honor, the only question,



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1 the only concern I have is that there may not be --  
2 we could probably determine which one is currently in  
3 effect, or probably which one was in effect at a  
4 particular point in time, but actually sort of dating  
5 the period when intermediate service agreements were  
6 in effect, I'm not sure that's going to be possible.  
7 But we'll certainly make an effort, if that's your  
8 request.

9 JUDGE RENDAHL: Well, I think that would be  
10 best, to be able to identify, to the extent  
11 Stericycle can, various dates of the service  
12 agreements.

13 MR. JOHNSON: Seems like we're putting them  
14 to a lot of work for purposes here. But I'm happy to  
15 -- we'll have them do it.

16 MR. HAFFNER: Well, but, unfortunately, the  
17 data requests were not clarified in terms of the  
18 response. And I know I've answered data requests the  
19 same way, where somebody asks me for a series of  
20 documents responsive to a period, I'll give them the  
21 documents, and they may not clearly identify the  
22 dates. But I don't have any dates to attach to the  
23 documents, so I can't make them any clearer.

24 MR. JOHNSON: We might at least give them a  
25 sequence. That, I think, is the -- an approximate

0923

1 parameter. I believe that can be done.

2 JUDGE RENDAHL: Then that will be part of  
3 the bench request. Either date them or identify the  
4 beginning and ending one and sequence in between.

5 MR. JOHNSON: Very good.

6 JUDGE RENDAHL: All right. With that, I'll  
7 admit Exhibits 81 through 85. And Mr. Haffner, I  
8 know you had an objection to Exhibit 80 -- Exhibit  
9 60-T, and moved to strike prior to Mr. Philpott's  
10 cross-examination to certain portions of that. Why  
11 don't you go ahead and state your reasons for those  
12 objections.

13 MR. HAFFNER: Yes, Your Honor. My  
14 objections, again, are to Paragraphs 30, 31, 32, 33,  
15 34, 36, 37, 39, 40, 42, except for portions, I  
16 believe, C and D.

17 And the reason for my objections is that  
18 these paragraphs constitute argument and do not  
19 include any statements of fact. I think it's an  
20 inappropriate method to -- it's inappropriate  
21 information to submit in pre-filed testimony and  
22 clearly would have been objectionable in live  
23 testimony as either conclusory, calling for legal  
24 conclusions, or unresponsive to an appropriate  
25 question.

0924

1           JUDGE RENDAHL:  And that objection applies  
2 to all of the paragraphs that you've cited?

3           MR. HAFFNER:  Yes.

4           JUDGE RENDAHL:  And there's no other reason  
5 for the particular paragraphs?

6           MR. HAFFNER:  No.

7           JUDGE RENDAHL:  Okay.  Mr. Johnson.  I'm  
8 sorry, are you done?

9           MR. HAFFNER:  Yes, Your Honor.

10          JUDGE RENDAHL:  Mr. Johnson.

11          MR. JOHNSON:  Well, Your Honor, I think, if  
12 we were going to -- if Mr. Haffner was going to lay  
13 an appropriate foundation for the broad, sweeping  
14 motion that he has filed, he should have led Mr.  
15 Philpott through the statements that he believes are  
16 inappropriate and given Mr. Philpott a chance to  
17 respond with respect to those particular items.

18                 I don't see how we can sweepingly strike out  
19 paragraphs from Mr. Philpott's testimony without  
20 going through it line-by-line and evaluating whether  
21 it was an inappropriate statement either of fact,  
22 based on personal knowledge, or opinion, based on Mr.  
23 Philpott's extensive experience as probably the most  
24 expert business person in the field of biomedical  
25 waste collection in the state of Washington.

0925

1           And frankly, I think Mr. -- I understand Mr.  
2 Haffner's point. I think the Commission and Your  
3 Honor are quite capable of sifting through any  
4 argument or statement that may be shade from opinion  
5 based on business expertise to something else, and I  
6 just don't think it's either useful or appropriate,  
7 unless we want to go through this line-by-line and  
8 statement-by-statement, which I am prepared to do if  
9 we want to do that.

10           But I think the better approach, Your Honor,  
11 would be to simply note Mr. Haffner's objection and  
12 to admit the document in full, with the caveat that,  
13 as in all things, the Commission and the presiding  
14 officer is free to weigh the testimony and weigh the  
15 statements made for what they're worth.

16           We're not in a proceeding where we're  
17 strictly bound by the rules of evidence. I think the  
18 opinion statements, to the extent there are opinion  
19 statements here, are well within Mr. Philpott's  
20 competence, and that he should be allowed to put his  
21 position and his opinions on the record.

22           JUDGE RENDAHL: Mr. Trautman, do you have  
23 any position on this?

24           MR. TRAUTMAN: Well, I would tend to agree  
25 that I think -- I think that Your Honor can probably

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1 give the appropriate weight to the statements that  
2 are made, and how much of them are legitimately  
3 within Mr. Philpott's expertise.

4 I would agree that there's a fine line at  
5 which point you get from there to expert statements,  
6 opinions, and arguments that are appropriate for the  
7 brief, and I think that the testimony treads that  
8 line, but I do think that -- I do think that Your  
9 Honor is capable of making those distinctions and  
10 according the appropriate weight to the statements in  
11 the challenged paragraphs.

12 JUDGE RENDAHL: Mr. Haffner, anything in  
13 closing?

14 MR. HAFFNER: I certainly understand the  
15 comments about allowing Your Honor to give weight to  
16 language or evidence that is admitted, but I believe  
17 that that's typically reserved for occasions when  
18 evidence is entered that is questionable as to the  
19 quality of the evidence.

20 In this case, we're not dealing with  
21 evidence, and that's my issue that I have with this  
22 document. This may not even be so much of a concern  
23 about the evidentiary nature of evidence -- of  
24 information that's being submitted, but the process  
25 by which counsel is arguing their case, in that they

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1 are using this opportunity, in my opinion, to give a  
2 mini brief of their case by using argument instead of  
3 statements of fact. And I think that if this were a  
4 live witness, they would not be allowed to do so.

5 I understand that Your Honor can consider or  
6 not consider the weight of this testimony, but this  
7 is a hearing that is creating a record of evidence  
8 that is very significant for subsequent proceedings,  
9 and I do believe that this matter is likely to be  
10 appealed by either side, I hate to say, given the  
11 importance of this matter, and so I think it's clear  
12 -- it's very important that we create a good, clear  
13 record of evidence, and this is not evidence.  
14 Regardless of whether it might be questionable  
15 evidence, evidence of value or not, this is simply  
16 not evidence. This is argument.

17 I will also say that I don't -- I think it  
18 might be premature to make a ruling without going  
19 through things line-by-line.

20 MR. JOHNSON: Your Honor, the only thing I  
21 would add to this is that we didn't give Mr. Philpott  
22 a chance to go through line-by-line. And it seems to  
23 me if Mr. Haffner's objection, if he wants to press  
24 it, we need to give Mr. Philpott a chance to address  
25 each specific statement and provide foundation or

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1 background, or Mr. Haffner could certainly  
2 cross-examine him on his expertise. We haven't done  
3 that.

4 JUDGE RENDAHL: I think what might be  
5 helpful to me, in particular, Mr. Haffner, given  
6 that, for example, Paragraph 30 is one sentence, and  
7 so I can understand an objection to the one sentence  
8 as to, you know, an opinion or a conclusory  
9 statement, but as to the entirety of Paragraph 31,  
10 which goes on to the next page, again, it's difficult  
11 to identify what, in particular, you might be  
12 objecting to.

13 And so what might be useful, between now and  
14 Wednesday, and I'll reserve ruling on this exhibit,  
15 is to go through in particular and identify which  
16 particular statements you are objecting to. Because  
17 I do think, reading through, some of the language in  
18 some of the paragraphs is, in fact, factual and some  
19 of it is not.

20 MR. HAFFNER: I've done --

21 JUDGE RENDAHL: I think it goes to the  
22 opinion issue and argument, because, in reading  
23 through, I think there is clear argument being made.  
24 And while that may be appropriate in pre-filed  
25 testimony before the Commission if there's an expert

0929

1 who is stating an opinion, oftentimes, the Commission  
2 -- most times, the Commission receives pre-filed  
3 testimony in a question and answer format. And I  
4 don't believe --

5 MR. HAFFNER: Neither of us did that.

6 JUDGE RENDAHL: Neither of you did that.  
7 And so, to that extent, it's also difficult to weigh  
8 the testimony that was filed in this proceeding, as  
9 opposed to other pre-filed testimony before the  
10 Commission. I determined it would be an  
11 extraordinary waste of resources on both sides to  
12 refile it with a question and answer format, and so I  
13 didn't ask the parties to redo that.

14 MR. HAFFNER: Thank you.

15 JUDGE RENDAHL: So in weighing this, if you  
16 have identified particular sentences, I'd like you to  
17 provide that to me and to counsel so that we can  
18 argue this further next week.

19 MR. HAFFNER: I have those sentences.

20 JUDGE RENDAHL: All right. Why don't you go  
21 ahead and identify them now.

22 MR. HAFFNER: On Paragraph 31, a little bit  
23 more than halfway down, after the reference to RCW  
24 81.77.040, the next sentence starts, A copy of a  
25 letter from the Commission Staff reporting the



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1 results of its investigation of Kleen, a Commission  
2 Staff memorandum and related materials are attached  
3 hereto as Exhibit MP-16.

4 I don't think that that would be included as  
5 argument.

6 JUDGE RENDAHL: So that's the only thing  
7 you'd exclude?

8 MR. HAFFNER: That would be the only thing  
9 that I would exclude. And I believe that MP-16 has  
10 now been separated into Exhibits 75 and 76.

11 On Paragraph 33, again, just a little bit  
12 past the midpoint, it starts out with the sentence,  
13 It is patently impossible -- all of that sentence and  
14 the next sentence are -- in my opinion, would be  
15 acceptable, but not the last sentence.

16 MR. JOHNSON: So we're going to stop, in  
17 terms of your posture on this, before the sentence  
18 that this is simply not economically practical?

19 MR. HAFFNER: Yes.

20 MR. JOHNSON: Okay.

21 MR. HAFFNER: I could see that as being  
22 included. I could see that as his opinion based on  
23 his knowledge, so I won't object to that.

24 JUDGE RENDAHL: Okay. Now, just for a point  
25 of clarification, in that paragraph, are you

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1 objecting to the two prior sentences as argument or  
2 as Mr. Philpott not having expertise to speak -- to  
3 comment on Kleen's application and testimony?

4 MR. HAFFNER: I am objecting to those on the  
5 basis of argument.

6 JUDGE RENDAHL: All right. So in Paragraph  
7 34?

8 MR. HAFFNER: The remainder of the  
9 paragraphs, other than Paragraph 42, would be  
10 objected to in their entirety.

11 JUDGE RENDAHL: Sorry, with the exception of  
12 what?

13 MR. HAFFNER: Forty-two. On 42, I would not  
14 object to paragraphs, Subparagraphs C and D.

15 JUDGE RENDAHL: But you're objecting to the  
16 entirety of 42A?

17 MR. HAFFNER: 42A and 42B and the preamble.

18 MR. JOHNSON: Now, Mr. Haffner, just as an  
19 example, under 42B, if I'm looking at the right  
20 testimony, the first sentence is, Covanta does not  
21 have tub washing and disinfecting facilities. Is it  
22 your position that that's argumentative, or not  
23 factual?

24 MR. HAFFNER: No, you're right. That would  
25 have to be -- I would not object to that. I would

0932

1 not object to that or the next sentence.

2 MR. JOHNSON: Your Honor, could we go off  
3 the record briefly?

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

5 (Discussion off the record.)

6 JUDGE RENDAHL: Let's be back on the record.  
7 While we were off the record, we agreed -- Mr.  
8 Haffner agreed to go back and look at the particular  
9 paragraphs and identify with specificity what he's  
10 objecting to and what he is not as argument versus  
11 fact and reasonable opinion by Mr. Philpott.

12 You will provide that to myself and counsel  
13 by noon on Monday, with the other information  
14 concerning shipper/generator witnesses, I believe it  
15 is. Is that what's Monday at noon?

16 MR. HAFFNER: No, rebuttal.

17 JUDGE RENDAHL: Rebuttal, thank you. It's  
18 been a long four days. And we will take it up  
19 Wednesday, after hearing the testimony of Mr. Menaul.

20 So with that, I think we can adjourn for  
21 today and we will reconvene on Wednesday, October  
22 6th, in this room at 9:30.

23 Thank you very much. We'll be off the  
24 record.

25 (Proceedings adjourned at 4:55 p.m.)