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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 IX  
 AL )Pages 933-1093  
 )(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 9:45 a.m. on Wednesday, October 6,  
2004, at 220 Fourth Avenue South, Kent, Washington,  
before Administrative Law Judge ANN E. RENDAHL.

Barbara L. Nelson, CCR  
Court Reporter



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1           JUDGE RENDAHL:  Let's be on the record.  
2  We're back again for another day of testimony in --  
3  before the Washington Utilities and Transportation  
4  Commission today, Wednesday, October 6th, in Kent,  
5  Washington, in Docket Number TG-040248, which is  
6  captioned in the matter of the Application Number  
7  GA-079254, of Kleen Environmental Technologies,  
8  Incorporated.  I'm Ann Rendahl, I'm the  
9  Administrative Law Judge presiding over this  
10 proceeding.

11           As I noted at the start of our hearing last  
12 week, the primary issue in this proceeding is to  
13 determine whether to grant the application of Kleen  
14 Environmental Technologies, referred to here mostly  
15 as Kleen, for short, who is requesting statewide  
16 solid waste authority under Chapter 81.77 RCW for the  
17 collection, transportation, and disposal of  
18 biomedical waste.

19           The purpose of our hearing today and the  
20 remainder of this week is to hear testimony from the  
21 Applicant's and Protestants' witnesses addressing  
22 sentiment in the community concerning the proposed  
23 service, as well as the issue of whether the existing  
24 carriers will not provide or will provide service to  
25 the satisfaction of the Commission.

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1           And generally, the Commission and the  
2 parties refer to these witnesses as shipper/generator  
3 witnesses, and interspersed with these witnesses  
4 we'll take the testimony of Mr. Stromerson, for  
5 Protestant Stericycle, as well as rebuttal witnesses  
6 identified by the parties.

7           After taking appearances, we'll proceed to  
8 take the testimony and cross-examination of Mr. Robb  
9 Menaul, spelled M-e-n-a-u-l, who's appearing today on  
10 behalf of the Washington State Hospital Association,  
11 and then we'll address a number of administrative and  
12 procedural matters and then take the  
13 cross-examination of Mr. Stromerson.

14           So with that, let's take appearances from  
15 the parties, beginning with the Applicant.

16           MR. HAFFNER: Thank you, Your Honor. Greg  
17 Haffner, for the Applicant, Kleen Environmental  
18 Technologies, Inc.

19           JUDGE RENDAHL: And for Protestant  
20 Stericycle?

21           MR. JOHNSON: Thank you, Your Honor. Steve  
22 Johnson, representing Stericycle of Washington, Inc.

23           JUDGE RENDAHL: And for the other  
24 Protestants?

25           MR. SELLS: Thank you. If Your Honor

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1 please, James Sells, appearing on behalf of  
2 Protestants Harold LeMay Enterprises, Incorporated,  
3 Consolidated Disposal, Rubatino Refuse, Inc. and  
4 Washington Refuse and Recycling Association.

5 JUDGE RENDAHL: And for Staff?

6 MR. TRAUTMAN: Greg Trautman, Assistant  
7 Attorney General, for Commission Staff.

8 JUDGE RENDAHL: Thank you. If you could  
9 just turn off all of your cell phones at this point,  
10 so we don't have any distractions, I'll swear in the  
11 witness. Mr. Menaul, if you could state your full  
12 name and business address for the record, please?

13 MR. MENAUL: I'm Robert K. Menaul. I'm the  
14 senior vice president of Washington State Hospital  
15 Association. The address is 300 Elliott Avenue West,  
16 Suite 300, Seattle.

17 JUDGE RENDAHL: Thank you. Could you raise  
18 your right hand, please?  
19 Whereupon,

20 ROBERT K. MENAUL,  
21 having been first duly sworn, was called as a witness  
22 herein and was examined and testified as follows:

23 JUDGE RENDAHL: Okay. And please go ahead,  
24 Mr. Johnson, but before you do, I'll remind you, if  
25 you can speak a little bit slowly for the court

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1 reporter, or more slowly for the court reporter, that  
2 would be great. And if you could make sure to wait  
3 until Mr. Johnson or other counsel have finished  
4 asking their questions before answering, then it will  
5 be easier, as well.

6 THE WITNESS: All right.

7 MR. JOHNSON: Thank you, Your Honor.

8

9 DIRECT EXAMINATION

10 BY MR. JOHNSON:

11 Q. Mr. Menaul, I'm Steve Johnson. I'm  
12 representing Stericycle of Washington, Inc. in this  
13 proceeding. I'm going to ask you a couple of  
14 questions about the proceeding that we're addressing  
15 today. If I ask you any questions that are confusing  
16 or need to be restated for clarification, please stop  
17 me and I'll be happy to do that.

18 Mr. Menaul, you brought a letter with you  
19 today, did you?

20 A. Yes, sir.

21 Q. And what's the date of the letter?

22 A. October 4th, 2004.

23 Q. And Mr. Menaul, is this letter authorized by  
24 the Washington State Hospital Association?

25 A. Yes, it is.

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1 Q. And Mr. Menaul, do you wish the Commission  
2 to accept this letter as part of the record of this  
3 case?

4 A. Yes.

5 MR. JOHNSON: Your Honor, I would like to  
6 offer the letter of October 4, 2004, by Mr. Menaul,  
7 from the -- representing the Washington State  
8 Hospital Association to the Washington Utilities and  
9 Transportation Commission for admission into the  
10 record.

11 JUDGE RENDAHL: All right. I'm going to  
12 mark the letter, dated October 4th, 2004, from the  
13 Washington State Hospital Association to the  
14 Utilities and Transportation Commission, as Exhibit  
15 200. Mr. Haffner.

16 MR. HAFFNER: Well, I am not -- I guess I'm  
17 not opposed to this document being admitted, but --  
18 and I think it will help speed things up. I am  
19 opposed to the manner in which it's coming in, in  
20 that it was not offered earlier for us to be prepared  
21 for cross-examination.

22 I guess what I'm going to ask is that the --  
23 if the document is admitted, that we are given time  
24 to analyze the document to prepare our  
25 cross-examination accordingly. At a minimum, it

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1 should have been at least provided by Monday, noon.  
2 If there is -- in addition to that, if there is any  
3 additional -- well, unless there's additional  
4 testimony, I don't see a need for Mr. Menaul to  
5 testify further on direct if this is going to  
6 substantially cover his testimony.

7           The only other question I guess I would have  
8 about the admission of this exhibit and, frankly, the  
9 admission of Mr. Menaul's testimony, is what proof we  
10 have of his authority to speak on behalf of the  
11 members of the association, and I don't see any of  
12 that here. Maybe Mr. Johnson could pursue that.

13           JUDGE RENDAHL: Mr. Johnson, before you go  
14 ahead, maybe we should treat this exhibit the same as  
15 we have others, where we allow -- we reserve ruling  
16 on admission until either some direct examination has  
17 been addressed or cross-examination of the witness.

18           And I'm happy to take a short break if you  
19 want to take some time to look through the letter and  
20 familiarize yourself with it.

21           MR. HAFFNER: Do we know if there's going to  
22 be any additional direct testimony to this letter?

23           JUDGE RENDAHL: I don't know. Mr. Johnson?

24           MR. JOHNSON: Your Honor, it's my intention  
25 to, if the letter is admitted, that that would

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1 conclude our direct.

2 JUDGE RENDAHL: All right. Well, maybe you  
3 should do some foundation and conduct some foundation  
4 questions with the witness as to his authority to  
5 address this information in a letter on behalf of the  
6 Washington State Hospital Association.

7 MR. JOHNSON: Well, Your Honor, I think that  
8 could be taken up in cross. I'd be happy -- I asked  
9 him about his authority. He is a senior vice  
10 president for the Washington State Hospital  
11 Association. If Mr. Haffner has questions about his  
12 authority, that's certainly something he would be  
13 entitled to raise on cross.

14 JUDGE RENDAHL: All right. Mr. Sells, any  
15 thoughts on this?

16 MR. SELLS: No, Your Honor. I have no  
17 objection to treating this as pre-filed testimony.  
18 That makes sense.

19 JUDGE RENDAHL: Okay. Mr. Trautman?

20 MR. TRAUTMAN: I have no objection.

21 JUDGE RENDAHL: Mr. Haffner, what's your  
22 thought on this?

23 MR. HAFFNER: I think probably the thing to  
24 do would be to admit it as pre-filed testimony and  
25 allow me to cross-examine the witness on the

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1 authority for him to provide the testimony as such on  
2 behalf of the association.

3 JUDGE RENDAHL: Okay. And do you require a  
4 few minutes to review it or have you had time --

5 MR. HAFFNER: Yes, please.

6 JUDGE RENDAHL: All right. Well, at this  
7 point, I would admit what's been marked as Exhibit  
8 200 as the pre-filed testimony of Mr. Robb Menaul.  
9 And right now, we'll be off the record until five to  
10 10:00, or would you like 10:00?

11 MR. HAFFNER: I would like till 10:00.

12 JUDGE RENDAHL: All right, till 10:00, to  
13 allow you some time to evaluate the letter.

14 MR. HAFFNER: Thank you, Your Honor.

15 JUDGE RENDAHL: We'll be off the record.

16 (Recess taken.)

17 JUDGE RENDAHL: Let's be back on the record.  
18 We're back on the record after a short break while  
19 Mr. Haffner had an opportunity to review what's been  
20 admitted as Exhibit 200. Mr. Haffner, do you have  
21 any cross-examination for the witness?

22 MR. HAFFNER: Yes, I do, Your Honor. Thank  
23 you.

24

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

0945

1 BY MR. HAFFNER:

2 Q. Mr. Menaul, my name is Greg Haffner. I'm  
3 the attorney for the applicant, Kleen Environmental  
4 Technologies.

5 With respect to this association that you  
6 are here on behalf of, what authority do you have to  
7 speak on behalf of the association today?

8 A. Well, I have explicit authority from my  
9 boss, Leo Greenawalt, who's the president of the  
10 Washington State Hospital Association.

11 JUDGE RENDAHL: Can you spell Greenawalt,  
12 please?

13 THE WITNESS: G-r-e-e-n-a-w-a-l-t.

14 JUDGE RENDAHL: Thank you.

15 Q. Is there a board of directors that governs  
16 the association?

17 A. Yes, there is.

18 Q. Has that board of directors taken or passed  
19 a resolution to authorize you to speak on behalf of  
20 the association?

21 A. It has not.

22 Q. Have the members of the association been  
23 polled to determine their opinion of whether you  
24 should be here today speaking on their behalf?

25 A. They have not.

0946

1 Q. Would it be fair to say that the opinion  
2 that you're expressing today is the opinion of the  
3 president and yourself and not the official position  
4 of the association?

5 A. I think it's all those. It expresses the  
6 opinion of my boss and me and on behalf of the  
7 Hospital Association.

8 Q. But without the authority of the board or  
9 its members?

10 A. Well, they didn't address that specific  
11 letter, if that's what you're asking me.

12 Q. Yes.

13 A. But they have authorized us to work on  
14 issues that are important to hospitals, and this is  
15 one of them.

16 Q. Okay. What does the association do for its  
17 members?

18 A. The primary purpose is advocacy in Olympia  
19 on legislative and regulatory matters; and  
20 secondarily, education; and probably a third,  
21 information forum about hospitals.

22 Q. When you advocate issues in Olympia, is that  
23 the equivalent of lobbying?

24 A. Yes, sir.

25 Q. Do you take positions on pending legislation

0947

1 in Olympia?

2 A. Yes, sir.

3 Q. When you take those positions, do you obtain  
4 approval from the board before you go down and take  
5 that lobbying position?

6 A. Generally not.

7 Q. Do you seek the opinion of the members  
8 before you take that position?

9 A. It depends on the topic. Depends on the  
10 topic.

11 Q. How is the association involved in decisions  
12 regarding the collection and transportation of the  
13 medical waste in the state for its members?

14 A. Well, there's a history on that that goes  
15 back probably 15 years ago or so, when our members  
16 began to feel nervous about what was happening with  
17 medical waste that was going from hospitals straight  
18 to the dump without being treated and concern about  
19 incinerators, those hospitals that had incinerators  
20 and were being squeezed by the regulations from the  
21 Environmental Protection Agency and concern about  
22 what was happening with the ash that would result of  
23 the burning waste in the incinerators.

24 About that time, also, there was a lot of  
25 worry about -- emerging worry about AIDS and

0948

1 blood-borne illnesses, so they came to the  
2 association and asked us to find some better way of  
3 developing methods, better methods for picking up,  
4 hauling, disposing of medical waste.

5 Q. Has there been any such analysis done  
6 currently or recently, I should say?

7 A. No.

8 Q. In your letter to the Commission, you  
9 indicate that you entered into a contract with  
10 Stericycle where you agreed to promote their  
11 services. If this application were granted and  
12 members of your association started using Kleen as an  
13 alternative to Stericycle, would that have a  
14 financial impact on the association?

15 A. No.

16 Q. It would not affect the revenue you would  
17 receive pursuant to that contract with Stericycle?

18 A. That's correct.

19 Q. What are the terms of -- how does your  
20 association receive compensation from Stericycle?

21 A. Well the contract, first of all, is with  
22 Washington Hospital Services, which is a  
23 wholly-owned, for profit subsidiary of Washington  
24 State Hospital Association, so there's no direct  
25 remuneration for the Washington State Hospital

0949

1 Association. The arrangement is a flat annual fee  
2 that's negotiated with Stericycle for marketing on  
3 behalf of Stericycle.

4 Q. So that's a flat fee. It's not a fee based  
5 on revenue?

6 A. That's correct.

7 Q. In your letter, you indicate that you have  
8 97 community hospital members. Is that the extent of  
9 your association, is 97 members?

10 A. The short answer is yes. It's a little bit  
11 hard to count day-to-day, because there are hospitals  
12 that open and close, but today it's 97 community  
13 hospitals, all of which are members of the Hospital  
14 Association.

15 Q. And it's my understanding that your  
16 association pretty much encompasses all the major  
17 hospitals, almost all the hospitals in the state, all  
18 the community hospitals in the state, big, large,  
19 east, west. Isn't it likely that many of your  
20 members disagree with the positions taken by the  
21 officers and the directors at different times?

22 A. Ask the question again, because I'm not sure  
23 I understand the question.

24 Q. Isn't it possible that members of your  
25 association disagree with the positions taken by the

0950

1 association's officers and directors at different  
2 times?

3 A. From time to time, that happens.

4 Q. Okay. And don't you think it's possible  
5 that some of your members are not in agreement with  
6 the position you're expressing in this letter?

7 A. I suppose there is a possibility for that,  
8 but I believe that, on balance, the factors that are  
9 important in consideration of people who are  
10 providing a service, price, quality, service,  
11 education, waste reduction, those sorts of things,  
12 that they would believe that Stericycle's doing a  
13 good job.

14 Q. But you're not here -- you don't know  
15 whether any of your members actually would be in  
16 support of Kleen Environmental's application, do you?

17 A. I do not know that.

18 Q. And you don't know whether all of your  
19 members are opposed to this application, do you?

20 A. I do not know that.

21 Q. In your letter, you also reference  
22 Stericycle's minimally successful attempt at -- or  
23 effort to recycle plastics. Are you aware of whether  
24 there was any success in their proposed recycling  
25 program that they had suggested back when they sought

0951

1 the permit that they now have?

2 A. I think there was the diversion of plastics  
3 from the waste stream recycling into the manufacture  
4 of plastic boxes that are used as receptacles for  
5 sharps containers, and then there was another effort  
6 that I don't think was successful, to use some of the  
7 recycled material as fuel, cement manufacturing.

8 Q. Thank you. The Bio Systems program that you  
9 refer to, I believe there has been evidence in this  
10 hearing that that program is not actually provided by  
11 Stericycle of Washington, but provided by Stericycle,  
12 Inc. Is that your understanding?

13 A. I haven't differentiated between the two.

14 Q. If that program were still available through  
15 Stericycle, Inc. and the program that Kleen  
16 Environmental is proposing to offer, wouldn't that  
17 allow your customers, your members, to obtain the  
18 benefits of both?

19 A. Would you ask the question again?

20 Q. If the Bio Systems program that's made  
21 available by Stericycle, Inc. was available to your  
22 members and the service being proposed by Kleen  
23 Environmental were made available to them, wouldn't  
24 they be able to take advantage of both, since the Bio  
25 Systems program --

0952

1 A. I suppose that's possible.

2 Q. Let me finish the question, please -- since  
3 the Bio Systems program is provided by Stericycle,  
4 Inc. and not Stericycle of Washington?

5 A. Again, I haven't distinguished between the  
6 two.

7 MR. HAFFNER: Okay. Your Honor, I believe  
8 that's all the questions I have of the witness, but  
9 I'd like to make one check before I tender the  
10 witness for redirect.

11 JUDGE RENDAHL: Okay. Let's go off the  
12 record.

13 (Discussion off the record.)

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

15 Q. One further thing, Mr. Menaul. Regarding  
16 the contract -- I believe you said the contract with  
17 Stericycle was actually with a subsidiary of your  
18 association?

19 A. That's correct.

20 Q. Do you know how much money that association  
21 receives from Stericycle on an annual basis?

22 A. Washington Hospital Services?

23 Q. Yes.

24 A. I think it's \$38,000 this year and \$40,000  
25 in 2005.

0953

1 Q. Why is that increasing?

2 A. Just the result of our negotiation  
3 performance.

4 MR. HAFFNER: Okay. No other questions,  
5 Your Honor.

6 JUDGE RENDAHL: All right. Mr. Sells, do  
7 you have any questions for the witness?

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

9 JUDGE RENDAHL: And Mr. Trautman?

10 MR. TRAUTMAN: I do. I have one or two.

11

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

13 BY MR. TRAUTMAN:

14 Q. Good morning, Mr. Menaul. I'm Greg  
15 Trautman.

16 A. Good morning.

17 Q. Assistant Attorney General, for the  
18 Commission Staff. In your letter, Exhibit 200, you  
19 speak of the use of incineration as a means of  
20 disposal; correct?

21 A. (Nodding.)

22 Q. And I believe you state that using  
23 incineration would be a step backward, and so would  
24 -- is it correct you would view that as a negative  
25 aspect of the application?

0954

1 A. Yes.

2 Q. Are you aware that the witnesses for LeMay,  
3 Rubatino and Consolidated all state in their  
4 pre-filed testimony that they all use incineration as  
5 a method of disposal?

6 A. Not aware of that.

7 MR. TRAUTMAN: That's all I have.

8 JUDGE RENDAHL: And I don't have any  
9 questions for the witness. Mr. Johnson, do you have  
10 any redirect for the witness?

11 MR. JOHNSON: Your Honor, just a couple of  
12 things.

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. Menaul, Mr. Haffner asked you a question  
17 about sort of more recent analysis of the wants and  
18 needs of the Hospital Association's members. Have  
19 you conducted any polls of your members in -- I think  
20 you referred to the history that began 15 years ago.  
21 Have you conducted polls of your members to determine  
22 their wants and needs --

23 A. We've done --

24 Q. Excuse me -- with respect to medical waste  
25 collection over the past 15 years?

0955

1           A.    We've done two surveys of the members.  The  
2   last one, I think, was in 1997, asking them to  
3   identify what they thought the strengths were of  
4   Stericycle and what -- and to evaluate the  
5   performance.  And they said clearly that service,  
6   reliability, education, and that meant explaining to  
7   the hospitals how they could reduce their waste  
8   stream by segregating medical waste and other waste,  
9   as well as price, were important features.

10          Q.    And did they comment as to whether  
11   Stericycle was performing on those features?

12          A.    I don't remember -- it was more of a  
13   numerical survey, give us a numerical score, one  
14   through 10.

15          Q.    Did it rate the Stericycle service  
16   ultimately, or did you --

17          A.    Yes.

18          Q.    What conclusions could you draw from these  
19   surveys?  If you don't remember or you don't know,  
20   please don't answer, but if you do remember, can you  
21   explain to us?

22          A.    The scale was one to 10, with one being poor  
23   performance, 10 being perfect.  On the parameters  
24   that we measured, the score for Stericycle was  
25   somewhere between seven and eight and a half, in that

0956

1 kind of range.

2 Q. You mentioned that your association  
3 represents community hospitals. I'm not familiar  
4 with the distinction between community hospitals and  
5 other types of hospitals. Could you just explain  
6 that for us?

7 A. For us, the distinction is military  
8 hospitals, Veterans Administration Hospitals, Western  
9 State, Eastern State Psychiatric Hospitals would not  
10 be considered community hospitals.

11 Q. So basically, governmental institutions  
12 would not be included in your membership?

13 A. Federal and state governmental institutions  
14 would not be. They're members, but we don't -- I  
15 wouldn't call those community hospital members.

16 Q. Okay. But they are also members of your  
17 association?

18 A. Some of them are.

19 Q. I see. Mr. Menaul, are you aware of any  
20 initiatives within the Hospital Association or within  
21 or sponsored by your association dealing with waste  
22 reduction?

23 A. We're not doing anything on that line  
24 special today, but that's been a feature of the  
25 Stericycle program from the beginning. They actually

0957

1 had people that came out and did seminars for the  
2 hospitals to help them, as I said a moment ago, do a  
3 better job of segregating medical waste from the  
4 regular waste stream, just to reduce the volume. So  
5 yeah, that's an important feature, and Stericycle,  
6 technologically, has also reduced the total volume  
7 going into the waste stream via the process they use  
8 in Morton to sterilize and compact the waste,  
9 sterilize and reduce its volume in the compacting.

10 MR. JOHNSON: Thank you, Mr. Menaul. I  
11 don't think I have any further questions.

12 JUDGE RENDAHL: Mr. Haffner.

13 MR. HAFFNER: Yes, Your Honor, two  
14 questions.

15

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

17 BY MR. HAFFNER:

18 Q. Mr. Menaul, regarding the survey that your  
19 association conducted of its members, I guess back in  
20 1997, you identified a number of strengths that were  
21 identified in that survey. Were there any weaknesses  
22 that Stericycle identified in that survey?

23 A. I can't recall any specific weaknesses.

24 Q. But you do recall the specific strengths of  
25 Stericycle?

0958

1 A. Generally, yes, in general.

2 Q. None of your members indicated that there  
3 were any weaknesses of Stericycle?

4 A. Well, if they graded down -- you said none  
5 of the members. There were some that would have  
6 graded Stericycle lower than six on a scale of 10.  
7 The average, I said, was somewhere between seven and  
8 eight and a half, probably, on the three or four  
9 questions that were asked.

10 MR. HAFFNER: Thank you. No other  
11 questions, Your Honor.

12 JUDGE RENDAHL: Anything further for this  
13 witness? Okay. Thank you very much, Mr. Menaul, for  
14 appearing this morning. You're excused.

15 THE WITNESS: Thank you.

16 JUDGE RENDAHL: Thanks for appearing. All  
17 right. Let's be off the record.

18 (Discussion off the record.)

19 JUDGE RENDAHL: Let's go back on the record.  
20 While we were off the record, we discussed Mr.  
21 Philpott's pre-filed testimony, marked as Exhibit  
22 60-T. On Friday, Mr. Haffner had made an oral motion  
23 to strike portions of Mr. Philpott's testimony, and  
24 on Monday, I believe, Mr. Haffner indicated that he  
25 -- or maybe late Friday indicated that he was

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1 withdrawing the motion to strike. Is that correct,  
2 Mr. Haffner?

3 MR. HAFFNER: I believe it was over the  
4 weekend, Your Honor.

5 JUDGE RENDAHL: Okay. And so I'm going to  
6 admit what's been marked as Exhibit 60-T, pre-filed  
7 testimony of Mr. Philpott.

8 Then, Monday, parties circulated their lists  
9 of rebuttal witnesses, and Mr. Haffner attached  
10 copies of five rebuttal exhibits. I have included  
11 and marked as Exhibit 52 on the revised exhibit list,  
12 under Mr. Lee, the commercial real estate listings.  
13 Again, that's marked as Exhibit 52. Marked as  
14 Exhibit 53 are quotes for lease rates on commercial  
15 vehicles.

16 And then Mr. Haffner also identified as  
17 rebuttal exhibits the 2003 WUTC annual reports for  
18 Consolidated, LeMay and Rubatino. I've marked the  
19 Consolidated annual report as Exhibit 195, the LeMay  
20 annual report as 196, and the Rubatino Refuse Removal  
21 annual report as Exhibit 197, and I did so based on  
22 Mr. Haffner's representation yesterday that they  
23 weren't intended to be introduced by any particular  
24 witness, but he preferred to have them stipulated  
25 into the record. And while we were off the record,

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1 counsel for Stericycle and Consolidated, LeMay and  
2 Rubatino had questions, and so we went back on the  
3 record.

4 So at this point, maybe, Mr. Sells and Mr.  
5 Johnson, you can express your concerns on the record.

6 MR. SELLS: Well, if Your Honor please,  
7 these, of course, are regularly kept public records.  
8 They're available to anybody that walks into the UTC.  
9 There's certainly nothing hidden in there that I'm  
10 aware of.

11 I guess my problem is they're -- at least  
12 LeMay's and Rubatino's are pretty voluminous  
13 documents, and I don't know why -- I don't know what  
14 they add to the record here. They're primarily  
15 concerned with non-medical waste, of course, on the  
16 reporting, although they do reference medical waste.

17 If the object is to show that these two  
18 companies' medical waste operations are a small  
19 percentage of their overall operations, I stipulate  
20 to that. That's true. But I just hate to see the  
21 record get this much bigger with those documents,  
22 especially when they're public records and anybody  
23 can look at them if they want, anyway.

24 JUDGE RENDAHL: All right.

25 MR. SELLS: But I don't think anybody has to

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1 sponsor them, for that matter.

2 JUDGE RENDAHL: Okay. So you don't  
3 necessarily object to their admission, but just  
4 you're concerned about expanding the record?

5 MR. SELLS: Yeah, I don't think they add  
6 anything to the record, other than than a couple  
7 extra pounds.

8 JUDGE RENDAHL: All right. Mr. Johnson,  
9 anything else?

10 MR. JOHNSON: Your Honor, I would just be  
11 interested to know from Mr. Haffner what the  
12 relevance of these annual reports is. As Mr. Sells  
13 indicated, they basically are annual reports for  
14 companies that are primarily engaged in general solid  
15 waste collection, disposal activities, so most of the  
16 information in these annual reports has no  
17 relationship to medical waste.

18 I haven't reviewed them with care to  
19 identify anything that might be relevant, but I may  
20 be -- if Mr. Haffner could identify what he thinks  
21 the relevance is, that would be helpful.

22 JUDGE RENDAHL: Mr. Haffner.

23 MR. HAFFNER: Thank you, Your Honor. As Mr.  
24 Sells correctly assumes, the purpose for putting  
25 these into the record is to complete the picture of

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1 the protestants' financial picture with respect to  
2 medical waste and their overall operations.

3           We have the annual reports from the  
4 Applicant and Stericycle. I thought it was important  
5 that we have the similar reports from the other  
6 Protestants to show the dollar revenue that they have  
7 for medical waste and also the dollar revenue that  
8 they have from their other operations. I don't know  
9 if it's possible to segregate those sections out of  
10 the annual report. I thought it would be better for  
11 the entire report to come in. I do realize that it  
12 adds bulk to this already very bulky record.

13           JUDGE RENDAHL: Mr. Sells, anything in  
14 response?

15           MR. SELLS: No.

16           JUDGE RENDAHL: Okay. Mr. Johnson.

17           MR. JOHNSON: Perhaps this is my fault for  
18 having not dug into them, but do they show the  
19 medical waste revenue broken out or do they show a  
20 medical waste cost broken out?

21           MR. HAFFNER: They show -- yes, they do.

22           MR. JOHNSON: Could you pick an example and  
23 just point that out?

24           MR. HAFFNER: Yes, I will.

25           JUDGE RENDAHL: Well, for example, I can see

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1 on page 14, there's --

2 MR. JOHNSON: Of which one, Your Honor?

3 JUDGE RENDAHL: Of Exhibit 195, which is the  
4 Rubatino. It talks about expenses for disposal and  
5 processing, and it breaks it up into various  
6 categories --

7 MR. JOHNSON: I see.

8 JUDGE RENDAHL: -- of waste. I haven't seen  
9 the -- looked through the other parts of it, but  
10 that's an example of where it does. And also  
11 revenues on page 10 breaks it up into various  
12 categories of waste collection. So it does look like  
13 it does break up the financial picture based on the  
14 categories of waste.

15 MR. HAFFNER: And I believe that those are  
16 typically the only two pages. I couldn't remember if  
17 there was one on the fee schedule, but I guess not.  
18 The problem is those two pages are parts of other  
19 financial documents, and so it's hard to separate  
20 them.

21 MR. JOHNSON: Your Honor, I have no  
22 objection to the admission of these annual reports.

23 MR. SELLS: I think it's easier just to put  
24 them in the way they are.

25 JUDGE RENDAHL: I tend to agree. I think,

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1 given that there is a comparison to the Stericycle  
2 exhibit, I think it is appropriate, and although it  
3 does add another half inch to the two binders we  
4 have, I think it's worth adding it in. So I will  
5 admit what's been marked as Exhibits 195 through 197.

6 All right. And is that all we have at this  
7 point for exhibits?

8 MR. HAFFNER: I --

9 JUDGE RENDAHL: Mr. Johnson, you had  
10 identified in your filing on Monday that you would  
11 have additional rebuttal exhibits. You identified  
12 revised exhibits to the pre-filed testimony of Ms.  
13 Walker, and you stated earlier, I believe off the  
14 record, that you were still working or Ms. Walker was  
15 still working to complete those revisions. Do you  
16 have a sense of when those might be available?

17 MR. JOHNSON: I hope by the end of the week,  
18 certainly. Ms. Walker and I spoke on Monday, I  
19 believe it was, and were able to go over -- in fact,  
20 I'm sorry, it was Tuesday -- were able to go over the  
21 revisions that she had made over the weekend. I had  
22 not been able to reach her before Tuesday, and I was  
23 having trouble following the revisions, so I  
24 suggested some changes, and she was going to try to  
25 make those changes and get them to me, actually, for

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1 today. So I haven't received them, but I know she  
2 understands the importance of getting them out.

3 All these exhibits will do is show sort of a  
4 net effect of the revised exhibit, I believe it's 51,  
5 the revised pro forma that the Kleen folks submitted  
6 for the record here last week. So I can't promise  
7 exactly when they will be here, but I expect that we  
8 will have them by Friday.

9 JUDGE RENDAHL: Okay. Well, I guess, since  
10 we have Mr. Lee testifying on Friday, if it's  
11 possible to get them by tomorrow, so that we can do  
12 this more efficiently --

13 MR. JOHNSON: I will pursue that.

14 JUDGE RENDAHL: Thank you. All right.

15 MR. HAFFNER: I have one other exhibit that  
16 came in 4:00 on Monday, a letter from Marion County,  
17 the Covanta operator, discussing the -- or referring  
18 to the capacity of that plant, any clarification of  
19 the amount of unused capacity, and I do have copies  
20 to circulate.

21 JUDGE RENDAHL: And who do you propose to  
22 discuss that with, Mr. McCloskey?

23 MR. HAFFNER: Yes.

24 JUDGE RENDAHL: All right. I guess if you  
25 could, at our next break, circulate those, and then

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1 discuss it with counsel -- actually, why don't you  
2 circulate them now. Might as well get it done now,  
3 and then I'll mark it. Thank you. All right.

4 MR. HAFFNER: I also had one question. Oh,  
5 I'm sorry. Go ahead.

6 JUDGE RENDAHL: Let me just mark it, get it  
7 in the list here. I'll mark this -- it's a October  
8 1st, 2004 letter to Mr. McCloskey from Jeff Bickford,  
9 Senior Environmental Engineer for Marion County,  
10 Oregon, as Exhibit 33, and we'll discuss the  
11 admission when Mr. McCloskey appears this afternoon.

12 All right. And you had something else you  
13 wanted to add?

14 MR. HAFFNER: Just a housekeeping matter,  
15 Your Honor. On the exhibit list, on item 165, you  
16 identified a Mr. Richard Olson, and I was --

17 JUDGE RENDAHL: Where, 65?

18 MR. HAFFNER: 165. These were the  
19 photographs.

20 JUDGE RENDAHL: Oh, I probably just -- it  
21 should be Robert, shouldn't it?

22 MR. HAFFNER: I guess that would be Robert  
23 Olson. I wasn't sure how that was -- if they were  
24 brought in through his testimony, cross-examination  
25 exhibits.

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1           JUDGE RENDAHL:  They were.  It should have  
2   been Robert, and thanks for picking up the error.  
3   All right.  So going back to Mr. Johnson, let me find  
4   your list here.  You had also indicated a Stericycle  
5   lease.

6           MR. JOHNSON:  Yes, Your Honor.

7           JUDGE RENDAHL:  Do you have that available?

8           MR. JOHNSON:  I apologize.  I intended to  
9   bring it with me and I left it in the office.  I will  
10  fax it out this evening or I could have my secretary  
11  do it.

12          JUDGE RENDAHL:  All right.  If you can --  
13  how lengthy is it?

14          MR. JOHNSON:  Well, it's a typical  
15  commercial lease.  Probably 35 pages long.

16          JUDGE RENDAHL:  Do the parties want it faxed  
17  or do you want it tomorrow morning?

18          MR. HAFFNER:  Well, can we talk about the  
19  relevance of it?

20          JUDGE RENDAHL:  Sure.

21          MR. HAFFNER:  What's it being offered for?

22          MR. JOHNSON:  Well, it would be offered for  
23  lease rates in South King County, in short.

24          MR. HAFFNER:  Okay.

25          JUDGE RENDAHL:  And who is it intended to be

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1 admitted through?

2 MR. JOHNSON: Mr. Philpott.

3 JUDGE RENDAHL: All right. So we can't do  
4 that -- we can't have Mr. Philpott on this afternoon  
5 without having the lease.

6 MR. JOHNSON: Or we can bring him back if we  
7 need to.

8 JUDGE RENDAHL: All right. Then you had  
9 other rebuttal witnesses, other rebuttal exhibits.  
10 Do you have anything else in mind at this point?

11 MR. JOHNSON: I have nothing specific in  
12 mind, Your Honor.

13 JUDGE RENDAHL: All right. So at this  
14 point, if you can provide the Walker exhibits and the  
15 Stericycle lease tomorrow, and I understand Ms.  
16 Walker may not be available to do that, but if we're  
17 going to proceed efficiently, it would be helpful to  
18 have those tomorrow.

19 MR. JOHNSON: I --

20 MR. SELLS: Bear in mind, don't fax it,  
21 because --

22 JUDGE RENDAHL: Yeah, and I'm not going to  
23 be in my office, so if you can bring one to me, but  
24 Mr. Haffner may want it.

25 MR. HAFFNER: Yeah, if you could e-mail it

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1 to me or fax it. Either one would be fine.

2 MR. JOHNSON: I will have my assistant --

3 JUDGE RENDAHL: Scanning it, you know, I  
4 don't know whether scanning it versus faxing, whether  
5 it makes any difference.

6 MR. JOHNSON: We have it scanned. It is  
7 delivered to us scanned, so all we have to do is  
8 forward.

9 JUDGE RENDAHL: Just send it by e-mail.

10 MR. HAFFNER: If you could maybe call your  
11 office and have them do that during the break or  
12 lunch.

13 MR. JOHNSON: I will do that.

14 JUDGE RENDAHL: Okay. If it's available  
15 over the lunch hour, then we might -- if you can make  
16 copies of that in your office and make arrangements  
17 with Mr. Johnson for reimbursement if we need to,  
18 then we could actually address it through Mr.  
19 Philpott this afternoon.

20 MR. SELLS: Just run downtown and get it for  
21 us.

22 MR. HAFFNER: Borrow your car, dad.

23 JUDGE RENDAHL: All right. Any other  
24 exhibit issues we need to discuss today? All right.  
25 We've talked about the motion to strike, which was

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1 pending. Refresh my memory. What were the other  
2 issues we needed to talk about?

3 MR. HAFFNER: The exhibit being marked. We  
4 haven't talked about that, the letter.

5 JUDGE RENDAHL: We marked as 33.

6 MR. HAFFNER: Right.

7 JUDGE RENDAHL: We marked -- we don't have  
8 any other exhibits to mark at this point. So as far  
9 as exhibits are concerned, and the motion is taken  
10 care of, we talked a bit about scheduling off the  
11 record. Let's go off the record again and do a  
12 little bit more scheduling discussion, and then we'll  
13 take Mr. Stromerson. So we're off the record.

14 (Discussion off the record.)

15 JUDGE RENDAHL: Let's be back on the record.  
16 While we were off the record, we discussed some  
17 scheduling and rearranging witnesses, and I'll  
18 endeavor to revise my agenda tonight and have another  
19 one available tomorrow that we can work off of. Mr.  
20 Sells, are you planning to be here tomorrow and  
21 Friday, or do you know?

22 MR. SELLS: My plan now is to show up in the  
23 morning and see what's happening and either stay or  
24 leave, depending on who's testifying.

25 JUDGE RENDAHL: All right. That's fair

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1 Enough. Okay. Let's be off the record for a moment.

2 (Recess taken.)

3 JUDGE RENDAHL: All right. Let's be back on  
4 the record. While we were -- well, we just took a  
5 break and we're back and we're here to hear the  
6 testimony of Mr. Stromerson.

7 Could you state your full name and business  
8 address on the record, please?

9 MR. STROMERSON: Yes, Christopher  
10 Stromerson, 20320 80th Avenue South, Kent,  
11 Washington.

12 JUDGE RENDAHL: Thank you. Would you raise  
13 your right hand, please?

14 Whereupon,

15 CHRISTOPHER STROMERSON,  
16 having been first duly sworn, was called as a witness  
17 herein and was examined and testified as follows:

18 JUDGE RENDAHL: Please go ahead, Mr.  
19 Johnson.

20 MR. JOHNSON: Thank you, Your Honor.

21

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

23 BY MR. JOHNSON:

24 Q. Mr. Stromerson, you have a book of exhibits  
25 in front of you. Would you look at the exhibit

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1 that's marked 91-T?

2 A. Yes.

3 Q. And do you recognize that document?

4 A. Yes, I do.

5 Q. Let me make sure you're looking at the right  
6 document. Do you have the exhibit list? Okay, yeah,  
7 that's -- and that document states on the front of it  
8 that it's the testimony of Christopher E. Stromerson?

9 A. Correct.

10 Q. Is that your testimony?

11 A. Yes, it is.

12 Q. And is this your signature on the last page  
13 of the document?

14 A. Yes, it is.

15 Q. And do you recognize the exhibits that are  
16 appended to it? Let me go through those exhibits to  
17 make sure that they're all there and they're all  
18 properly attached and in front of you. The exhibits  
19 that are on the exhibit list as attachments to your  
20 pre-filed testimony are Exhibits 92 through 104.  
21 Would you look at each of those exhibits and confirm  
22 that those are properly attached as exhibits to your  
23 pre-filed testimony?

24 A. Yes, they are.

25 Q. And Mr. Stromerson, do you wish the

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1 Commission to accept Exhibit 91-T and the  
2 attachments, Exhibits 92 through 104, as your  
3 testimony in this proceeding?

4 A. Yes, I do.

5 MR. JOHNSON: Thank you. Your Honor, we  
6 would offer Exhibits 91-T and 92 through 104 for  
7 admission into the record at this time.

8 JUDGE RENDAHL: Mr. Haffner, any objections?

9 MR. HAFFNER: I would like, Your Honor, to  
10 reserve the ruling until after I've had a chance to  
11 cross-examine the witness.

12 JUDGE RENDAHL: All right. Please go ahead.

13 MR. HAFFNER: Thank you, Your Honor.

14

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

16 BY MR. HAFFNER:

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

20 Regarding your pre-filed testimony, on page  
21 eight of your testimony, you indicate that Stericycle  
22 drivers receive training in the following areas, and  
23 then you have a number of bullet points there. From  
24 whom do the drivers receive that training?

25 A. They receive that training from myself or

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1 their manager.

2 Q. Who would their manager be?

3 A. Chris Dunn, D-u-n-n.

4 Q. What training have you received to certify  
5 you for the training that you give to your employees?

6 A. When I was hired on, my hiring manager took  
7 me through each and every topic, ensured that I  
8 understood it, and assisted me with initially  
9 training the employees.

10 Q. Is there any sort of certification that you  
11 receive as a trainer?

12 A. No, there's not.

13 Q. It's just your experience in the regulations  
14 that apply to this type of service?

15 A. The experience with the regulations and  
16 observing what the employees go through and tailoring  
17 that training to what their needs are in the  
18 workplace.

19 Q. If you could look at -- I believe it's  
20 Exhibit 97, which is referenced on page eight of your  
21 testimony as CS-7. That exhibit indicates that it's  
22 the written hazard communication plan; correct?

23 A. Yes, it does.

24 Q. Okay. What does that plan have to do with  
25 the transportation and collection of medical waste?

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1           A.    Hazard communication plan is a requirement  
2   for any sort of business that may use some sort of  
3   chemicals that can be considered dangerous.  Why we  
4   have this plan is in our spill kits we have  
5   disinfectant, which would require that information  
6   about that item to be passed on to the people who may  
7   use it.

8           Q.    And so is that training that the employees  
9   go through and/or is it information that is included  
10  in the spill kit?  Let me -- well, go ahead.

11          A.    I don't understand your question.

12          Q.    Let me clarify.  I asked two questions.  Let  
13  me ask them separately.  Is this a training plan that  
14  your employees go through?

15          A.    They go through hazard communication  
16  training, which this plan outlines some of the  
17  material that must be covered in that training.

18          Q.    Is that training given to the drivers?

19          A.    Yes, it is.

20          Q.    Is the information in that plan also  
21  included in the spill kit?

22          A.    Are you asking me if there's written  
23  procedures inside the spill kit?

24          Q.    Yes.

25          A.    No, there is not.

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1 Q. Okay.

2 A. There is a separate spill response training,  
3 which we go through, and we instruct and demonstrate  
4 how the spill kit should be used in order to properly  
5 clean up a spill if a spill were to happen.

6 Q. If we were to turn, then, to -- I guess it's  
7 Exhibit 92, and addendum two of that exhibit, also  
8 identified as page six.

9 A. Yes.

10 Q. What would be the chemicals in that spill  
11 kit that would be subject to the hazard communication  
12 plan?

13 A. The bleach.

14 Q. That's the only item?

15 A. Essentially. We would probably have  
16 information on the germicidal wipes in addition to  
17 that.

18 Q. Okay. Going back to page eight of your  
19 pre-filed testimony, you indicate that drivers  
20 receive training on lockout/tagout control, and you  
21 reference an Exhibit CS-8, which is Exhibit 98. Why  
22 is lockout/tagout control relevant to drivers  
23 involved in the collection and transportation of  
24 medical waste?

25 A. That ties into DOT requirements, in that a

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1 driver must perform a pre and post-trip inspection of  
2 their vehicle to make sure it is safe enough to  
3 operate on the public highways. And that includes  
4 the driver walking around all four sides of the  
5 vehicle, looking under the hood, and lockout/tagout  
6 becomes an important process of that to ensure that  
7 that employee is safe during that inspection.

8 And the lockout/tagout portion of that, they  
9 are trained in how to properly secure the vehicle in  
10 having sole possession of any sort of mechanism that  
11 they start the vehicle while they're doing that  
12 inspection.

13 JUDGE RENDAHL: Mr. Haffner.

14 MR. HAFFNER: Yes.

15 JUDGE RENDAHL: Where were you referring in  
16 the direct testimony to that exhibit?

17 MR. HAFFNER: Page eight, Your Honor.

18 JUDGE RENDAHL: Okay. Thank you.

19 Q. Mr. Stromerson, if you could please turn to  
20 page -- or Exhibit 92, and the first page of that  
21 exhibit. This is the operating plan for Stericycle  
22 for biomedical waste terminal?

23 A. Yes.

24 Q. Is this a plan that is only for the Morton  
25 facility?

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1           A.    No, this plan is for the collection  
2 facilities.

3           Q.    And in the first paragraph, you reference a  
4 transportation manager and area manager,  
5 environmental safety and health.  Who would those two  
6 people be?

7           A.    The transportation manager is Chris Dunn,  
8 and the area manager, environmental safety and  
9 health, is myself.

10          Q.    Where do you have your office, your personal  
11 office?

12          A.    In our Kent facility.

13          Q.    Where does Mr. Dunn have his personal  
14 office?

15          A.    In our Kent facility.

16          Q.    Turning to page two of that exhibit, you  
17 make a number of statements on that page, starting  
18 with the first partial paragraph.  You make a number  
19 of statements regarding regulations.  For instance,  
20 the last sentence of the first partial paragraph  
21 ends, The vehicles used for transportation of the  
22 waste will meet all current regulations.

23               MR. JOHNSON:  Your Honor, could I just ask  
24 Mr. Haffner, he referred to you made certain  
25 statements.  Could you clarify your question or at

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1 least -- I don't know that Mr. Stromerson is making  
2 statements, but --

3 MR. HAFFNER: You bring up a good point, Mr.  
4 Johnson.

5 Q. Mr. Stromerson, did you prepare the  
6 operating plan that is Exhibit 92?

7 A. I tailored the operating plan according to  
8 our specific needs.

9 Q. So when reference is made in here that the  
10 vehicles used for transportation of the waste will  
11 meet all current regulations, I guess when I say that  
12 you provide for that, really I'm referring to the  
13 plan, and your company is making that provision  
14 through the plan; correct?

15 A. That could be a correct statement.

16 Q. How does the driver know what those  
17 regulations are that the vehicle is supposed to meet?

18 A. The driver, as part of their initial  
19 training, has numerous topics that they need to go  
20 through. One of them is the U.S. Department of  
21 Transportation and assorted State of Washington rules  
22 and regulations, which are listed in the sentence  
23 before the one in question. It is that time in which  
24 the drivers are made aware, if they have no driving  
25 experience in the past, and then, if they do, it's

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1 just reaffirmed, that the rules and regulations  
2 outline how our trucks are operated on the highway.

3 Q. Can you point to us in the exhibits that you  
4 submitted with your testimony where those rules and  
5 regulations are specified for the drivers?

6 A. Are you asking for the direct citations?

7 Q. I'm asking for -- you have a very detailed  
8 plan here, it appears, and I'm asking if any of the  
9 exhibits list the different regulations that the  
10 drivers need to make sure that their vehicles are in  
11 compliance with?

12 A. As far as in our training topics, we talk  
13 about specific rules, for instance, Code of Federal  
14 Regulation Rules.

15 Q. No, I'm asking specifically whether any of  
16 the exhibits that you submitted with your pre-filed  
17 testimony list any of the regulations that your  
18 drivers need to make sure, or actually, that the  
19 vehicles are -- you're indicating that the vehicles  
20 will be in compliance with?

21 A. I guess I'm having trouble understanding  
22 your question. Are you asking me if, during the  
23 training, we go over the original rule and how it  
24 applies to the operation?

25 Q. No, again, I'm asking if any of the exhibits

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1 include a list of the regulations that you would  
2 advise the drivers that their vehicles are needing to  
3 be in compliance with? Is that a part of -- first of  
4 all, is that a part of your training? Do you advise  
5 your drivers what regulations they need to be in  
6 compliance with for their vehicle?

7 A. Yes, essentially the Department of  
8 Transportation hazardous material rules and  
9 regulations.

10 Q. Have you included those regulations in these  
11 exhibits?

12 A. As far as the rules and regulations as  
13 pulled out of the Code of Federal Regulations?

14 Q. Or even the citations to them and any  
15 reference to them, other than just as a general  
16 blanket statement of all current regulations?

17 A. I think you will find some -- are you  
18 specifically asking for Department of Transportation?

19 Q. Whatever -- when you say the vehicles used  
20 -- when the document says the vehicles used for  
21 transportation of the waste will meet all current  
22 regulations, I'm wondering, do you have those  
23 regulations listed somewhere in these exhibits?

24 A. Well, in one document here, Exhibit 95,  
25 accident investigation procedures, there's a

0982

1 reference in Item Number 3, 3.1, DOT regulations,  
2 National Safety Council, OSHA 1910, WISHA standards,  
3 ANSI incident surveillance.

4 JUDGE RENDAHL: When you say ANSI, that's  
5 A-N-S-I?

6 THE WITNESS: A-N-S-I; correct. Keep in  
7 mind that the operating plan is an overall document,  
8 which may not get into minute detail that would  
9 necessarily -- that would necessarily be in the  
10 actual training, but it gives you guidance on what  
11 needs to be discussed at time of training.

12 Q. Are you claiming that you would have other  
13 training manuals that would more specifically  
14 identify those DOT regulations that have not been  
15 provided?

16 A. I was saying that the actual training  
17 documents, which are not provided in here, would  
18 contain those items.

19 Q. Okay. Thank you. In the third paragraph,  
20 on page two, second sentence, you make a -- the  
21 document makes a statement that --

22 JUDGE RENDAHL: Are you referring to Exhibit  
23 91?

24 MR. HAFFNER: I'm sorry, Exhibit 92.

25 JUDGE RENDAHL: Okay. And you are on which

0983

1 page?

2 MR. HAFFNER: Page two.

3 JUDGE RENDAHL: Line?

4 MR. HAFFNER: It's actually the second full  
5 paragraph, the second sentence, which begins at the  
6 end of the third line.

7 JUDGE RENDAHL: Okay. Thank you.

8 Q. That reads, At the time of pickup, the  
9 driver records the date of pickup, the generator  
10 information, the number of waste containers being  
11 collected and the total volume or weight of the waste  
12 being collected.

13 How do your drivers determine the weight of  
14 the waste?

15 A. They do not.

16 Q. So at the time of pickup, they don't  
17 determine the weight of the waste being collected; is  
18 that correct?

19 A. No, they do not determine the weight.  
20 However, they do calculate volume, which is  
21 stipulated in the Department of Transportation  
22 shipping paper, and also, I believe, in the  
23 Washington Administrative Code, that they require  
24 some form of recording of the material. That can be  
25 through volume or through weight, and since our

0984

1 containers have defined volume characteristics, we  
2 use simple math in determining the number of  
3 containers, the size of the containers, thus giving  
4 us the cubic footage or volume of the material.

5 Q. Is it impossible to exceed the weight of  
6 your containers, then?

7 A. Is it possible?

8 Q. Right. And let me rephrase that. Is it  
9 impossible to exceed any weight limitations that your  
10 company might have on those containers?

11 A. It would be possible that the generator can  
12 exceed that limit. And as a driver gains more  
13 experience in collecting these containers, he can  
14 make an educated assumption that a container might  
15 greatly exceed the maximum capacity of the container.

16 Q. In that same paragraph that we just looked  
17 at, the last sentence provides, Copies of manifests  
18 will be maintained on site and made available for  
19 inspection purposes upon request.

20 What -- when the generator has waste picked  
21 up from their site, what do they receive from you in  
22 documentation for that? And I'll ask that maybe you  
23 look at Exhibit 65, which would be in that book,  
24 which I believe is a copy of the manifest.

25 A. Well, if you're asking if I give them

0985

1 anything, no, I don't. The driver actually gives  
2 them a copy of the signed manifest, which has their  
3 signature on it, as the offerer or shipper of the  
4 waste, along with the driver's signature, upon  
5 picking that waste up.

6 Q. And can you -- is Exhibit 65 the manifest  
7 that you're speaking about?

8 A. Yes, it is.

9 Q. That's given to the generator when their  
10 waste is picked up?

11 A. One copy of it is, yes.

12 Q. And is it correct, then, that the -- that's  
13 the only copy they get unless they request a  
14 different -- another copy, which is apparently  
15 maintained at your company's facility?

16 A. I'm not totally familiar with that, but it  
17 is my understanding that if a generator were to want  
18 a returned copy with the treatment facility's  
19 signature on it, that would be something that can be  
20 provided by the company.

21 Q. The last line, the last sentence of that  
22 page, page two, provides that all waste is contained  
23 in secured semi trailers until ready for transport.  
24 How does your company maintain the security of those  
25 semi trailers?

0986

1                   MR. JOHNSON: Excuse me, Mr. Haffner. Are  
2 you referring now to Exhibit 92 again?

3                   MR. HAFFNER: Pardon me, yes. I'm back on  
4 Exhibit 92.

5                   JUDGE RENDAHL: That's the last sentence on  
6 the page?

7                   MR. HAFFNER: Yes.

8                   MR. JOHNSON: Page two, I believe; is that  
9 correct?

10                  JUDGE RENDAHL: Yep, page two.

11                  Q. How does your company secure the semi  
12 trailers?

13                  A. All of our vehicles are secured with a lock.  
14 When the route trucks leave for the day, the  
15 container, the box, if you will, is locked with a  
16 padlock that is unlocked only at generator facilities  
17 during the on-loading and off-loading times. When  
18 the route trucks return at the end of the day, they  
19 then back up to a semi trailer that's in the yard,  
20 and the yard is secured via a fence. They once again  
21 unlock their door, transfer the full containers from  
22 the route truck onto the semi trailer. At the  
23 completion of that transfer, all the vehicles are  
24 once again locked and parked accordingly. And then  
25 that trailer, upon its complete containment of all

0987

1 the waste, is once again locked and then transported,  
2 transferred to the treatment facility.

3 Q. How long is the waste on the initial  
4 vehicle?

5 A. Well, you mean the route truck?

6 Q. Yes.

7 A. I can't give you a specific time, but, as an  
8 example, a driver may begin his day at 6:00 a.m.,  
9 after his initial paperwork and pre-trip inspections,  
10 travel time to his first facility, let's say it's  
11 close by, it's an hour. Generally our guys are  
12 scheduled at four 10-hour days, so they're back  
13 within 10 hours, off-loaded, and on their way. So on  
14 the time on the original route truck would probably  
15 not exceed 10 hours, or roughly thereabouts.

16 Q. Then once that waste is off-loaded onto the  
17 trailer, did you indicate that the trailer was also  
18 padlocked?

19 A. Correct. All our vehicles are.

20 Q. Is that trailer under refrigeration?

21 A. No, it's not. That trailer typically  
22 remains on site for about 24 hours. It may be 48  
23 hours if it were a Friday till Monday, but those  
24 trailers are transported to the treatment facility on  
25 a daily basis.

0988

1 Q. Except on weekends, apparently, when -- do  
2 your route trucks only operate Monday through Friday?

3 A. Correct.

4 Q. So if a route truck came in on a Friday and  
5 cross-loaded to a trailer, the waste in the trailer  
6 may not be taken to Morton until the following  
7 Monday?

8 A. There's a possibility of that. However, we  
9 have shuttle drivers that will work, you know, past  
10 midnight transferring that waste, so 24 hours to 48  
11 hours is typically the turnaround time on the  
12 trailers.

13 Q. All right. On the Exhibit 92, page three,  
14 under Section Three, the second paragraph, the  
15 document states that each container will be scanned  
16 for radiation at the treatment facility. By  
17 treatment facility, is that referring to Morton?

18 A. Correct.

19 Q. Why is that done at the treatment facility  
20 instead of before the waste is loaded onto the route  
21 truck?

22 A. It's a permit requirement of the treatment  
23 facility and not the pickup vehicles.

24 Q. Does your company have the ability to  
25 transport hazardous materials or materials that are

0989

1 -- that contain radiation?

2 A. We do not have a permit for that. However,  
3 we have worked with the Washington State Radiological  
4 Department, for lack of the exact term, in having  
5 containers that may be high in radiation, if the  
6 scanners at the facility do indicate that, we're able  
7 to contact the State and have the DOT exemption to  
8 return that container to the customer.

9 Q. But that will --

10 A. The State was not exorbitantly concerned,  
11 because the typical material in our waste has a decay  
12 period that is typically a day, 18 to 24, maybe 36  
13 hours at the most.

14 Q. But under your procedures, you do allow for  
15 the possibility of the transportation of radioactive  
16 material?

17 A. We do not knowingly accept any of that  
18 material, no.

19 Q. But you recognize that it is possible,  
20 because you are needing to scan it at your treatment  
21 facility?

22 A. As any treatment facility has scanning  
23 material, just as Covanta does. However, we scan  
24 each container, whereas other facilities may scan a  
25 whole trailer instead of each individual container.

0990

1 JUDGE RENDAHL: Mr. Haffner, before you go  
2 forward --

3 MR. HAFFNER: Yes.

4 JUDGE RENDAHL: -- I just want to clarify,  
5 when I first heard you talk about the radioactive  
6 material, I thought I heard you say a K period, and  
7 then I realized you were saying a decay period. Is  
8 that correct?

9 THE WITNESS: That's correct. I apologize.

10 JUDGE RENDAHL: I just want to make sure  
11 it's clear for the record.

12 MR. HAFFNER: Thank you, Your Honor.

13 Q. Still on Exhibit 92, in page three, Section  
14 Four refers to employee training, and again lists a  
15 number of areas where the employees receive training,  
16 including the third item, which is personal  
17 protective equipment. I believe there are a number  
18 of exhibits attached to your testimony that refer to  
19 personal protective equipment. Do you know which of  
20 those exhibits the driver relies on to know what he  
21 should have in the way of personal protective  
22 equipment?

23 A. You're asking me which policy would  
24 specifically address personal protective equipment?

25 Q. Yes.

0991

1           A.     That would be a couple of documents.  The  
2     first one would be Exhibit 94, which is entitled  
3     personal protective equipment, and personal  
4     protective equipment is also addressed in Exhibit 93,  
5     blood-borne pathogens.

6           Q.     And Exhibit 93 is quite a lengthy exhibit.  
7     Can you tell us where in Exhibit 93 the personal  
8     protective equipment reference might be?

9           MR. JOHNSON:  Mr. Haffner, are you referring  
10    to personal protective equipment for drivers only?

11          MR. HAFFNER:  Yes.

12          MR. JOHNSON:  Thank you.

13          THE WITNESS:  In Exhibit 94, page seven,  
14    there's a matrix for all of the positions within the  
15    company that outlines the personal protective  
16    equipment required.

17          Q.     Now, according to this document, and again,  
18    you said the matrix --

19          JUDGE RENDAHL:  Would that be Exhibit 8.1?

20          THE WITNESS:  Correct.

21          Q.     If we're looking for -- again, this hearing  
22    is primarily focusing on transportation of medical  
23    waste, and so I'm assuming that the job title of  
24    drivers would be the only employee position that  
25    would be affected during the transportation of

0992

1 medical waste; is that correct?

2 A. During the operation of vehicles, that would  
3 be correct.

4 Q. And does this matrix indicate that there are  
5 only four pieces of personal equipment that would be  
6 required for a driver, those being gloves, safety  
7 glasses and/or goggles, safety boots and ear plugs?

8 A. The specific items would be listed as such.  
9 However, they all are required to wear uniforms. Not  
10 only the drivers, but the plant personnel have  
11 uniforms, also.

12 Q. Okay. So that would be a fifth item that  
13 would be added for personal protective equipment for  
14 drivers?

15 A. You could consider that a piece of personal  
16 protective equipment, yes.

17 Q. Now, if we look on Exhibit 94, where -- and  
18 that was where Exhibit 8.1 of Exhibit 94 was located.  
19 If we also look further to Exhibit 8.3 of that  
20 exhibit, which is page 29 of 35, in the upper  
21 right-hand corner, this appears to me to be another  
22 list of personal protective equipment that would be  
23 required of drivers, and we see the gloves, the  
24 eyewear, the boots, and hearing protection, but this  
25 one also includes a dust/mist mask. Is that an item

0993

1 that should have been included also on Exhibit 8.3 --  
2 or 8.1, pardon me?

3 A. No, because if you read on for -- it lists  
4 potential exposure to airborne contaminants when in  
5 plant. Drivers typically do not go in plant for any  
6 reason at all that they would need to have that dust  
7 mask as part of their normal PPE requirements.

8 Q. So do the drivers not enter the plant when  
9 they transport the waste?

10 A. No, they do not.

11 Q. How does the waste get into the plant?

12 A. By the plant workers. They offload the  
13 trailers in the facility.

14 Q. Okay. So you have a separate tractor that  
15 pulls the trailers around in the plant?

16 A. The trailers are not actually in the plant.  
17 They're on the outside of the plant. When the  
18 trailer backs up to the wall, it's a dock high that  
19 the employees inside the plant roll up the door and  
20 then are able to access the material in the trailer.  
21 So the actual driver does not go in the treatment  
22 facility at all.

23 Q. All right. If we could look, then, at  
24 Exhibit 101; and I believe it's page 28 of that  
25 exhibit, the last page of that exhibit, which is

0994

1 Appendix G.

2 MR. JOHNSON: I'm sorry, let's see. You're  
3 on the last page of Exhibit 101?

4 MR. HAFFNER: Correct.

5 MR. JOHNSON: Thank you.

6 JUDGE RENDAHL: Appendix G.

7 MR. HAFFNER: Yes.

8 Q. This is another grid regarding minimum  
9 personal protective equipment requirements, and  
10 again, we have a list of job titles, including  
11 drivers, on the left-hand side. Do you see that?

12 A. That's correct.

13 Q. However, when we go across, there appear to  
14 be only two items of personal protective equipment  
15 required under this grid, those being gloves and  
16 boots. Is there a reason why this grid has a  
17 different requirement than the previous grid?

18 A. This is the exposure control plan written  
19 specifically for transportation, as noted on the  
20 first page, so it's been tailored thus to be specific  
21 to drivers and their needs for PPE on a daily basis.

22 Q. Why is that different than the document that  
23 we saw in -- was it Exhibit 94, which was Exhibit 8.1  
24 of Exhibit 94?

25 A. If you go to the first page of that, which

0995

1 is the personal protective equipment policy, in the  
2 heading, it says applies to all locations. So this  
3 is a general policy that encompasses anything and  
4 everything that may be needed, and that is broken  
5 down further when the specific exposure control plan  
6 is written for transportation or treatment  
7 facilities.

8 Q. So while the drivers are out on the road,  
9 the only personal protective equipment you really  
10 require of them are these impervious work gloves and  
11 safety boots; is that correct?

12 A. Along with their uniforms. They must be in  
13 uniform.

14 Q. Okay. Is there anything special about this  
15 uniform?

16 A. It has our logo with their name on it that  
17 identifies who they are when they go to the  
18 facilities.

19 Q. Okay. Thank you.

20 A. And to the customers.

21 Q. Going back to Exhibit 92, and again, page  
22 three, in Section Four, after the list of different  
23 areas of training that your employees are exposed to,  
24 there is a sentence on that next paragraph that  
25 states, Training will be conducted at initial

0996

1 employment and as required thereafter. Who  
2 determines how frequently the training is to be  
3 required?

4 A. Typically, the rules and regulations outline  
5 a time line if a person needs training, and also the  
6 company has embraced those regulations and actually  
7 has produced an outline which states when things need  
8 to be administered as far as training. And that is  
9 Exhibit 96, I believe. And a number of the training  
10 topics, for instance, as an example, blood-borne  
11 pathogens, I believe the standard states that they  
12 need that training within 10 days of initial hire.

13 So we have taken those differing and  
14 multitude of regulations and tried to create a matrix  
15 as far as a time line on when training needs to be  
16 done. Most of it is annually. There is some DOT  
17 training that needs to be done every three years, and  
18 some company training that needs refreshers at  
19 differing times.

20 Q. Staying on that same page three, the last  
21 paragraph --

22 MR. JOHNSON: Exhibit 92 again?

23 MR. HAFFNER: Yes.

24 Q. The second sentence of that last paragraph  
25 states, All spills are reported to the appropriate

0997

1 supervisor immediately. Who --

2 A. I'm sorry. Where are we?

3 Q. I'm sorry. Exhibit 92, page three, the last  
4 paragraph, the second sentence of that paragraph --

5 A. Okay.

6 Q. -- states, All spills are reported to the  
7 appropriate supervisor immediately. Who would be the  
8 appropriate supervisor at any time?

9 A. That's typically the hiring manager for a  
10 driver. That would be Chris Dunn. If the driver  
11 happens to have a release, they have direct  
12 connection, through Nextel radios, to notify of the  
13 incident and indicate that cleanup has begun. And  
14 with that direct connection, if they need assistance,  
15 that can be brought to them.

16 Q. And since Mr. Dunn offices in Kent, if a  
17 spill occurs in Pullman, Mr. Dunn would supervise the  
18 cleanup of that spill or the supervision of that  
19 spill from Kent by telephone?

20 A. Via telephone. For him to be there  
21 personally would be probably impossible. That is why  
22 each driver needs to go through spill training on  
23 their own, because they're on their own every day.  
24 They're on the highway and different locations. They  
25 need to be essentially self-supervising themselves,

0998

1 so they need to have that knowledge and the ability  
2 to conduct themselves in the appropriate manner to  
3 take care of the incident.

4 Q. So are there occasions when they would be  
5 able to -- or when you would rely on them to act on  
6 their own without reporting it to the supervisor?

7 A. I don't understand your question.

8 Q. If there are spills, would you ever allow  
9 the driver to react to that spill, handle it on his  
10 own, without reporting it to the supervisor?

11 A. They would automatically notify the  
12 supervisor. That's the thrust of the majority of the  
13 training that they go through, is communication.

14 Q. Okay.

15 A. Communication is key.

16 Q. Okay. Speaking of communication, I believe  
17 you mentioned that they would contact Mr. Dunn or the  
18 appropriate supervisor by phone. Are all of your  
19 drivers equipped with cell phones to call back, or  
20 what means of communication do they use to contact  
21 their supervisor?

22 A. I referenced Nextel radios, which has direct  
23 connect abilities.

24 Q. Okay.

25 A. I do not know if those same radios have cell

0999

1 phone capabilities for each driver or not, but the  
2 Nextel radios gets them in touch with front office,  
3 their hiring manager, dispatcher, any other  
4 supervisor they can get ahold of.

5 Q. Have you determined whether the Nextel  
6 network has any gaps in the state of Washington?

7 A. I have not done that. I do not have that  
8 ability.

9 Q. If there was a situation where a driver  
10 could not contact the supervisor because of a gap in  
11 the cellular coverage, would you expect the driver to  
12 handle that spill on his or her own?

13 A. By not being able to contact someone does  
14 not preclude them from conducting business as  
15 necessary.

16 Q. Would you --

17 A. So they would -- yes, they would have to  
18 clean the spill up and then notify the person in the  
19 appropriate manner at the appropriate time.

20 Q. Either by finding the nearest telephone or  
21 some means of immediate communication, whatever would  
22 be closest?

23 A. Thing is, what I've seen with the Nextel  
24 radios, they have an ability to alert, so if there is  
25 a gap in the cell coverage, as you said, once that

1000

1 connection is made again, it immediately alerts that  
2 person that they have a message, if you will.

3 Q. And this Nextel technology that you're  
4 talking about, it's available to any carrier, is it  
5 not? Any person can obtain that type of service?

6 A. I believe that's correct.

7 Q. Still on Exhibit 92, and going to page five,  
8 this is a document titled Addendum Number One,  
9 Emergency Coordinators. And the first sentence  
10 provides, The emergency coordinators listed in this  
11 section are authorized to act as on-scene  
12 coordinators and to commit the necessary resources  
13 during an emergency. And then the last sentence of  
14 that paragraph indicates, The coordinators are as  
15 follows and lists four people, Mr. Dunn, yourself,  
16 Don Wilson and Mike Philpott. Is this correct that  
17 these are the four people that are to coordinate  
18 on-scene emergencies?

19 A. These would be the people that, in the case  
20 of such an emergency, would have the authority to  
21 authorize extended services, notify appropriate  
22 agencies.

23 Q. Looking at the telephone numbers that you've  
24 listed for each of these four individuals, it would  
25 appear that the area codes of all four individuals

1001

1 are for King County phone numbers; is that correct?

2 A. That appears to be correct, yes.

3 Q. So is it correct to say that your on-scene  
4 coordinators are all located in King County?

5 A. That would be to say that these four people  
6 are located in King County. If necessary to be on  
7 scene, and on scene would be relative to the state of  
8 the emergency, but these people are people who  
9 authorize the release of resources, whatever they may  
10 be, to take care of the incident at the scene.

11 Q. Would you require any of these four people  
12 to travel to the scene as part of their  
13 responsibilities as an on-scene coordinator?

14 A. It would -- that would be dictated by the  
15 type of emergency, yes.

16 Q. Would it be dictated by the location of the  
17 emergency? For instance, if you had an emergency in  
18 Clarkston, Washington, would one of these four  
19 individuals go to that emergency?

20 A. They possibly could, or have a person in  
21 that area go and act in their behalf.

22 Q. All right. Still on Exhibit 92, and now  
23 turning to page six, which is Addendum Number Two,  
24 this is identified as a spill kit inventory. Can you  
25 explain -- are all of these items included in some

1002

1 physical kit, such as a box or a container of some  
2 sort?

3 A. Yes, they are. These things are the list  
4 for stable items in the kit, that it's the driver's  
5 responsibility to ensure that their kit is fully  
6 functional at all times.

7 Q. Okay. And what type of -- how do you keep  
8 all those things together? What are they stored in?

9 A. They're stored in a container.

10 Q. What type of a container?

11 A. A container that is large enough to handle  
12 all this material and has a sealable lid on it.

13 Q. Is this like a Rubbermaid type container or  
14 is it like a first aid kit type container?

15 A. No, a first aid kit would be too small.  
16 A typical Rubbermaid container would be sufficient to  
17 house these items.

18 Q. The second item on the list indicates that  
19 latex gloves are a part of the spill kit. Does your  
20 company have any concerns about potential allergies  
21 to latex?

22 A. There are allergies out there for latex,  
23 yes.

24 Q. How does your company take that into  
25 consideration when it requires latex gloves to be

1003

1 part of a spill kit?

2 A. That may be a universal term for the type of  
3 glove that would be necessary for that, whether it's  
4 actually latex or not, but an impervious glove can  
5 also mean a Nitrile glove.

6 MR. JOHNSON: I'm sorry, what was that word?

7 THE WITNESS: Nitrile.

8 MR. JOHNSON: Could you spell that for the  
9 record?

10 THE WITNESS: N-i-t-r-i-l-e, which would be  
11 a suitable substitute for latex.

12 Q. Is there anything that you've omitted from  
13 this spill kit that you think at this time should be  
14 added to that spill kit?

15 A. There can always be material added or  
16 subtracted from a list, as far as what might be  
17 necessary to conduct the job task, if necessary.

18 Q. Let's look at the next page of Exhibit 92,  
19 which is Addendum Three, and that appears to be a --  
20 well, I'm not sure what it appears to be. Are these  
21 procedures when there's a spill?

22 A. Correct, if there's an unintentional release  
23 of material from a container, these basically outline  
24 the steps necessary to remediate that spill.

25 Q. There is -- there are a number of bullet

1004

1 points listed, and the fourth point down is to shovel  
2 solids from spill into container?

3 A. Mm-hmm.

4 Q. Based on the spill kit that you've listed on  
5 the previous addendum, Addendum Number Two, what  
6 would the driver use to shovel those solids?

7 A. I believe the dustpan would serve that  
8 purpose.

9 Q. So that would be the suitable implement for  
10 shoveling any solids from a spill on a truck full of  
11 medical waste?

12 A. Keep in mind that it is a tool that can be  
13 used which prevents the employee from directly  
14 touching the material that was unintentionally  
15 released.

16 Q. If we go down three more lines, there is a  
17 shovel, absorb, and other items into a container. I  
18 assume that that's the absorbent material that might  
19 be used to absorb liquids?

20 A. Correct.

21 Q. Again, you would require them to use the  
22 dustpan to shovel that material?

23 A. Right.

24 Q. What container would they be putting this  
25 into?

1005

1           A.    Into a new reusable container or a box, both  
2 of which needs the plastic liner before insertion of  
3 material.

4           Q.    Your spill kit does not list as an item  
5 within it a reusable container or box, does it?

6           A.    No, but essentially there's numerous empty  
7 containers on every truck, because they're dropping  
8 off containers while they're picking up new  
9 containers, and there's always residual empty  
10 containers in each vehicle.

11          Q.    That's assuming you've not had just an  
12 excellent day and been able to drop off your reusable  
13 containers at potential customers; correct?

14          A.    That's with the initial factor of needing --  
15 potential for needing extra for every stop.

16          Q.    The fifth item down advises the driver, I  
17 guess, to spray the area with USEPA-approved  
18 tuberculocidal disinfectant. That's spelled  
19 t-u-b-e-r-c-u-l-o-c-i-d-a-l. Is that listed on the  
20 spill kit inventory, a disinfectant?

21          A.    The disinfectant used would be the bleach  
22 solution. That can come in powder form, also.

23          Q.    Why don't you just say bleach?

24          A.    I can't answer that. I didn't specifically  
25 write these things in that order.

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1 Q. All right. If you could please turn to  
2 Exhibit 93. Is this training document required  
3 training for the drivers of the trucks that transport  
4 and collect medical waste?

5 A. Which portion of the document are you  
6 referring to?

7 Q. Well, I guess is any portion or are any  
8 portions of this document used in the training of  
9 drivers for the transportation and collection of  
10 medical waste?

11 A. Yes, this second page in is an outline of  
12 what transpires during training. The third page in  
13 is the written test for blood-borne pathogens  
14 training. The answers thus follow with reasons why  
15 the answer is. The next page is the certification of  
16 acknowledgement of receipt of training, which again  
17 outlines essentially what is on the second page in of  
18 this document.

19 During the training, the employees are  
20 notified of our policy, where that policy is located,  
21 both in my office and in Mr. Dunn's office, along  
22 with where rules can be obtained for their review at  
23 their leisure.

24 Q. If we look at -- within still Exhibit 93, if  
25 we look at what are identified as pages 12 of 23, 13

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1 of 23, and 14 of 23, according to the heading of that  
2 exhibit, 8.1, this is a section on job  
3 descriptions/task descriptions and protective  
4 equipment. I didn't find anything there for drivers.  
5 Am I wrong? And if I am not wrong, can you explain  
6 why drivers are not listed?

7 A. Drivers would be encompassed in the trailer  
8 unloader task, also. They could be dovetailed into  
9 that. Once again, this is a policy that encompasses  
10 all of the Pacific Northwest locations.

11 MR. JOHNSON: Mr. Stromerson, are you  
12 referring to the first item on Exhibit 12 of 23,  
13 where it says trailer/unload?

14 THE WITNESS: Right.

15 MR. JOHNSON: You have to answer audibly.

16 THE WITNESS: Yes, I'm sorry. The driver's  
17 not specifically listed in this document.

18 Q. Is that something you think you would want  
19 to change, to make sure that the drivers are included  
20 in that training and included in this document as  
21 being required to go through that training?

22 A. It could be added for clarity, but it does  
23 not preclude the driver from not going through the  
24 required training. Blood-borne pathogens training is  
25 one of the staples of the training regime we have.

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1 Q. Still within Exhibit 93, turning to page  
2 seven of 23, there is a Section 7.5, and the third  
3 paragraph down starts out with a reference to some  
4 dates. Between April 18, 2001, to December 13, 2001,  
5 such incidents must be recorded on the sharps injury  
6 log. That sentence would indicate that this document  
7 was prepared sometime before April 18, 2001. Has  
8 this document been revised since then?

9 A. Repeatedly.

10 Q. Is there a reason why a provision such as  
11 that was not revised?

12 A. I don't understand.

13 Q. Why would you, if this document had been  
14 revised, why would you include a reference to  
15 something that, if done, to dates that have now  
16 passed?

17 A. These dates refer to when the OSHA 200 log  
18 made changes that became the OSHA 300 log and  
19 required a sharps injury log to be kept for any  
20 injury that was from a sharps material and punctured  
21 the skin OSHA logs are required to be kept for up to  
22 five years, so I would expect that that reference  
23 would be removed after that five-year period.

24 Q. Okay. If we could turn to Exhibit 95, on  
25 page two of that exhibit, in Section 8.0 procedure,

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1 there is a Paragraph 8.5, or a sentence 8.5, which  
2 provides that the supervisor/lead person will be  
3 assigned the duty of ensuring the accident  
4 investigation is initiated and completed in a timely  
5 manner. Who would be the supervisor/lead person that  
6 would be responsible for that?

7 A. This particular policy is one to review  
8 accidents and injuries to determine if they're  
9 preventable or not. It includes management staff,  
10 including myself, and whether they be transportation  
11 or plant managers and supervisors, if necessary, and  
12 actual employees could be part of that review  
13 process. And they would just ensure that the process  
14 in determining the outcome of that particular  
15 incident would be followed through in the appropriate  
16 manner.

17 Q. So who would those people be, again?  
18 Yourself.

19 A. Myself, another manager, whether it be a  
20 plant manager or a transportation manager, supervisor  
21 from either of those endeavors.

22 Q. Who would the transportation manager be?

23 A. Chris Dunn.

24 Q. Who would the supervisors be?

25 A. He has three different supervisors.

1010

1 Q. Who are they?

2 A. Sean McDevitt.

3 JUDGE RENDAHL: Can you spell that last  
4 name?

5 THE WITNESS: M-c-D-e-v-i-t-t.

6 JUDGE RENDAHL: Thank you.

7 THE WITNESS: Ken Daub, D-a-u-b, and Vern  
8 Sites, S-i-t-e-s.

9 JUDGE RENDAHL: Thank you.

10 THE WITNESS: Sure.

11 Q. Where does Mr. McDevitt office?

12 A. He is stationed out of Spokane.

13 Q. Mr. Daub?

14 A. Stationed out of Woodinville.

15 Q. Mr. Sites?

16 A. He is in Portland.

17 Q. If you could turn to Exhibit 101, now, this  
18 appears to be an exposure control plan for  
19 transportation, and is it applicable to other aspects  
20 of your company's operations, or is it specifically  
21 just for transportation?

22 A. I would expect it would mirror the exposure  
23 control plan for other aspects, as well.

24 Q. If we look at page nine of that exhibit, in  
25 Paragraph Two -- Section Two, I should say, again,

1011

1 this goes to the issue of personal protective  
2 equipment, and in Paragraph A, the last sentence  
3 makes reference to Appendix G, which we looked at  
4 before, that's the last page of that Exhibit 101. It  
5 also, then, in Paragraph B refers to a face shield is  
6 required when the potential exists for splashes to  
7 the mucous membranes of regulated medical waste.

8 I don't see that on the chart for -- that's  
9 on Appendix G. Why is a face shield included in this  
10 list of personal protective equipment, but not  
11 included in the chart?

12 A. The face shield services a specific need is  
13 outlined there. When handling waste above the  
14 shoulder, when handling improperly packaged or  
15 leaking containers. We would not accept improperly  
16 packaged or leaky containers to start with. And the  
17 drivers are instructed on how to avoid lifting things  
18 above their shoulders by using the lift gate or other  
19 dock mechanisms that they can slide containers on top  
20 of others, adjusting the height accordingly.

21 Q. You don't offer a service to assist the  
22 customer if they present you with an improperly  
23 packaged or leaking container?

24 A. DOT regulations prohibit us from carrying  
25 that container because it's improperly packaged.

1012

1 Q. That means -- I understand your statement to  
2 mean that you would not take an improperly packaged  
3 or leaking container onto your truck; is that  
4 correct?

5 A. That's correct, because it's not presented  
6 for transportation the way the rules outline.

7 Q. And you don't provide your customers with a  
8 service to correctly package that container, do you?

9 A. If that were to take place, we would then  
10 become the offerer, as well, because we would then be  
11 packaging the waste, and would be considered the  
12 shipper and not the transporter.

13 Q. At that point, then, it would be your  
14 understanding that the material would not be subject  
15 to UTC regulation?

16 A. It most certainly would be, but if you're  
17 going to repackage waste according to the Federal  
18 Register of August 14th, 2002, the DOT recognizes  
19 that, as that task, that event becoming part of the  
20 offer, which then becomes the generator and the  
21 customer.

22 Q. Isn't it possible for your drivers to handle  
23 waste that doesn't appear to be improperly packaged  
24 and then turns out to be improperly packaged, thereby  
25 causing an accident that results in a spill?

1013

1           A.    Are you saying -- if I understand your  
2   question, you're saying could we take possession of a  
3   package and it later resulted in a spill or a leak or  
4   something like that?

5           Q.    Yes.

6           A.    Yes.  That is different than repackaging  
7   waste before pickup.

8           Q.    But in that case, if -- depending on which  
9   information you're relying on, based on the chart  
10  that's on Appendix G of Exhibit 101, if there's not a  
11  face shield in the truck for the employee to use for  
12  their protection, they would not be in compliance  
13  with this part of your procedures and they wouldn't  
14  have a piece of protective equipment that, at least  
15  according to this, you think is essential?

16          A.    I don't think I understand your question.

17          Q.    Are you requiring a face shield to be part  
18  of the personal protective equipment carried in the  
19  vehicles?

20          A.    I don't think the face shields are a  
21  requirement to be carried in the vehicles.  We do  
22  have face shields that are attached to hard hats, if  
23  necessary.

24          Q.    But you don't require them to be in the  
25  vehicles?

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1 A. I do not believe so, no.

2 Q. Likewise, the next item on that page nine is  
3 Item C, calling for fluid resistant aprons to be part  
4 of the personal protective equipment, yet I don't see  
5 that on Appendix G either. Are you not requiring  
6 fluid resistant aprons to be part of the personal  
7 protective equipment?

8 A. If the need arises where there is sufficient  
9 fluid, the spill kit does contain a Tyvek suit, which  
10 would retard absorption of that material.  
11 Additionally, each driver has a spare uniform that he  
12 carries in his cab, as well.

13 Q. But you're not requiring them to contain or  
14 to keep in the truck a fluid resistant apron, are  
15 you?

16 A. The Tyvek suit is the fluid resistant apron,  
17 garment.

18 Q. It's not an apron, though, is it?

19 A. It's better than an apron.

20 Q. On page 10 of Exhibit 101, the first  
21 paragraph on that page, which is Paragraph D,  
22 provides that interior cargo areas of vehicles must  
23 be decontaminated whenever the area is visibly soiled  
24 with medical waste or more often if required by state  
25 or local law or permit restrictions.

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1           What is your practice at Stericycle when it  
2 comes to decontaminating the rear cargo areas of  
3 vehicles?

4           A.   When they are visibly soiled in direct  
5 contact with the waste, it would undoubtedly need to  
6 be decontaminated then.  And if the truck needs to go  
7 in for service or to be returned, it is  
8 decontaminated at that time, also.

9           Q.   Why don't you decontaminate on a daily  
10 basis?

11          A.   If the need arises on a daily basis, it  
12 would be.  It is conducted roughly on a weekly basis.

13          MR. HAFFNER:  For timing, I just have a  
14 couple more questions.

15          JUDGE RENDAHL:  Okay.

16          Q.   Mr. Stromerson, I believe in this hearing  
17 there has been testimony that Stericycle of  
18 Washington provides cradle to grave tracking.  When  
19 does Stericycle of Washington consider the waste that  
20 it has picked up from a generator to be in the grave?

21          A.   I don't know if I could address that on  
22 Stericycle.  I don't know who you mean when you're  
23 referring to Stericycle.

24          Q.   Stericycle of Washington?

25          A.   Stericycle of Washington.  I don't

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1 understand that reference.

2 Q. Who are you employed by?

3 A. Stericycle.

4 Q. Of? Stericycle, Inc.?

5 A. I do tasks for both Stericycle and

6 Stericycle, Inc.

7 Q. Do you recognize the difference between the

8 two entities, Stericycle, Inc. and Stericycle of

9 Washington?

10 A. Stericycle of Washington is the

11 transportation end of the business.

12 Q. Let's start from a -- I guess maybe a larger

13 picture. When do you believe that Stericycle, Inc.

14 would consider the waste that Stericycle of

15 Washington has picked up to be in the grave?

16 MR. JOHNSON: Your Honor, I have to object

17 to Mr. Haffner's question. I mean, this issue of in

18 the grave, I'm not sure where this alleged testimony

19 comes from, as to whether Stericycle tracks from

20 cradle to grave, whether that's your testimony or our

21 testimony. If you could ask your question sort of

22 specifically, I mean, is there --

23 MR. HAFFNER: We can do that.

24 Q. I can stop using the word, the phrase that's

25 been in the testimony, and just simply ask when do

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1 you believe that the waste that is transported by  
2 Stericycle of Washington is disposed of?

3 A. I guess I would need to understand disposed  
4 of, because, basically, we're taking the waste and we  
5 are treating the waste from a regulated medical waste  
6 standpoint to which the manifesting and shipping  
7 papers are required, following through from the  
8 customer pickup to the treatment facility with the  
9 appropriate signatures signed on a particular  
10 manifest. At that point in time, the manifest states  
11 that the waste has been treated. Disposal afterwards  
12 would be into a specific landfill.

13 Q. Does your documentation -- does the  
14 documentation that -- I guess it would be Stericycle  
15 at that point, because Stericycle of Washington only  
16 does the transportation. The treatment and disposal  
17 is done by Stericycle, Inc.; correct?

18 A. Correct.

19 Q. And so if a generator wanted to get  
20 certification of treatment and disposal, they would  
21 have to request that through Stericycle, Inc.?

22 A. They would ask for that through our office.

23 Q. And when you say your office, which office  
24 are you speaking of?

25 A. The Kent office.

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1 Q. And that's Stericycle of Washington;  
2 correct?

3 A. I couldn't answer that.

4 Q. So if the customer made a request to the  
5 Stericycle of Washington -- or the office in Kent,  
6 not sure which company it is, they would be able to  
7 get certification of treatment and disposal?

8 A. They would typically ask for the manifest,  
9 to which we would return them.

10 Q. And that manifest would represent that the  
11 waste not only had been treated, but that it had been  
12 disposed?

13 A. That would show that it had been treated.

14 Q. Is there any documentation of disposal that  
15 you make available to the generator? And when I say  
16 you, I mean either Stericycle of Washington or  
17 Stericycle, Inc.

18 A. I do not have firsthand knowledge of that.

19 Q. Okay. Thank you. Are you familiar with the  
20 Bio Systems program of Stericycle, Inc.?

21 A. Yes, I am.

22 Q. Do you know what certification of treatment  
23 Stericycle, Inc. provides to the generators in that  
24 program?

25 A. That is beyond my purview of --

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1           MR. HAFFNER: All right. Your Honor, if I  
2 could have a moment to confer with my client to see  
3 if I have any other questions of the witness. I  
4 believe I'm done, but --

5           JUDGE RENDAHL: Okay. Let's be off the  
6 record for a moment.

7           (Discussion off the record.)

8           JUDGE RENDAHL: Let's be on the record.  
9 While we were off the record, Mr. Haffner indicated  
10 he had no further questions for the witness. At this  
11 time, we'll take our break for lunch. We will  
12 reconvene at 1:30, and at that time we'll take up any  
13 cross by Mr. Sells and Mr. Trautman, questions by  
14 myself and then the redirect and re-cross. So let's  
15 be off the record for lunch. Thank you.

16           (Lunch recess taken.)

17           JUDGE RENDAHL: Let's be back on the record.  
18 We're back on the record after our lunch break. Mr.  
19 Haffner had just finished his cross-examination. Mr.  
20 Sells, do you have anything for the witness?

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

22           JUDGE RENDAHL: Mr. Trautman, do you have  
23 anything?

24           MR. TRAUTMAN: No, I do not.

25

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

1

2 BY JUDGE RENDAHL:

3

4 Q. Mr. Stromerson, I have a couple of questions  
5 for you. There was some discussion between you and  
6 Mr. Haffner about written instructions in the spill  
7 kit or spill kits that are carried on the vehicles,  
8 and I just want to clarify, are there any written  
9 instructions included in the spill kits or are they  
10 just the materials that were identified in that list  
11 in Exhibit 97?

12 A. There are no instructions in the kit itself.  
13 However, in every cab of the vehicle, we do have a  
14 binder, and in that binder, there's the operating  
15 plan, which is Exhibit 92, which includes the spill  
16 kit items that the binder also has housed within it  
17 our major operating permits, contact phone numbers  
18 and the like of that. So the content list of the  
19 spill kit is in the binder. There's nothing but the  
20 materials for the spill cleanup in the kit itself.

21 Q. Okay. I just needed clarification on that  
22 point. And then back to this issue of the uniform  
23 itself, what is the uniform?

24 A. Uniform includes a shirt, pants, and in  
25 colder climate times, a jacket. And that shirt can  
be long-sleeved, short-sleeved, according to the time

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1 of year, also.

2 Q. Okay. But they're just ordinary uniforms?  
3 There's nothing particularly -- nothing about them  
4 that's designed as protective equipment, per se?

5 A. That's correct. I believe our distributor  
6 of uniforms is Aramark.

7 JUDGE RENDAHL: Okay. And I believe that's  
8 it that I have. Let me just check through here. No,  
9 that's it. Mr. Johnson, do you have anything on  
10 redirect?

11 MR. JOHNSON: I have a few questions, Your  
12 Honor. Thank you.

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. Stromerson, when Mr. Haffner was asking  
17 you about your own personal training for the position  
18 that you now hold, you mentioned a couple of things.  
19 I think you mentioned that your hiring manager took  
20 you through a certain amount of training; is that  
21 correct?

22 A. Yes, it is.

23 Q. What is a hiring manager?

24 A. My particular hiring manager is -- their  
25 title is area vice president for environmental safety

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1 and health, and at that time, when I was hired, April  
2 of 2000, was -- his name was Chuck Merritt.

3 JUDGE RENDAHL: How do you spell the last  
4 name?

5 THE WITNESS: M-e-r-r-i-t-t, I believe.

6 JUDGE RENDAHL: Thank you.

7 Q. And the term hiring manager, could you give  
8 me a more generic definition of what that means? You  
9 used it a couple of times in your responses to Mr.  
10 Haffner.

11 A. Hiring manager would be the person who is  
12 bringing on a new employee to fill a position that he  
13 thus manages. So for instance, the transportation  
14 manager would be the hiring manager for the drivers.  
15 The plant manager would be the hiring manager for the  
16 plant personnel.

17 Q. When you spoke of your training for your  
18 present position, you did not include anything with  
19 respect to prior educational experience or work  
20 experience. Did any of your prior educational  
21 experience or work experience assist in preparing you  
22 for your current duties?

23 A. I think it has.

24 Q. Could you tell us a little bit about your  
25 educational background and work experience prior to

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1 coming to Stericycle?

2 A. Sure. I have a bachelor of science in  
3 environmental science from Washington State  
4 University, I graduated in 1994 from there. In  
5 January of '95, I started with the Snohomish Health  
6 District as an environmental health specialist. I  
7 worked with water and wastewater issues, drinking  
8 water, solid waste, municipal solid waste, household  
9 hazardous waste. Prior to that, while a student, I  
10 worked in the environmental health services in  
11 collecting hazardous waste. I achieved -- or I have  
12 a HAZWOPER 40-hour class training from that, which I  
13 keep current today.

14 Q. What is HAZWOPER? What does that mean? Is  
15 that an acronym for something?

16 A. I don't know off the top of my head, but it  
17 has something to do with hazardous waste industry in  
18 emergency response and collection and disposal of  
19 that type of materials.

20 Q. Is HAZWOPER H-A-Z-W-O-P-E-R, all caps?

21 A. Correct.

22 Q. And did you, when you worked with the health  
23 district, did you have any special qualifications or  
24 did you achieve any special certifications or  
25 professional qualifications in that position?

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1           A.    Yes, I'm a registered sanitarian, which I  
2    keep current today.  I also belong to the Washington  
3    State Environmental Health Association, which I keep  
4    current by going to classes that they offer and that  
5    -- I continue going to those.

6           Q.    What is a registered sanitarian?

7           A.    Registered sanitarian is someone who works  
8    in the public health industry and conducts  
9    investigations, compliance, allows that person to do  
10   their job according to the rules that are outlined in  
11   that particular field.

12          Q.    Does that involve issues of infection and  
13   exposure control at all?

14          A.    Yes, it can.

15          Q.    Did it in your case?

16          A.    With the solid waste portion of my tenure  
17   there, it did, yes.

18          Q.    Any other aspects of your personal work  
19   history that were relevant to your current position?

20          A.    Before?

21          Q.    Before taking your current position at  
22   Stericycle?

23          A.    That pretty much sums it up, I believe.

24          Q.    Very good.  Now, with respect to your hiring  
25   with Stericycle, you mentioned the training that you

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1 received from Mr. Merritt, as area vice president of  
2 Environmental Safety and Health. Does Stericycle  
3 offer other types of training and did you participate  
4 in that training?

5 A. Yes, there -- we're continually being  
6 trained. There's a network of people in my position  
7 across the country, and we meet with our own area,  
8 for instance, the West Coast, roughly twice a year to  
9 go over any rule changes or what may be coming along,  
10 work about, talk about and work out issues with plant  
11 processes and permits and things like that. We're on  
12 regular monthly conference calls. And recently, we  
13 had two major meetings in June and July regarding DOT  
14 information and rule changes along with creating an  
15 audit process to audit our facilities to make sure we  
16 maintain compliance.

17 Q. Are you -- have you been involved in other  
18 types of training other than what you have mentioned  
19 up to this point in your testimony in matters  
20 relevant to your current position?

21 A. We've created some training, seen the need  
22 to better expand our training, so I've had input as  
23 far as items go for that.

24 Q. How about training from independent  
25 professional organizations or educational or -- I

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1 don't know what to call them -- other sources outside  
2 of the company training?

3 A. Yes, I've been to numerous L&I classes to  
4 talk about ergonomics, OSHA reporting, workmen's  
5 compensation, topics on that, and I try to frequent  
6 those as often as possible.

7 Q. And L&I means Labor and Industries?

8 A. Correct.

9 Q. Is that Washington State Labor and  
10 Industries?

11 A. Right. It dovetails in with WISHA, also,  
12 which is the Washington State version of OSHA.

13 Q. WISHA is W-I-S-H-A, I believe?

14 A. Yes, correct.

15 Q. You mentioned, in response to Judge  
16 Rendahl's questions, that some sort of binder is kept  
17 in the trucks with some of the policies that we've  
18 been discussing today, is that right?

19 A. Yes, it's got our operating plan, it has  
20 numerous permits that we're required to have, has the  
21 spill kit inventory, has the spill kit procedures for  
22 conducting the spill, it has appropriate phone  
23 numbers. It's basically a resource that, if a driver  
24 were to be pulled over for a roadside inspection,  
25 typical questions that may be asked can be found in

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1 that binder.

2 Q. You mentioned spill cleanup procedures, I  
3 believe?

4 A. Mm-hmm.

5 Q. What -- are those procedures in our -- in  
6 the attachments to your pre-filed testimony in  
7 Exhibit 91?

8 A. Yes, they are. They're actually in Exhibit  
9 92, the operating plan, page seven.

10 Q. I see. And you're referring to Addendum  
11 Three, maybe?

12 A. Correct.

13 Q. Okay. So that's Exhibit 92, Addendum Three,  
14 page seven. Are there any other sort of guidance  
15 materials in these binders beyond what you've  
16 described so far?

17 A. No, what's inclusive in the operating plan,  
18 again, it speaks to nonconforming wastes not accepted  
19 by Stericycle, also, which talks about we don't  
20 knowingly accept things overweight and it outlines  
21 the weight limits for the containers.

22 Q. And that's -- so it would be in Addendum  
23 Number Four, page eight, I believe?

24 A. Correct.

25 Q. Mr. Stromerson, apropos of Addendum Number

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1 Four, page eight of Exhibit 92, whose responsibility  
2 is it to see that nonconforming waste, that is,  
3 overweight or improperly packaged containers, are not  
4 picked up by Stericycle?

5 A. Well --

6 JUDGE RENDAHL: Let's be off the record for  
7 a moment. Let's go back on.

8 THE WITNESS: Ultimately, that would be the  
9 driver. They couldn't necessarily speak to weight  
10 specifically, because they do not carry scales, but  
11 they do need to inspect the containers before they  
12 pick them up to ensure that they are properly  
13 packaged and that they are not leaking. By properly  
14 packaged, I would say is that they don't open the  
15 container, but a visual inspection to ensure that  
16 it's closed properly, that it does not have any  
17 materials on the outside of the container.

18 Q. I'm sorry. I missed the last part of your  
19 sentence, because I think you sort of swallowed it.  
20 Doesn't include --

21 A. It does not -- it includes a visual  
22 inspection to ensure that there are no waste  
23 materials on the outside of the container.

24 Q. Who's responsible for ensuring that  
25 overweight packages are not packaged for Stericycle

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1 pickup?

2 A. Ultimately, it's the generator's  
3 responsibility to package the material according to  
4 the guidelines set out by the Department of  
5 Transportation in preparation for transportation.

6 Q. And does that include the issue of weight?

7 A. Yes, it does.

8 Q. And is Addendum Four intended to implement  
9 those requirements?

10 A. Yes, it does.

11 Q. Does a generator also have responsibility  
12 for packaging?

13 A. Yes, it does. It needs to ensure that the  
14 waste is packaged properly, bag tied off accordingly,  
15 container sealed, labeled, marked and ready for  
16 transportation when we arrive.

17 Q. Mr. Stromerson, Mr. Haffner asked you some  
18 questions about radioactive materials, and I guess --  
19 that may be in medical waste. Whose responsibility  
20 is it to ensure that radioactive materials are not  
21 included in medical waste and picked up by  
22 Stericycle?

23 A. That would be the generator's  
24 responsibility.

25 Q. What's the basis for your thought on that?

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1           A.   Typically, radioactive material is not  
2   considered regulated medical waste, and radioactive  
3   material that a hospital may use for its diagnosis,  
4   to my understanding, needs to be disposed of or  
5   handled in a way that we are not prepared for.  
6   Material that may come in our waste is such that it  
7   is not detrimental to the health of anyone who may  
8   come in contact with it as far as the information  
9   that we've been given to by the state, and it is  
10  detected at the treatment facility when it passes by  
11  the scales prior to insertion into the process.

12           The radiation detector at the treatment  
13  facility is set at background, which is 900 counts  
14  per minute.  Anything essentially above background  
15  would have an alarm.  We're unique in that situation  
16  in that the majority of facilities' radiation  
17  detectors are set at two to three times background.

18           Q.   Now, with respect to the issue of the  
19  scanning for radioactivity at the plant, has there  
20  been a significant amount of material identified  
21  through that process that was radioactive and should  
22  not have been transported by Stericycle?

23           A.   Very few cases, and we work with the state,  
24  with customers to get them back.

25           Q.   And if you identified a shipper that has

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1 transferred some radioactive material that should not  
2 have been discarded in the medical waste stream,  
3 what's the response by Stericycle to that shipper, if  
4 any?

5 A. We notify the shipper, but we are also  
6 governed to contact the State, also, the State  
7 Radiation Department, and actually, Terry Freezee is  
8 the person contacted there.

9 Q. Maybe you could spell that name?

10 A. I believe it's F-r-e-e-z-e-e, I believe.

11 Q. Mr. Stromerson, there was some discussion  
12 between you and Mr. Haffner concerning what  
13 documentation is provided to the shipper with respect  
14 to waste that is picked up by Stericycle, and I think  
15 you mentioned the manifest that would be signed by  
16 both the shipper and the transporter, the driver.  
17 Are there other documents that are provided to the  
18 generator at the time of pickup?

19 A. Along with the manifest, the driver has what  
20 we call a PDT. It's basically a scanning mechanism.  
21 And at the end of his collection, he's able to print  
22 out the list of each container that was picked up,  
23 and that is provided, along with the manifest, back  
24 to the generator.

25 Q. I believe we had a copy of such a document.

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1 I believe it's Exhibit 66. Would you look at Exhibit  
2 66 and tell me if that's the document you're  
3 referring to, or an example of the document you're  
4 referring to?

5 A. Yes, that is a greatly enlarged copy of  
6 that.

7 Q. Okay. And after the waste has been  
8 transported, treated, disposed of, what documents  
9 does the shipper receive to reflect treatment and  
10 disposal?

11 A. After treatment, the waste is disposed of in  
12 a landfill. There's no documentation back to the  
13 generator as far as that goes, because the manifest  
14 shows that it's been treated, and it's basically  
15 changed from regulated medical waste, which is thus  
16 regulated, to a solid waste, which is not regulated.  
17 However, on their bill, they have a statement that  
18 says the waste was treated and disposed of  
19 accordingly.

20 Q. Okay. Now, if you refer to Exhibit 67, is  
21 this an example of the certificate that you're  
22 referring to? There's a statement there, at the  
23 bottom of the large box, the center top, that starts  
24 with the word certification. Is that what you're  
25 referring to?

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1 A. Yes, it is.

2 Q. And are other types of documentation  
3 available to the shipper/generator to reflect  
4 treatment and disposal of their medical waste?

5 A. Other than the manifest and the driver PDT  
6 printout and their billing, those are the ones, to my  
7 knowledge.

8 Q. If you look at Exhibit 68, do you recognize  
9 that type of document?

10 A. This is not something I've regularly seen.  
11 I may have seen this once or twice in the past.

12 Q. Okay. So you're just not familiar with this  
13 document?

14 A. Correct.

15 Q. Okay. Mr. Stromerson, there was some  
16 discussion with Mr. Haffner concerning the  
17 possibility that a driver might be in an area that --  
18 where there was a gap in the service that would be  
19 available through the Nextel radio mechanism. Are  
20 there other means provided to drivers for  
21 communication with their managers and supervisors?

22 A. Yes, they may have cell phones, but even in  
23 the case -- if there were an accident of an incident  
24 release, container malfunction, typically they're  
25 going to find that when they're at a location to pick

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1 up or drop off, and they would have other means of  
2 communication at that point, also, whether it be at  
3 the generator or weigh station or something like  
4 that.

5 Q. Do you know, with respect to the drivers --  
6 you said that the drivers may be provided with cell  
7 phones. I believe you used the term may. Is there  
8 -- is that -- do you have any other information about  
9 when that would be the case, or is it universally the  
10 case, or only the case in certain instances, and can  
11 you clarify?

12 A. Two specific cases that I know of, the two  
13 supervisors I mentioned, Mr. McDivett and Mr. Sites,  
14 they have a cell phone number which I believe is part  
15 of their Nextel radio and I am able to call them  
16 directly via my cell phone. Whether the other  
17 drivers do, I cannot address that.

18 Q. Mr. Stromerson, Exhibit 92, which is the  
19 Stericycle operating plan for biomedical waste  
20 terminals, I think the revenue is on page five, I  
21 guess it's Addendum One, and I think Mr. Haffner  
22 asked you about the role of what's referred to in  
23 Addendum One. The first sentence says, On-scene  
24 coordinators.

25 Mr. Stromerson, is it your understanding

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1 that an on-scene coordinator must be physically  
2 present at the site of an emergency to function as a  
3 coordinator?

4 A. No, it is not. The phrase on-scene means  
5 that that person is being given the information of  
6 the scene and are acting accordingly and using the  
7 necessary resources to eliminate any sort of  
8 emergency or hazard that may be taking place there,  
9 which would also allow them to distribute other  
10 personnel that might be closer to the area than one  
11 of these people listed.

12 Q. What kinds of emergencies or we might -- are  
13 spills the most common type of event that you might  
14 consider an emergency? What would an emergency  
15 involve?

16 A. Not necessarily a spill. It would be more  
17 of an auto accident of some type. And if there needs  
18 to be a vehicle towed or something like that, to  
19 which would be a DOT incident direct reporting, it  
20 speaks more to that than an actual spill, because  
21 spills are typically minor, a very small area, one  
22 container. That's not necessarily the emergency that  
23 we're referencing here. It's more an auto accident  
24 or something to that effect.

25 Q. I guess that gets to the point of spills.

1 Maybe you've already answered this, but I guess what  
2 -- can you describe what a typical spill would be?

3 A. Typical --

4 Q. If I could say typical. I don't know how  
5 frequent a spill occurs. Maybe you could comment on  
6 that, as well as describe a typical spill?

7 A. Actually, spills happen rather infrequently.  
8 And it's due to -- again, the actual spill itself  
9 might be very little liquid, because the DOT recent  
10 changes do not allow free-flowing liquid in their  
11 containers any longer, so it mainly will be some  
12 solid material, whether they be fluffs, gowns, things  
13 like that, maybe some test tubes or something like  
14 that, but it's actually a small type area that a  
15 spill may take place, probably two square feet at the  
16 most on a typical spill.

17 Q. Are you aware of any sort of extraordinary  
18 spills that have occurred in Stericycle's operation  
19 since you've been employed there?

20 A. Not extraordinary, no.

21 MR. JOHNSON: I have no further questions,  
22 Your Honor.

23 JUDGE RENDAHL: Mr. Haffner, do you have any  
24 re-cross?

25 MR. HAFFNER: Yes, Your Honor, just a few.

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

2 BY MR. HAFFNER:

3 Q. Mr. Stromerson, when did you first start  
4 working in the medical waste field?

5 A. April of 2000.

6 Q. Was that with Stericycle or prior to your  
7 employment with Stericycle?

8 A. That was with Stericycle.

9 Q. In any of your previous employment, did you  
10 have or obtain any experience in handling medical  
11 waste?

12 A. No.

13 Q. Did you find the hazardous materials  
14 training and education that you had helpful in  
15 learning how to handle medical waste?

16 A. Are you referring to, for instance, the  
17 HAZWOPER training?

18 Q. Yes.

19 A. It gave some framework, but it did not speak  
20 specifically to regulated medical waste. And I  
21 understand now why, because oftentimes the DOT rules  
22 separate regulated medical waste out from regular  
23 hazardous materials -- excuse me, regular hazardous  
24 waste. It's still considered a hazardous material,  
25 but they exclude regulated medical waste, I believe.

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1 Their rules, as I understand them.

2 Q. When you bring new employees on to -- in as  
3 drivers for Stericycle, how long does it take you to  
4 train them before they're allowed to operate a truck?

5 A. Well, for me to train them, that can  
6 probably take up to eight hours, just to go over the  
7 training materials. After that time, they ride with  
8 another driver for a significant time, probably up to  
9 two weeks, and then it's the hiring manager's  
10 discretion on when they're able to ride on their own  
11 to do a route. But my specific time in training is  
12 the class time and any hands-on training that needs  
13 to take place for the training materials that I  
14 provide.

15 Q. If you could look at Exhibit 92, and I  
16 believe it's page seven of that exhibit, I believe  
17 this was the document you said was part of the binder  
18 that's included in the trucks?

19 A. As part of the operating plan, yes.

20 Q. I noticed the last item on that list of  
21 procedures advises the driver to wash hands  
22 thoroughly. What do you provide to allow the driver  
23 to wash their hands thoroughly?

24 A. Typically, if there is a spill, it's  
25 typically where they're at, a stop location, so they

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1 have facilities there, but in addition to that, each  
2 one of our cabs or drivers have access and carry  
3 small bottles of what's called Zep. It's an anti --  
4 it's a lotion, antibacterial lotion, which acts as a  
5 hand cleaner in the absence of soap and water.

6 MR. JOHNSON: Could you spell the name?

7 THE WITNESS: Zep, Z-e-p. There's other  
8 products, called Purell, of the same thing. It's an  
9 antibacterial lotion.

10 Q. Is that item included in your spill kit?

11 A. It's typically with the vehicle. They use  
12 it when they get into the vehicle after loading  
13 containers. They'll use it to wipe their hands  
14 before they get into their cab, because essentially  
15 the cab is a separation. I train as the cab is your  
16 office, the back of your truck's your processing  
17 plant, so we don't want to cross-contaminate  
18 anything.

19 Q. If we -- can you look at Exhibit 93, page  
20 four of 23, and specifically Item 7.2.5 provides that  
21 supervisors are to ensure that employees flush mucous  
22 membranes with water and wash their hands and any  
23 other skin surface immediately following contact with  
24 such areas with blood or other infectious material.

25 Is it your testimony that the water required

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1 to accomplish this task is provided by the facility  
2 where the driver is at, but would not be available to  
3 them if they came into contact during an auto  
4 accident on the road?

5 A. Are you asking me if water is available on  
6 the truck?

7 Q. Yes.

8 A. It is not a requirement of ours. However,  
9 I've seen drivers bring their lunches, which contain  
10 water with them.

11 MR. HAFFNER: No other questions, Your  
12 Honor.

13 JUDGE RENDAHL: Mr. Sells.

14 MR. SELLS: None, Your Honor.

15 JUDGE RENDAHL: Mr. Trautman.

16 MR. TRAUTMAN: No, Your Honor.

17

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

19 BY JUDGE RENDAHL:

20 Q. I have one clarification question for you,  
21 and hopefully this will wrap it up. Do you have in  
22 front of you what's been marked as Exhibit 62, which  
23 is the tariff?

24 A. Is it Mr. Philpott's testimony?

25 Q. It should be, yes. And it's about, oh,

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1 two-thirds of the way in. Okay. If you'll look at  
2 page -- what's called the second or the third revised  
3 page number six. It should be in the upper  
4 right-hand corner.

5 A. Third revision, page six?

6 Q. Correct.

7 A. Yes.

8 Q. Okay. And now, if you'll also compare that  
9 with the last page of Exhibit 92, your exhibit, which  
10 is Addendum Number Four, addressing the nonconforming  
11 waste not accepted?

12 A. Okay.

13 Q. At the very bottom, do you see the language  
14 about the following charges will be assessed for  
15 improperly packaged containers or for containers  
16 requiring special handling?

17 A. Yes.

18 Q. Is that the same issue that's discussed  
19 under Item 70 of Exhibit 62 in the tariff?

20 A. I believe that speaks to that, yes.

21 Q. Okay. So when you were discussing earlier  
22 that -- how Stericycle handles or addresses materials  
23 that have been improperly packaged, my question is  
24 this. Does this particular item in the tariff and  
25 the language in Addendum Number Four talk about how,

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1 if one of the drivers comes in and there's a package  
2 that's improperly packaged, there's waste coming out  
3 of it, it looks like it's, you know, not ready for  
4 transport, is this the charge that you would charge  
5 the generator for packaging the waste or is this  
6 something different?

7 A. That is, if I'm understanding your question  
8 correctly, that is something that we would charge the  
9 generator, but we would not repackage the waste.

10 Q. Okay. So you would assess a charge to the  
11 generator and require them to repackage the waste  
12 before you would ship it, before you would pick it  
13 up?

14 A. Yes, the drivers would work with the  
15 customer at that point, because typically they're  
16 picking up numerous containers, and if they see one  
17 that does not meet those requirements, they would  
18 mention it to someone, and if they could take care of  
19 it then, we would pick it up. If we would have to  
20 leave it there for later pickup, I believe that might  
21 be when that assessment would be administered.

22 But typically it would happen when the  
23 container reaches the treatment facility and goes  
24 across the scale. If the container weighs more than  
25 these weight limits outlined, which is also part of

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1 our waste acceptance protocol, which thus outlines  
2 the weight limitations of our containers to be in  
3 line with our tariff rates.

4 Q. Okay. So this is not a charge for  
5 repackaging?

6 A. Correct.

7 JUDGE RENDAHL: Okay. I just wanted to be  
8 clear about that. Okay. That's all I have. Are we  
9 done?

10 MR. JOHNSON: I have one or two questions,  
11 if I may.

12 JUDGE RENDAHL: Let's be quick.

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. Stromerson, you mentioned that your  
17 drivers would ride with another driver for up to two  
18 weeks before they would be allowed to drive alone; am  
19 I correct?

20 A. Yes.

21 Q. And is it your understanding that this is a  
22 requirement of some regulation or law, or why is that  
23 the case?

24 A. That is our policy, because it's not only  
25 the materials they have to learn that I give them,

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1 they have to learn the route, they have to understand  
2 the operation of the vehicle, they need to understand  
3 the operation of their PDT to record material being  
4 picked up. They need to understand their paperwork,  
5 manifesting, so on, so forth. So that's the time  
6 frame that we generally like to see a driver go  
7 through before they're driving on their own.

8 Q. This is not a requirement of the DOT  
9 regulations, to your knowledge?

10 A. No.

11 Q. Mr. Stromerson, in responding to Judge  
12 Rendahl, you mentioned that the containers are  
13 weighed as they are handled by the processing plant;  
14 is that correct?

15 A. Yes.

16 Q. So is this the way Stericycle determines  
17 whether a package is overweight?

18 A. At that point in time, yes.

19 Q. Mr. Stromerson, are you involved in the  
20 application of the tariff to Stericycle's activities?

21 A. No, I am not.

22 Q. Do you know how the tariff lies in terms of  
23 this special handling and packaging charge, Item 70?

24 A. I believe I have a rough idea of that.

25 Q. Okay. If the driver comes to a generator's

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1 facility and sees an improperly packaged container  
2 and doesn't pick it up, is it your understanding that  
3 Stericycle would charge them two bucks a gallon for  
4 not picking up the container?

5 A. We would not charge them if we don't pick it  
6 up, because we would not pick it up because it's  
7 improperly packaged.

8 Q. If the container is overweight at the  
9 processing plant, would this Item 70, \$2 per gallon  
10 charge apply?

11 A. That is my understanding of how it is  
12 applied, yes.

13 Q. What if radioactive waste were found in the  
14 container? Would this \$2 per gallon charge apply  
15 from Item 70?

16 A. If it were determined that that particular  
17 material should not have been placed in there, yes,  
18 you could apply that.

19 MR. JOHNSON: I have no other questions.

20 JUDGE RENDAHL: Anything else?

21 MR. HAFFNER: Nothing further, Your Honor.

22 JUDGE RENDAHL: Okay. Thank you, Mr.  
23 Stromerson.

24 THE WITNESS: Thank you.

25 JUDGE RENDAHL: You may be excused.

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1 THE WITNESS: Okay.

2 JUDGE RENDAHL: Thanks. We'll be off the  
3 record.

4 (Discussion off the record.)

5 JUDGE RENDAHL: Let's be back on the record.  
6 We're back on the record for the rebuttal testimony  
7 of Mr. McCloskey. Mr. McCloskey, you remain under  
8 oath from testifying last week. Why don't you go  
9 ahead with the direct rebuttal.

10 MR. HAFFNER: Thank you, Your Honor.

11 Whereupon,

12 ALLEN McCLOSKEY,  
13 having been previously duly sworn, was re-called as a  
14 witness herein and was examined and testified as  
15 follows:

16

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

18 BY MR. HAFFNER:

19 Q. Mr. McCloskey, let's start with the new  
20 exhibit that we made -- we've identified as Exhibit  
21 33. Can you take a look at that exhibit and tell me  
22 if you're familiar with it?

23 A. Yes, I am.

24 Q. And how are you familiar with that exhibit?

25 A. Well, the letter was drafted after I had a

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1 conversation with the operating personnel at the  
2 Covanta facility and after contacting the  
3 environmental department there at Marion County.

4 MR. JOHNSON: Your Honor, I guess I -- first  
5 of all, I'm looking for the letter. Thank you. I'm  
6 sorry. Go ahead.

7 Q. Can you restate your answer you just gave?

8 A. Well, what I said was that the letter was  
9 issued after I had a conversation with the operating  
10 personnel there at Covanta Energy, which led to a  
11 conversation with the environmental department there  
12 at Marion County.

13 Q. What was the purpose of your inquiry with  
14 that person at Marion County?

15 A. Well, I wanted to determine the overall  
16 capacity for the Covanta facility, and specifically  
17 the unused capacity for that facility related to  
18 medical waste.

19 Q. What was your understanding of the available  
20 capacity for medical waste at the Covanta facility  
21 after that discussion?

22 A. Well, as the letter states, the Marion  
23 County Board of Commissioners, in '98, ruled to limit  
24 the total amount of out-of-county medical waste  
25 received by that facility to 1,500 tons per calendar

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1 year. Currently they're operating or accepting 638  
2 tons of out-of-county infectious materials, which  
3 leaves, you know, quite a deficit as, you know,  
4 they're basically only offering close to half of  
5 their true capacity.

6 Q. So it's your understanding that there is  
7 more than 800 tons of unused capacity at the Covanta  
8 facility?

9 A. Yes.

10 MR. HAFFNER: Your Honor, although I have  
11 other questions to ask of the witness, I would offer  
12 this Exhibit 33 to be part of the record.

13 JUDGE RENDAHL: Mr. Johnson, the exhibit is  
14 being offered.

15 MR. JOHNSON: I have no objection to it,  
16 Your Honor.

17 JUDGE RENDAHL: Mr. Sells.

18 MR. SELLS: No objection, Your Honor.

19 JUDGE RENDAHL: Mr. Trautman.

20 MR. TRAUTMAN: No objection.

21 JUDGE RENDAHL: All right. The exhibit will  
22 be admitted.

23 MR. HAFFNER: Thank you, Your Honor.

24 Q. Mr. McCloskey, can you turn to Exhibit 44?  
25 On the very first page of that exhibit, I believe

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1 there was questioning in this hearing earlier about  
2 the -- I'm sorry, yes, on the first page, there's  
3 questioning about the mileage that was used in these  
4 pro formas, and the first mileage figure for the  
5 first month is 2,800 miles. First of all, are you  
6 the one that determined that 2,800-mile figure?

7 A. Everything that's reflected here over these  
8 pro formas was a collaborative effort between myself  
9 and Mr. Lee.

10 Q. So you participated in the determination of  
11 2,800 miles?

12 A. Yes.

13 Q. Can you just tell us how you arrived at that  
14 figure?

15 A. Basically, what we did is we figured in in  
16 that first month, based on the number of units and  
17 clients. We figured in two trips to the Covanta  
18 facility, which is roughly about a thousand miles,  
19 which leaves us with, you know, local operating miles  
20 of about 1,800 miles.

21 Q. When you say a thousand miles, is that one  
22 way or round trip or is that a combination of  
23 multiple trips?

24 A. It's two trips. It's about 250 miles, plus  
25 or minus, one way.

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1 Q. Okay. How long do you figure that it takes  
2 a driver to go to the Covanta facility?

3 A. Drive time's about four hours, four hours,  
4 20 minutes, four and a half hours.

5 Q. How long would it take for them to be  
6 present at the facility while the waste was being  
7 unloaded?

8 A. I wouldn't say more than an hour. At max,  
9 an hour and a half.

10 Q. And why is that? What do they do during the  
11 unloading process?

12 A. Well, you're basically taking units out of  
13 the trucks and placing it onto the conveyor belt,  
14 which feeds into the hopper, which feeds into the  
15 incinerator.

16 Q. Your driver physically performs that  
17 service?

18 A. Yes.

19 Q. Is it required -- your understanding that  
20 there would be any requirement for the driver to  
21 spend the night in Covanta, or in the Covanta area,  
22 pardon me?

23 A. Well, it's my understanding, you know, based  
24 on the DOT operating requirements for a driver, that  
25 they wouldn't necessarily be required to lodge

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1 overnight in that area. I wouldn't foresee their  
2 operating time to exceed the operating requirements  
3 of the DOT.

4 Q. What about if you are -- if you find it  
5 useful in your -- in the provision of your services  
6 to go up to the health -- well, to the hydroclave  
7 facility in British Columbia. How long do you  
8 anticipate your drivers taking to get to that  
9 facility?

10 A. If and when that service is offered, I don't  
11 anticipate that taking any more than two and a half,  
12 at the max, three hours.

13 Q. Would there be any wait time for your  
14 drivers at that facility?

15 A. Actually, the -- to unload the truck at the  
16 hydroclave facility, that would -- I mean, you could  
17 cut that time in half, the unloading time that you  
18 had at Covanta. The way it operates at hydroclave  
19 facility there in Port Coquitlam, when you back the  
20 truck up to the unloading dock, it's not only your  
21 driver that's unloading the waste, but they have two  
22 to three personnel that are also helping your driver  
23 unload boxes onto their floor.

24 Q. Do you believe there's any need for those  
25 drivers to spend the night in the area of the

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1 hydroclave facility?

2 A. Again, it's not anticipated or foreseen that  
3 they would exceed their operating time under those  
4 DOT regulations, but I mean, if they ever did -- I  
5 mean, anything could happen. I mean, there could  
6 always be that one time where, you know, something  
7 could require them to have to stay overnight, but,  
8 again, we don't foresee that to be the case.

9 Q. Okay. Have you been quoted a cost for  
10 disposal at the hydroclave facility?

11 MR. JOHNSON: Your Honor, I object to this  
12 question. This is a non-rebuttal. This is a  
13 supplement to the direct testimony that Mr. McCloskey  
14 had ample opportunity to provide in the direct case.  
15 We -- you know, this goes far beyond rebuttal  
16 testimony.

17 JUDGE RENDAHL: Mr. Haffner.

18 MR. HAFFNER: Your Honor, Mr. Philpott  
19 quoted a specific per pound price for the disposal  
20 cost at the Covanta -- or at the hydroclave facility,  
21 and this is in response to that testimony.

22 MR. JOHNSON: Your Honor, now that Mr.  
23 Haffner reminds me, I agree with it.

24 JUDGE RENDAHL: Okay. Please go ahead.

25 Q. And I think, for the record, why don't we

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1 take a look at that Exhibit 60, page 19.

2 JUDGE RENDAHL: Sorry, Exhibit 60, you said?

3 MR. HAFFNER: Yes, page 19.

4 Q. Can you take a look at that, Mr. McCloskey?

5 A. Exhibit 19?

6 Q. No, Exhibit 60, page 19.

7 A. Sorry.

8 Q. At the bottom of the page, the last sentence  
9 states, At current exchange rates -- and I'll  
10 paraphrase this, I'll drop some things out -- this is  
11 about 28 cents per pound U.S. dollars, almost three  
12 times the cost of incineration at Covanta. Is it  
13 your understanding that the cost of disposal quoted  
14 to you by the hydroclave facility people is three  
15 costs (sic) the cost of incineration at Covanta?

16 A. Well, I think the important thing to note  
17 here is the first sentence in that Paragraph B, HSS  
18 offered Stericycle the rate of -- and then they go on  
19 to list those. We had negotiated a rate not only  
20 with HSS, but with Iatron Corporation, which is the  
21 parent company of this technology.

22 Q. What was that rate that you negotiated?

23 A. As I recall, based on the conversations I  
24 had with those people and the agreement that we had  
25 come to, it was about \$240 per ton, U.S. dollars.

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1 Q. Let me now ask you to take a look at Exhibit  
2 79. Do you have that in front of you?

3 A. Yes.

4 Q. After you saw this exhibit made a part of  
5 this record or disclosed as a document that was going  
6 to be a part of this record, did you contact Mr.  
7 Phillip Rourke?

8 A. I did.

9 Q. And what was the purpose for your contacting  
10 him?

11 A. Well, as you know, I mean, there's several  
12 correspondence that you guys have sent back and  
13 forth, and after receiving this, the last paragraph  
14 kind of caught my eye. And I'll just read it so we  
15 know what it says. It says, I look forward to  
16 working with you and the owners of Kleen  
17 Environmental Technologies as this project goes  
18 forward.

19 I found that to be -- I found that  
20 questionable, based on the fact that the letter was  
21 addressed to Mr. Johnson.

22 Q. And by Mr. Johnson, you mean the counsel for  
23 Stericycle of Washington?

24 A. Yeah, Steve Johnson, uh-huh.

25 Q. Did you inquire to Mr. Rourke about what you

1055

1 found questionable about that sentence?

2 A. Yes, I did. I called the office of Kibble  
3 and Prentice --

4 JUDGE RENDAHL: It's K-i-b-b-l-e and  
5 P-r-e-n-t-i-c-e.

6 THE WITNESS: Sorry about that. Anyway, I  
7 contacted this office and I asked to speak with Phil  
8 Rourke. He wasn't available the first time I  
9 attempted to contact him, so he called back. My  
10 inquiry to him was, you know, what was the nature of  
11 the conversation between himself and Mr. Johnson.  
12 You know, he told me what the nature of, you know,  
13 their conversation was, and I was a bit troubled by  
14 it. And the reason for my being troubled with it is  
15 the light in which and the fashion in which things  
16 were presented to Mr. Rourke.

17 Q. Okay. How were they presented to Mr.  
18 Rourke, according to Mr. Rourke?

19 A. Well, based on the conversation that I had  
20 with Mr. Rourke, he was contacted by Mr. Johnson, and  
21 it was presented to him that Mr. Johnson had a client  
22 who was looking at pursuing a new endeavor. So  
23 basically, Mr. Rourke was put under the impression  
24 that Mr. Johnson had an existing relationship with  
25 Kleen Environmental or that Kleen Environmental was

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1 indeed his client, and that the conversation or phone  
2 call was being made on behalf of Kleen.

3 Q. Do you know if Mr. Johnson -- do you know if  
4 Mr. Rourke -- or did Mr. Rourke tell you whether Mr.  
5 Johnson explained what the current operations of  
6 Kleen Environmental Technologies was?

7 A. It was not -- as he had communicated to me,  
8 it was not made clear to him, you know, what the  
9 existing operations of Kleen Environmental was or  
10 what Kleen Environmental did, for that matter, or the  
11 services they provided.

12 Q. So it was your understanding that Mr. Rourke  
13 was not informed that Kleen Environmental  
14 Technologies was already providing hazardous waste  
15 cleanup and was insured for that type of operation?

16 A. Yes.

17 Q. I believe there was some testimony in this  
18 proceeding after you initially testified about  
19 containment units for the trucks that your company is  
20 proposing to use to provide this service. Are you  
21 familiar with the containment units that your company  
22 is proposing to use?

23 A. Specifically, not in great detail, but I do  
24 know that, just as with the truck that we use now for  
25 transporting some of the incidental or ancillary

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1 waste that we do transport, under the regulations, we  
2 are required to have what's called secondary  
3 containment in the vehicles. I know that those same  
4 regulations and guidelines apply to these operations.  
5 And being such, you know, we would be required to  
6 install that same, quote, unquote, secondary  
7 containment in these vehicles.

8 Q. How long do you think it would take your  
9 company to obtain those units and install them in the  
10 vehicles that you will be obtaining if this permit is  
11 granted?

12 A. Well, based on conversations that we've had  
13 with the gentleman who installed the secondary  
14 containment in the vehicles we have now, he didn't  
15 anticipate that it would take more than 48 to 72  
16 hours to install those units.

17 MR. HAFFNER: Can someone tell me where Mr.  
18 Menaul's letter is, which exhibit that is?

19 JUDGE RENDAHL: Two hundred, 200.

20 MR. HAFFNER: 200.

21 Q. And I don't know if you have in front of you  
22 Exhibit 200 or not, and I probably shouldn't let him  
23 use my document because it's written on.

24 JUDGE RENDAHL: I'll have an extra. Let's  
25 be off the record for a moment.

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1 (Discussion off the record.)

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

4 Q. All right. Mr. McCloskey, you were here  
5 earlier this morning for the testimony of Robb  
6 Menaul, were you not?

7 A. Yes, I was.

8 Q. Have you ever, in your capacity as a  
9 consultant to Kleen Environmental Technologies, have  
10 you ever approached Mr. Menaul about the services  
11 that your company proposes to provide?

12 A. Yes, one of the tasks that I was charged  
13 with was to approach, quote, unquote, key people  
14 within the -- within the industry or sector, if you  
15 would call it that, and on several occasions we  
16 attempted to make contact with Mr. Menaul, and I  
17 encountered him at several industry meetings, whether  
18 it was with the MIRT group or the HELP group.

19 JUDGE RENDAHL: MIRT being M-E-R-T?

20 MR. JOHNSON: M-I-R-T, Medical Industry  
21 Round Table.

22 JUDGE RENDAHL: Thank you, M-I-R-T.

23 THE WITNESS: And at each of those  
24 encounters, the response was negative and was  
25 ill-received, and we were never given the opportunity

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1 or afforded the opportunity to present to him, in  
2 whatever forum, the services that we were proposing.  
3 It was just one of those things. It was just so  
4 negative that we just stopped pursuing it and we  
5 circumvented him and went directly to the membership.

6 Q. Okay. I believe there was written testimony  
7 in pre-filed testimony that has been submitted here  
8 that alleges that your company will engage in what is  
9 called cream skimming. How do you respond to those  
10 allegations?

11 A. Well, the allegations simply aren't true.  
12 You know, as Mr. Olson testified and I will testify  
13 here today, I mean, it's not our intention to conduct  
14 business in that fashion. It is our intention and I  
15 think I can testify that Kleen would make a  
16 conscious, deliberate, determined effort to serve any  
17 and all generators that require service or that  
18 request service.

19 Q. What about the allegations that your pro  
20 forma statements indicate an activity of cream  
21 skimming?

22 A. Well, I think there were a lot of  
23 conclusions made. Because we did base our pro formas  
24 on large quantity generators, people jumped to  
25 conclusions because of that, but we based the numbers

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1 on what we knew, what we know, and based on the  
2 people we were talking to, it just so happens they  
3 were large quantity generators.

4 Q. Could you please take a look at Exhibit 51?  
5 Now, it's my understanding that this document, which  
6 is a revised pro forma profit and loss for the  
7 combined regions, was prepared by Mr. Lee; is that  
8 correct?

9 A. Yes.

10 Q. One of the items that Mr. Lee changed, which  
11 is identified by the multiple asterisks, was employee  
12 training. Did you consult with Mr. Lee about the  
13 cost for employee training?

14 A. Yes, I did, and basically, what we did is we  
15 contacted the -- a Seattle group by the name of Argus  
16 and made them aware of the endeavor at hand, the  
17 service that was being proposed, and they basically  
18 came back and, in letter form, identified what  
19 training modules our staff would be required to go  
20 through, and also provided us with costs for sending  
21 people through that training.

22 Q. And are these costs that are reflected in  
23 the pro formas consistent with what you were told the  
24 costs would be?

25 A. Yes.

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1 Q. I believe there were questions asked of  
2 witnesses subsequent to your initial testimony about  
3 whether your company was going to obtain a solid  
4 waste transfer station permit. Have you had occasion  
5 to determine whether such a permit would be required  
6 of your operations?

7 A. Yes, I have. I've looked, you know, looked  
8 over those, those regulations, and we would be  
9 required to retain a permit to do that.

10 Q. And what do you understand the cost for that  
11 permit to be?

12 A. The costs were a modicum fee. I believe  
13 there was a \$200 application fee and an annual fee of  
14 I think \$1,000 for such an operation.

15 Q. I believe there was testimony that the  
16 Covanta facility was not built to handle biomedical  
17 waste. How do you respond to that allegation?

18 A. Well, it's a fallacious statement. I mean,  
19 it -- if the facility were not set up to accommodate  
20 people bringing that type of waste in there, they  
21 would not be permitted to do so by the regulatory  
22 agencies. Anyone who's visited the facility, they  
23 actually have a separate -- they don't commingle that  
24 medical waste with any other waste prior to it being  
25 incinerated. They have a separate conveyor belt,

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1 which feeds into a separate hopper, which then feeds  
2 into a -- directly into an incinerator. While  
3 medical waste is being fed into the incinerator, it  
4 is not commingled with municipal solid waste. They  
5 basically -- they have a separate process for medical  
6 waste, is I guess what I'm saying.

7 MR. HAFFNER: Thank you. Those are all the  
8 questions I have of the witness, Your Honor.

9 JUDGE RENDAHL: Mr. Johnson.

10

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

12 BY MR. JOHNSON:

13 Q. Mr. McCloskey, I'm wondering if you know the  
14 quantity of biomedical waste that you're assuming  
15 that you would be handling in the twelfth month of  
16 your operation. I guess I'm looking at Exhibit 51.

17 A. Okay.

18 Q. And would I be correct that you're looking  
19 at handling in December 2,580 containers?

20 A. I see here 2,000 -- wait a minute.

21 Q. I'm looking at sort of the top right corner  
22 of the first page of Exhibit 51.

23 A. I see. Yeah, you're right, 2,580, uh-huh.

24 Q. Doesn't your pro forma assume 40 pounds per  
25 container?

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1 A. It assumes the maximum capacity, yeah.

2 Q. And that's 40 pounds per container?

3 A. Yeah.

4 Q. So if we were to multiply 2,580 times 40,  
5 we'd get, at least in the twelfth month, what you  
6 plan to handle in the way of medical waste by weight;  
7 right?

8 A. Yes.

9 Q. Okay. And that looks like 103,200 pounds.  
10 Is that --

11 A. Okay.

12 Q. -- fair?

13 JUDGE RENDAHL: Can you restate that number,  
14 please?

15 MR. JOHNSON: 103,200 pounds.

16 Q. Mr. McCloskey, you refer to the Covanta  
17 letter that we've admitted as -- I believe it's  
18 Exhibit 33. And the Covanta letter suggests, I  
19 believe, that there is a potential capacity, at least  
20 as you interpreted it, of maybe 800 or more tons?

21 A. Well, whatever you get when you subtract out  
22 from the maximum capacity the current use capacity.

23 Q. Okay. So that would be 862 tons?

24 A. Okay.

25 Q. And if we multiply that by 2,000, we would

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1 convert that to pounds, would we not?

2 A. Mm-hmm.

3 Q. So that's 1,724,000 pounds on an annual  
4 basis?

5 A. Mm-hmm.

6 Q. And if we divided that by 12, we'd get a  
7 monthly amount, roughly --

8 A. Okay.

9 Q. -- of 143,667 pounds.

10 JUDGE RENDAHL: Can you repeat that number,  
11 please?

12 MR. JOHNSON: 143,667.

13 Q. Now, Mr. McCloskey, the cap that's referred  
14 to in this letter that we have marked as Exhibit 33,  
15 do you know how that cap works? I mean, if they took  
16 all the 1,500 tons in the first quarter of the year,  
17 would there be any capacity remaining for the  
18 remainder of the year at that facility?

19 A. No.

20 Q. Okay. So what we -- what you've indicated  
21 by Exhibit 33 is that we have approximately 862 tons  
22 of available capacity. If that's spread out over the  
23 12 months, it would be 143,667 pounds per month, but  
24 it could be consumed earlier than that, could it not?

25 A. Well, that's purely hypothetical. I mean,

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1 after my conversations with them, historically  
2 speaking, they have never, ever, in the history of  
3 that facility, come close to hitting that mark.

4 Q. But this facility currently is a backup for  
5 Stericycle, is it not?

6 A. If that's what you testified, then yes.

7 Q. I believe we did. So there's a tremendous  
8 potential, if one of the plants shuts down that  
9 Stericycle uses, for a substantial additional volume  
10 of material to go into that facility, is there not?

11 A. It is, but they don't operate on a favored  
12 basis of any means; it's a first come-first served  
13 basis.

14 Q. That's my understanding, as well. But,  
15 again, if there is an outage at one of the Stericycle  
16 plants, I believe the testimony is that they're --  
17 from Washington generators alone, they're handling in  
18 Morton approximately a million pounds a month, and  
19 some additional portion that's currently going to the  
20 Salt Lake incinerator facility. So there is a  
21 potential for some substantial additional volumes to  
22 go to Covanta from Stericycle in the event of a  
23 shutdown of one of those plants, is there not?

24 A. Well, I mean, I could sit here and answer  
25 your hypotheticals all day, but I guess the worst

1066

1 case scenario, I guess what you're saying is if  
2 Stericycle decided to -- or if anyone decided to take  
3 all of their waste to Covanta, potentially, yeah. I  
4 mean, you could hit that earmark, but it's very  
5 unlikely.

6 Q. Now, is your statement that it's very  
7 unlikely based on knowledge with respect to the fact  
8 that these plants never shut down or something else?

9 A. It's based on the conversations that I've  
10 had with the senior environmental engineer and the  
11 operating personnel at the plant. Historically  
12 speaking, they've never come close to hitting that  
13 earmark.

14 Q. I'm sorry, the cap?

15 A. The cap.

16 Q. The 1,500-ton cap. Mr. McCloskey, you  
17 provided some testimony about the hydroclave  
18 processing facility that's been the subject of  
19 testimony in this case in Canada, and you gave some  
20 estimates with respect to number of hours involved  
21 for transit, the distances between, I guess, Seattle,  
22 King County, and that facility.

23 Have you taken account of procedures that  
24 would be required at the border, coming and going, to  
25 bring trucks of medical waste into Canada and then

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1 return?

2 A. Well, I know, and you keep painting the  
3 picture that it's a rather fastidious process to  
4 cross that border, and I'm not arguing that. There  
5 are procedures that need to be followed when crossing  
6 that international line.

7 Q. Have you taken that into account? Have you  
8 taken the time into account that's necessary to  
9 follow those procedures, whatever they are, and cross  
10 the border with biomedical waste for processing at  
11 that facility?

12 A. As I understand it, as was communicated to  
13 us by people at the hydroclave plant, what they've  
14 seen as a worst case scenario, it would add 30  
15 minutes onto your trip time, not coming back into the  
16 state, but crossing into -- I mean, crossing over  
17 into Canada when you have the waste on your truck.

18 Q. Mr. McCloskey, you keep quoting people that  
19 aren't in this hearing and are not under oath,  
20 they're not available for cross-examination for your  
21 sources.

22 A. Well, I'm just telling you what I know,  
23 Steve, okay.

24 Q. You personally have not attempted to even  
25 evaluate the requirements to cross the border with a

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1 load of medical waste, have you?

2 A. Personally, no.

3 Q. And you don't know what those requirements  
4 are, do you?

5 A. No.

6 Q. So you don't know how much time it would  
7 take you to get across the border with a load of  
8 medical waste, do you?

9 A. I told you what my understanding of it was  
10 based on.

11 Q. That's not what I'm asking about --

12 JUDGE RENDAHL: Excuse me. Let's not argue.

13 Let's ask a question, let's answer, and let's be  
14 civil with one another. Please go ahead, Mr.  
15 Johnson.

16 MR. JOHNSON: Thank you, Your Honor.

17 Q. I'm just asking you whether you know what  
18 the requirements are, what the time requirements  
19 would be to transfer a load of medical waste across  
20 the Canadian border for processing in Canada?

21 A. No.

22 MR. HAFFNER: Your Honor, objection. I  
23 think it's been asked and answered. I think he's  
24 testified what his source of information is, and Mr.  
25 Johnson didn't agree with it.

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1 JUDGE RENDAHL: I think the record is clear.

2 Go ahead, Mr. Johnson.

3 MR. JOHNSON: It's not that I don't agree  
4 with it, it's that I don't believe it.

5 Q. Mr. McCloskey, your testimony, I believe,  
6 was that your drivers would observe the destruction  
7 of all the medical waste you would collect if your  
8 application is granted; is that correct?

9 A. Yes.

10 Q. Now, Mr. McCloskey, is it your understanding  
11 that the hydroclave facility would immediately  
12 process or instantly process, after your truck shows  
13 up at the loading dock, your waste?

14 A. Well, I guess I should rephrase that, Mr.  
15 Johnson. If waste is taken to Covanta for  
16 incineration, they would witness the destruction of  
17 that waste. However, the hydroclave facility  
18 operates on its own schedule, if you will, so at that  
19 facility, no, it would not necessarily be a witnessed  
20 treatment or disposal.

21 Q. Okay. So that's why you didn't include time  
22 for the drivers to remain there to witness the  
23 destruction of the waste?

24 A. Well, we didn't include -- I don't know  
25 where you're getting time. For example, are you

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1 referring to the pro formas? I mean, the pro formas  
2 weren't based on going to the hydroclave; it was  
3 based on going to Covanta.

4 Q. Understood, Mr. McCloskey, but I'm just  
5 going back through the testimony you provided through  
6 Mr. Haffner's questions, and you talked about the  
7 amount of time it would take for a truck to go to the  
8 hydroclave and return. And I'm merely trying to ask  
9 you questions to clarify what you considered and what  
10 you didn't consider in reaching those time estimates.

11 So my question was, because your drivers  
12 don't witness or don't -- you don't intend that your  
13 drivers would witness the processing of the waste,  
14 that's the reason you didn't include that time factor  
15 in your discussion for that; correct?

16 A. I didn't include that dead time, no.

17 Q. There wouldn't be any dead time, because  
18 they wouldn't stay to watch it be destroyed; right?

19 A. Exactly, that's right.

20 Q. Okay. Thank you. Now, Mr. McCloskey, our  
21 recollection on this side of the table is that when  
22 we asked you about price previously, you didn't have  
23 a price for the hydroclave processing operation. We  
24 may be wrong on that. We'll look at the record.  
25 But, in any event, today you have a price, and I

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1 believe you said that, as I recall, based on my  
2 conversations we had, it was this number, and you  
3 gave us \$240 a ton.

4 Do you have any written statement from  
5 Hospital Sterilization Services quoting a price for  
6 processing at the hydroclave facility for your waste?

7 A. No, there was no written agreement and there  
8 was not going to be a written agreement until we  
9 secure authority to operate.

10 Q. That wasn't my question. I said written  
11 statement. Do you have anything in writing from HSS  
12 that would indicate a price for processing at that  
13 facility?

14 A. No.

15 Q. Do you have any idea why they would give you  
16 a price of \$240 a ton, which I believe, if you take  
17 \$240 and divide it by 2,000, works out at 12 cents a  
18 pound --

19 A. Mm-hmm.

20 Q. -- when you're not in the biomedical waste  
21 collection business, and they would quote Stericycle  
22 36 -- I'm sorry, 28 cents U.S., when you've got  
23 Stericycle with actual very, very substantial  
24 biomedical waste collection operations that could  
25 deliver very large quantities to the hydroclave

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1 facility. Do you have any explanation for that?

2 A. Well, my only explanation would be is that  
3 in our communications with the parent company for  
4 HSS, it was discussed that we would have a working  
5 relationship with that parent company to create a  
6 demand for building a plant here in Washington State.  
7 And based on that proprietary discussion and  
8 proprietary agreement, they were going to offer  
9 pricing to help us create that demand, just like they  
10 did in the state of Maine.

11 Q. Again, we're talking about something that we  
12 don't have any evidence, other than your relaying to  
13 us conversations; is that correct?

14 A. Yes and no. I mean, yes, I am saying it,  
15 but it is a fact that that is what they did in the  
16 state of Maine.

17 Q. Well, I'm talking about what they've done  
18 here. You're suggesting they gave you a 12 cents a  
19 pound price. And was this HSS, that is, Hospital  
20 Sterilization Services, the operator of the  
21 hydroclave that gave you this price?

22 A. Well, yes and no, but it was a communication  
23 and agreement that took place between the parent  
24 company for HSS.

25 Q. Well, now you're saying you have an

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1 agreement with them. Do you have an agreement with  
2 somebody that related to HSS?

3 A. Written agreement, no.

4 Q. Any kind of agreement?

5 A. Yes. They -- I mean, we wouldn't have  
6 gotten that price if we didn't.

7 Q. Was this the company that Mr. Graves works  
8 for that you were talking to?

9 A. Mr. Graves works for a subsidiary of the  
10 parent company, yes.

11 Q. Did you reveal the pricing that you've  
12 quoted to us today for processing at HSS in your  
13 pre-filed testimony?

14 A. I don't recall if I did or not.

15 Q. Did you reveal the agreement you're now  
16 alleging to have with some parent corporation for  
17 Hospital Sterilization Services in your pre-filed  
18 testimony?

19 A. No, I didn't.

20 Q. When did you reach this agreement?

21 A. I'd say -- well, the agreement was discussed  
22 upon our second visit to the HSS facility.

23 Q. If I could, when you say --

24 A. HSS.

25 Q. You discussed it with HSS personnel?

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1           A.    Not only HSS personnel, but the people who  
2 had come to travel from, quote, unquote, the East  
3 Coast, the Ontario area, where the parent company is  
4 located.

5           Q.    When did you reach agreement with respect to  
6 your efforts to promote -- or if you did -- promote  
7 use of the hydroclave in the United States?

8           A.    Well, let's see.  Our last visit was  
9 probably four months ago, three and a half, four  
10 months ago.

11          Q.    When did you -- when were you quoted this  
12 price of \$240 a ton?

13          A.    At that meeting.

14          Q.    With respect to the trucks that you would  
15 need to provide the service you're proposing, you  
16 referred to the containment units.  By that, do you  
17 mean the sort of cargo portion of the truck?

18          A.    Well, I'm not going to speak specifically on  
19 the containment requirements for the truck, because  
20 I'm not -- I don't have an in-depth understanding of  
21 those requirements, but I know it is required that  
22 you have some form of secondary containment for spill  
23 purposes on the vehicle.

24          Q.    Okay.  We're talking about the cargo  
25 compartment of a vehicle; right?

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1 A. Yes.

2 Q. And you responded to Mr. Haffner's questions  
3 with respect to what you refer to as secondary  
4 containment that is required by hazardous materials  
5 regulations; is that right?

6 A. Yes.

7 Q. Is it your understanding that that's the  
8 only requirement applicable to the cargo compartment  
9 of the vehicle used to transport biomedical waste?

10 A. No.

11 Q. What other requirements are there?

12 A. There are several requirements, Mr. Johnson.  
13 Again, I'm not a regulatory specialist. That's not  
14 my background, that's not my area of expertise.  
15 That's something that would be addressed and dealt  
16 with by Mr. Perrollaz.

17 Q. Mr. McCloskey, you don't know what these  
18 other requirements are, do you?

19 A. I think that's what I just said, Mr.  
20 Johnson.

21 Q. Well, that's what I'm trying to clarify.  
22 Now, Mr. McCloskey, you talked a little bit about  
23 your prior contacts with Robb Menaul, of the  
24 Washington State Hospital Association. Isn't it the  
25 case that Mr. Menaul sat in on some of your meetings

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1 with the groups you've described as HELP and MIRT,  
2 M-I-R-T?

3 A. When -- well, I wouldn't say he sat in on  
4 them. He was there at the meeting upon my arrival.

5 Q. Didn't he participate in the meeting?  
6 Didn't he sit there and listen? Didn't he  
7 participate?

8 A. He did sit there and listen. However, when  
9 I did set down our proposal in front of him, he chose  
10 not to look at it. He said, I stand with Stericycle,  
11 and I don't want to be accused of releasing your  
12 information, and slid it back to me.

13 Q. I don't want to be accused of what?

14 A. As he stated, I do not want to be accused  
15 of, you know, providing your information to other  
16 sources, because there was some information in there  
17 that I claimed was proprietary. He flat out --

18 Q. Oh, I see.

19 A. Excuse me.

20 Q. So excuse me. So you were asking the  
21 persons present to agree to some confidentiality  
22 requirement with respect to reviewing your materials;  
23 is that correct?

24 A. For some of the materials that we had in  
25 there, yes.

1077

1 Q. And he was not willing to accept your  
2 confidentiality limitations; is that correct?

3 A. Not even the -- well, not only just those.  
4 He refused to look at the whole proposal in its  
5 entirety.

6 Q. Well, but you've said that the reason was  
7 because he didn't want to be accused of disclosing  
8 what you were representing to the group as  
9 confidential information; right?

10 A. He also went on to say that he came to that  
11 meeting with Stericycle and that he would be leaving  
12 that meeting with Stericycle. He was there with Mr.  
13 Philpott. And he said that he did not want to be  
14 accused of providing Mr. Philpott information that I  
15 was going to be -- or that I had in that packet.

16 Q. And did Mr. Philpott leave the meeting  
17 before you made your presentation?

18 A. Yes, he and the other gentleman that were in  
19 the room left.

20 Q. All right. The other representative of  
21 Stericycle?

22 A. Yes.

23 Q. Is that because you were going to make a  
24 presentation, including confidential and proprietary  
25 information?

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1 A. Yes.

2 Q. And did Mr. Menaul stay for the  
3 presentation?

4 A. Yes, he did.

5 Q. And Mr. McCloskey, did you make  
6 representations to this meeting we're referring to?  
7 I think it was a MIRT meeting, was it not?

8 A. Yes.

9 Q. Did you make representations to that meeting  
10 with respect to Stericycle and the way it did  
11 business?

12 A. You're going to have to be more specific.

13 Q. I was pretty specific. Did you attempt to  
14 describe Stericycle's services to the folks at the  
15 meeting?

16 A. I didn't attempt to describe their service.  
17 I made parallels between the communication that took  
18 place between me and our existing clients and the  
19 service they received from Stericycle and the service  
20 that we offer our clients and the new service that we  
21 were proposing.

22 Q. So you did attempt to characterize  
23 Stericycle's services to this meeting?

24 A. I communicated to this round table what had  
25 been communicated to us in our meetings with our

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1 existing clientele, yes.

2 Q. Mr. McCloskey, do you think Mr. Menaul would  
3 have a different interpretation of the meeting and of  
4 the statements you have ascribed to him here in this  
5 hearing today?

6 A. Come again?

7 Q. Do you think Mr. Menaul would have a  
8 different interpretation of the events related to  
9 this meeting and -- or would he have a different view  
10 of the statements you've ascribed to him today?

11 A. Do you think -- do I think that he would  
12 look at that situation that occurred differently than  
13 I do?

14 Q. Yeah.

15 A. Probably. I'm sure he has his own  
16 perspective on it.

17 Q. Do you think he would remember the  
18 statements you've ascribed to him the same way you  
19 do?

20 A. I don't know what Mr. Menaul remembers.  
21 You'd have to ask him. I can't speak for him.

22 Q. Mr. McCloskey, you testified a little bit  
23 about this issue of cream skimming, based on Exhibit  
24 -- I think we're now looking at Exhibit 51 as being  
25 the current version of your pro forma. Isn't the

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1 assumption that's made in this pro forma with respect  
2 to revenue that all of your clients will generate in  
3 excess of \$1,000 per month each?

4 A. Yes.

5 Q. So Mr. McCloskey, wouldn't you agree that,  
6 to the extent you end up serving a generator  
7 population that is more representative of the whole  
8 population of generators in the state, that your pro  
9 forma here that's stated in Exhibit 51 would not be  
10 accurate?

11 A. I don't think that it's not accurate. I  
12 think -- I mean, there's always going to be --  
13 there's large quantity generators and there's small  
14 quantity generators.

15 Q. Right, and you would expect -- and you know  
16 there are more small quantity generators than large,  
17 are there not?

18 A. Yes.

19 Q. So wouldn't you expect to serve more small  
20 quantity generators than large if you have statewide  
21 authority and your application is granted?

22 A. Sure.

23 Q. So isn't your pro forma inaccurate to the  
24 extent that it -- not only does it assume that a  
25 majority of your customers will be large quantity

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1 generators, but all of them would be? Isn't that an  
2 inaccurate projection of the customer base you would  
3 serve?

4 A. If you look at it that way, yes, I guess it  
5 is. However, like I said, we based the pro formas  
6 on, you know, what we knew. And based on the people  
7 we were talking to, the hospitals that we currently  
8 have a relationship with, they were generating X  
9 amount of boxes, which we reflected here in our pro  
10 formas, which came out to be, you know, plus or minus  
11 \$1,000 per month.

12 Q. Right, I understand that from the testimony,  
13 but you don't expect that that's the actual customer  
14 base that you're going to end up serving, right,  
15 because you've just told me that you're not going to  
16 -- in response to Mr. Haffner, you're not going to be  
17 just serving large quantity generators, you're going  
18 to serve the whole state and all types and sizes of  
19 generators, right, and you've just told me that a  
20 majority of the generator public, maybe a very large  
21 majority, based on the evidence in the record, is  
22 small quantity generators.

23 So doesn't it follow that you should have at  
24 least made an effort to develop a projection based on  
25 a more realistic projection of the kinds of customers

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1 you would serve?

2 A. Well, there's always going to be -- I guess  
3 the best answer I can give you, Mr. Johnson, is  
4 there's always going to be, in any business, large  
5 clients and small clients, just like there is with  
6 hazardous waste. You know, basically, as I said, we  
7 based the numbers on the communications that we had  
8 with the people that were in front of us, the people  
9 we were dealing with directly. There's always going  
10 to be that dental office that's going to throw off a  
11 small thing of sharps or a veterinarian office that's  
12 going to have a dead dog or what have you. When you  
13 look at serving those clients in relationship to the  
14 large quantity clients, I think where you operate  
15 successfully here is in the way you route things, the  
16 way you set up your pickups and the way you schedule  
17 those.

18 Q. Mr. McCloskey, I think the record should  
19 show you're not answering my question. My question  
20 has to do with the way your pro formas are run. My  
21 question goes to whether your pro formas were based  
22 on an unrealistic assumption that all of your  
23 customers would be large quantity generators.

24 MR. HAFFNER: I'm going to object. We're  
25 just having an argument over whether he agrees with

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1 the pro formas or not. He's asking the witness to  
2 confirm mistakes that Mr. Johnson sees in the  
3 documents. That's argument, not obtaining testimony  
4 of fact.

5 JUDGE RENDAHL: I think the answer to your  
6 question has been given.

7 MR. JOHNSON: Perhaps so, Your Honor.

8 JUDGE RENDAHL: So I think you should move  
9 on.

10 MR. JOHNSON: I have no further questions.  
11 Thank you.

12 JUDGE RENDAHL: All right. Mr. Sells.

13 MR. SELLS: Thank you, Your Honor.

14

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

16 BY MR. SELLS:

17 Q. Mr. McCloskey, I'm still confused over this  
18 HSS parent company thing. Let me see if you can help  
19 me here. As I understood your testimony, Kleen has  
20 some sort of a verbal or other type of arrangement  
21 with some entity that is the parent company of HSS;  
22 is that correct?

23 A. Yes.

24 Q. And that arrangement apparently involves  
25 Kleen receiving a preferential rate, as compared to,

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1 say, Stericycle or someone else, for use of the  
2 hydroclave; is that correct?

3 A. Yes.

4 Q. And in return for that, the parent company,  
5 in return for giving you, your company, a better  
6 rate, what does this parent company get?

7 A. Well, basically, what we would be doing is  
8 introducing Washington State generators to the  
9 hydroclave technology. Once they were introduced to  
10 that and we created a demand or a need for that  
11 technology, the parent company would eventually come  
12 to Washington State, bring a plant, bring that  
13 technology to Washington State generators. As I  
14 said, just as they did in the state of Maine with  
15 creating the demand to come from Ontario down to  
16 Maine.

17 Q. So Kleen Environmental Technologies is going  
18 to have salesmen, for lack of a better term, out  
19 trying to convince generators of medical waste that  
20 the hydro thing is a good way to go; right?

21 A. We wouldn't have like -- I don't want you to  
22 think we're going to have, like, a dedicated salesmen  
23 who just goes out and sells hydroclave. What we  
24 would be doing is be the conduit to introduce  
25 Washington State generators, in the form of -- you

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1 know, in the process of conducting business, be the  
2 conduit to introduce them to the hydroclave  
3 technology.

4 For many Washington State generators, what  
5 we've found, in communications with them, is because  
6 they have never been introduced to the hydroclave  
7 technology, it's somewhat of a foreign concept.

8 Q. What is the parent company of HSS?

9 A. Oh, I believe it is Iatron Corporation, and  
10 I'm not sure how to spell that, if you're going to  
11 ask.

12 Q. Well, I'll take a stab at it. And is that a  
13 Canadian company?

14 A. I believe so, yes.

15 Q. Is this company -- are you planning on this  
16 company making any direct payments to Kleen?

17 A. No.

18 Q. Is Kleen going to make any direct payments  
19 to either Iatron or HSS?

20 A. Direct payments for?

21 Q. For anything?

22 A. No.

23 Q. Do you anticipate there being a written  
24 contract?

25 A. It was discussed that, at some time, and

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1 that time -- it's my understanding that that time  
2 would come once we were granted authority to operate.  
3 It was decided that it would be premature to  
4 establish such a relationship, written or otherwise,  
5 prior to receiving authority to operate.

6 Q. Do you believe that you would be required to  
7 file that contract with the WUTC?

8 A. Mr. Sells, I truly -- I mean, I don't know.  
9 It's something I'd have to delve into.

10 Q. Do you believe or do you know whether or not  
11 the WUTC, then, would have the right to audit and  
12 review the books and records of Iatron on the basis  
13 of that contract?

14 A. I don't know.

15 Q. Do you think Iatron would be happy over  
16 that?

17 A. Well, it's something you'd have to ask them.

18 Q. Okay. They're not going to testify here?

19 A. No.

20 Q. And while you're out promoting the  
21 hydroclave, you're going to be taking your medical  
22 waste to an incinerator in Oregon; right?

23 A. Initially, yes, that's the plan.

24 Q. The mileage is the other area where I'm a  
25 little bit confused. The figure of 2,800 miles, is

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1 that per month, per truck, or per month, per two  
2 trucks?

3 A. Which exhibit was that again, gentlemen?

4 Q. I'm sorry, I don't recall.

5 JUDGE RENDAHL: I believe it was Exhibit 51.

6 MR. HAFFNER: Forty-four.

7 JUDGE RENDAHL: Oh, 44, 44.

8 THE WITNESS: To answer your questions, Mr.  
9 Sells, the 2,800 miles that you see at that time,  
10 it's -- we only have the demand created for one  
11 truck.

12 Q. Okay, okay. So -- and that's per month?

13 A. For the month of January, yeah.

14 Q. All right. And I think you indicated, and  
15 I'll take your word for it, that round trip to  
16 Covanta from Seattle is 1,000 miles; correct?

17 A. No.

18 Q. I'm sorry, 500 miles.

19 A. Round trip, yes.

20 Q. All right. And how many round trips would  
21 you be making per month to Covanta?

22 A. We anticipated two.

23 Q. All right. So that's where I got the 1,000.  
24 So out of that 2,800, after you go to Covanta twice,  
25 you're left with 1,800 miles; correct?

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1 A. Yes, uh-huh.

2 Q. And that's the mileage that you've ascribed  
3 to picking up medical waste with this truck in the  
4 state of Washington for one month?

5 A. For one month, with four clients.

6 Q. All right. Now, I took the liberty at  
7 looking at this old map I carry here, and it's about  
8 -- well, it's actually almost exactly 300 miles from  
9 points in King County to Spokane. So during that  
10 month, if you had to go to Spokane, what, round trip,  
11 three times, that would use all of your 1,800 miles,  
12 wouldn't it?

13 MR. HAFFNER: Mr. Sells, I think the record  
14 already establishes that this is for Region One and  
15 not for the entire state.

16 MR. SELLS: If that's correct, I'm not aware  
17 of that.

18 MR. HAFFNER: It's labeled Region One.

19 MR. SELLS: Okay. Well, I'm not looking at  
20 the document.

21 MR. JOHNSON: Exhibit 44, page one, refers  
22 to Region One.

23 Q. So the 1,800 miles allowable are for -- is  
24 for Region One only?

25 A. (Nodding.)

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1 Q. All right. Well, that answered my question,  
2 then. One last area here. You indicated that you  
3 think you may have to get a transfer station -- solid  
4 waste permit for a transfer station in King County?

5 A. Yes.

6 Q. Have you spoken to anyone or reviewed any  
7 application process to go through that?

8 A. Personally, no, but I know Mr. Perrollaz  
9 has.

10 Q. All right. Do you know if he or you or  
11 anyone has reviewed the county solid waste plan to  
12 see if it provides for this type of transfer station?

13 A. I wouldn't know, Mr. Sells.

14 Q. Do you know what a county solid waste plan  
15 is?

16 A. What's that?

17 Q. Do you know what a county solid waste plan  
18 is?

19 A. The definition, no, I don't.

20 Q. Do you know how long it takes to site a  
21 transfer station?

22 A. No.

23 Q. Do you know how much it costs?

24 A. No. Well, if you're talking about what I  
25 was talking about earlier, based on what I reviewed

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1 in the documents provided by my counsel, then, yes, I  
2 do.

3 Q. Those are the costs of the permits?

4 A. Right.

5 Q. And that didn't include the cost of hiring a  
6 consultant and/or a lawyer, if you needed to do that.

7 MR. SELLS: All right. That's all I have.  
8 Thank you, Your Honor.

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

11 (Discussion off the record.)

12 JUDGE RENDAHL: Let's be back on the record.  
13 While we were off the record, we determined that Mr.  
14 Trautman has no questions, I have no questions for  
15 the witness, but I believe, Mr. Haffner, you have a  
16 little bit of redirect.

17 MR. HAFFNER: Yes, Your Honor. Thank you.

18

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

20 BY MR. HAFFNER:

21 Q. Mr. McCloskey, addressing what Mr. Sells  
22 just raised, in terms of a transfer station permit,  
23 if it turns out that the time and the cost of  
24 obtaining a transfer station permit is excessive or  
25 -- well, is excessive, would your company consider

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1 oing what Stericycle does to avoid having a transfer  
2 station permit, which is to cross-load medical waste  
3 from one vehicle to a trailer, and then take that  
4 trailer to its disposal site?

5 A. I think if it really were as stringent of a  
6 process as Mr. Sells painted it to be and if it were  
7 cost prohibitive, I think the partners, yes, they  
8 would sit down and look at it from a business  
9 perspective and make such a decision, yes.

10 MR. HAFFNER: Thank you. I have no further  
11 questions, Your Honor.

12 MR. JOHNSON: Your Honor, I have one  
13 question, if you'll indulge me. It doesn't relate to  
14 transfer stations.

15 JUDGE RENDAHL: That's re-cross that's based  
16 upon redirect.

17 MR. JOHNSON: I understand.

18 JUDGE RENDAHL: So what's this relate to?

19 MR. JOHNSON: It relates to the price Mr.  
20 McCloskey provided to us, and I'd like to ask him a  
21 question about the agreement Mr. Sells asked, and it  
22 relates the price to the agreement.

23 JUDGE RENDAHL: One more question.

24

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

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1 Y MR. JOHNSON:

2 Q. Mr. McCloskey, Mr. Sells asked you about an  
3 agreement that you may or may not have or might have  
4 in the future with the entity you've described as the  
5 parent of Hospital Sterilization Services. I believe  
6 you gave the name of Iatron for that company?

7 A. Yes.

8 Q. You gave us a price for processing waste at  
9 the Hospital Sterilization Services hydroclave  
10 facility in Canada, and I'm wondering if that price  
11 was contingent upon this future agreement that you  
12 refer to with the parent company for promotion of  
13 their technology in the United States?

14 A. Yes, it was. I mean, it was all contingent  
15 upon this whole process and how the outcome of this  
16 process, whether or not we'd be allowed to operate as  
17 a transporter of medical waste.

18 Q. But presumably, not only this process, but  
19 then actually reaching agreement with these folks?

20 A. Yes.

21 MR. JOHNSON: Okay. Thank you.

22 JUDGE RENDAHL: Mr. Haffner.

23 MR. HAFFNER: I have to get a clarification.

24

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

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1 BY MR. HAFFNER:

2 Q. Is it your understanding that that agreement  
3 is based on your company's promotion of the  
4 hydroclave facility?

5 A. Well, it was --

6 Q. Wouldn't the agreement with Iatron require  
7 your company to actively promote the use of the  
8 hydroclave facility?

9 A. Yes.

10 MR. HAFFNER: I have no other questions,  
11 Your Honor.

12 JUDGE RENDAHL: All right. With that, I'm  
13 assuming nobody has anything further for this  
14 witness? Hearing nothing, Mr. McCloskey, you're  
15 excused. Is there anything we need to talk about in  
16 terms of scheduling before we leave for the day?  
17 Have you and Mr. Johnson resolved your issues over  
18 the witnesses for tomorrow?

19 MR. JOHNSON: Are we off the record?

20 JUDGE RENDAHL: We're not off the record.  
21 Let's go off the record.

22 (Proceedings adjourned at 3:28 p.m.)

23

24

25