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10 52 1458

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

2 JUDGE RENDAHL: We're back for another day of
3 hearing in Docket Number TG-040248, which is the
4 application Number GA-079254 of Kleen Environmental
5 Technologies, Incorporated for a statewide certificate
6 to collect, transport, and dispose of biomedical waste.
7 I'm Ann Rendahl, I'm the Administrative Law Judge
8 presiding over this proceeding. We are here to hear
9 from what we call shipper generator witnesses, those
10 folks who generate the biomedical waste, and establish
11 either a need for or an issue with the satisfaction of
12 the service of the existing carriers.

13 So before we take the testimony of our first
14 witness, let's take the appearances of counsel beginning
15 with the applicant.

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

19 JUDGE RENDAHL: For protestant Stericycle.

20 MR. JOHNSON: Your Honor, Steve Johnson for
21 Stericycle of Washington, Inc.

22 JUDGE RENDAHL: And for the other
23 protestants.

24 MR. SELLS: Thank you, Your Honor, James
25 Sells appearing for protestants Harold LeMay

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1 Enterprises, Inc., Rubatino Refuse, Inc, Consolidated
2 Disposal, Inc., and the Washington Refuse and Recycling
3 Association.

4 JUDGE RENDAHL: Thank you, Mr. Sells.

5 And Mr. Trautman has been here representing
6 Commission Staff on prior days, but he has a conflict
7 and will not be here today.

8 So I think we're ready to start with our
9 first witness of the day. Mr. Smith, could you state
10 your full name and your work address for the record,
11 please.

12 MR. SMITH: Anthony B. Smith, Tony Smith, I
13 work at ZymoGenetics, 1201 Eastlake Avenue East, in
14 Seattle, 98102.

15 JUDGE RENDAHL: Thank you. And if you would
16 raise your right hand, please.

17 (Witness Anthony Smith was sworn.)

18 JUDGE RENDAHL: Okay, please go ahead,
19 Mr. Haffner.

20 MR. HAFFNER: Thank you, Your Honor.

21

22 Whereupon,

23 ANTHONY B. SMITH,
24 having been first duly sworn, was called as a witness
25 herein and was examined and testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. HAFFNER:

3 Q. Mr. Smith, can you spell Zymo for us?

4 A. Z-Y-M-O.

5 Q. Thank you. Where is your company located, or
6 does it have any other locations other than that address
7 you just gave?

8 A. We have a building across the street as well,
9 so technically we have two addresses, 1201 and 1208
10 Eastlake Avenue.

11 Q. So all your locations are in King County?

12 A. Correct.

13 Q. What is your position with ZymoGenetics?

14 A. I work in our environmental health and safety
15 department.

16 Q. How long have you been in that department?

17 A. For just over two years.

18 Q. What is your position in that department?

19 A. I'm an environmental health and safety
20 specialist.

21 Q. What are your responsibilities as a
22 specialist in that department?

23 A. My primary role is as the chemical safety
24 officer. I also work with two other individuals. We
25 work together to follow our policies, implement

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1 policies, develop programs, training, but predominantly
2 we manage our waste streams from biomedical, chemical,
3 and radioactive.

4 Q. Are you authorized by your company to be here
5 and speak on its behalf regarding treatment and disposal
6 of medical waste?

7 A. Yes, I am.

8 Q. What type of business is ZymoGenetics?

9 A. We are a protein therapeutics biotechnology
10 company.

11 Q. Can you explain that a little bit more in
12 layman's terms?

13 A. We manufacture human protein for treatment of
14 disease. We utilize several different types of
15 processes where protein's grown up in culture, and that
16 culture can be considered biohazardous. The containers
17 that that culture is grown in depending on the size can
18 be considered biohazardous, and as such, the biomedical
19 waste stream constitutes our largest waste stream at our
20 company.

21 Q. What type of wastes are included in your
22 waste stream?

23 A. For biomedical or for the whole company?

24 Q. Let's cover just biomedical.

25 A. With biomedical we have low, high volume low

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1 density plastics predominantly, sharps, and then
2 pathological, considered pathological, animals that are
3 kept frozen until time of disposal.

4 Q. Now when you talk about this high volume low
5 density plastics, you then mentioned sharps, are the
6 sharps the same as the high volume low density plastics,
7 or are they a separate category of waste?

8 A. They're really a separate category, because
9 they are contained in what's known as a sharps
10 container. When I refer to the high volume low density
11 waste, I'm referring to essentially giant milk jugs, big
12 containers of plastic that contain cells or human cell
13 lines and therefore have the potential to infect human.

14 Q. Okay. Do you have anything like lab coats or
15 rags or things like that that are considered biomedical
16 waste?

17 A. No, generally that gets laundered.

18 Q. What type of volume of biomedical waste does
19 your company generate on a monthly basis?

20 A. We ship roughly 50 containers per week, so I
21 would say 200 per month.

22 Q. What size are those containers?

23 A. They are the 35 pound or 60 pound containers.
24 They're the big red tubs. Maybe Stericycle could
25 elaborate, I'm not certain the official size of it, but

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1 it's a garbage can basically, red tub, gray tub.

2 Q. You mentioned Stericycle, is Stericycle your
3 current service provider?

4 A. Correct.

5 Q. Do you currently use any cartons?

6 A. No.

7 Q. What would be the frequency of pickup at your
8 facility?

9 A. Once a week.

10 Q. Do you have an estimate of the dollar volume
11 that your company generates on a monthly basis, a dollar
12 volume in terms of waste?

13 A. We are in excess of or right around \$50,000
14 annually so somewhere around \$5,000 to \$6,000 monthly.

15 Q. Have you contacted anybody else for service
16 of your transportation and collection of medical waste
17 in the last three years?

18 A. Yes.

19 Q. Who is that?

20 A. It was a company called SMI Medical in
21 Philadelphia.

22 Q. Why did you contact a company in Philadelphia
23 for your waste here in Washington?

24 A. Oh, you didn't specify for my waste here in
25 Washington.

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1 Q. Okay. How about for the transportation and
2 collection of your biomedical waste in Washington, have
3 you contacted a company, any other companies in the last
4 three years?

5 A. There are no other companies for me to
6 contact for hauling medical waste. I'm not sure I
7 understand exactly how to answer that.

8 Q. Well, I guess just to clarify, is it your
9 understanding then that there were no other companies
10 for you to contact?

11 A. It's my understanding that there are other
12 companies that are authorized to haul but do not and
13 that Stericycle is the only company available within the
14 biomedical waste industry to handle biomedical waste, so
15 there are no options for other haulers. If you look in
16 the yellow pages, I don't believe you will find anybody
17 else to haul that waste.

18 Q. Okay. Has anybody else contacted you to
19 provide that service in the last three years other than
20 Stericycle?

21 A. Yes.

22 Q. Who was that?

23 A. Kleen Environmental Technologies.

24 Q. And was that to provide your biomedical waste
25 transportation?

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1 A. Yes.

2 Q. Not your --

3 A. And disposal.

4 Q. Was that in preparation for this hearing, or
5 what was the purpose behind them contacting you?

6 A. There had been some discussions for the last
7 several years over the issue of medical waste vendors
8 and the lack thereof within our -- within this state,
9 and Kleen Environmental Technologies decided to explore
10 the option of trying to provide that service for some of
11 its customers, and I believe as a result of that we sit
12 here today.

13 Q. Have they ever actually provided you with
14 service of transporting biomedical waste?

15 A. No.

16 Q. Do you have a preferred method for how your
17 biomedical waste is treated or disposed of?

18 A. A preferred method or the method in which we
19 find acceptable?

20 Q. Well, let's start with the method that you
21 find acceptable.

22 A. At the moment, given the volume that we do
23 and the cost associated with it, our company has decided
24 to accept the risk associated with electrothermal
25 deactivation from the Morton facility. If it was

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1 feasible, we would prefer to have our wastes
2 incinerated.

3 Q. Why is that?

4 A. Because from a liability standpoint, once
5 it's incinerated, there's no possibility that that
6 material could remain infectious.

7 Q. Do you feel like you have the opportunity or
8 the option to have incineration provided to you by
9 Stericycle at this time?

10 A. They I believe have outlets for that, but for
11 the volume of waste that we do, it's not economically
12 feasible.

13 Q. Do you know where Stericycle handles their
14 incineration?

15 A. I'm not aware specifically, no.

16 Q. If you --

17 A. Actually, that's not true, we do have
18 pathological waste that they incinerate for us that goes
19 to Salt Lake City I believe.

20 Q. If you could have that incineration performed
21 at a closer location such as Oregon, would you or your
22 company prefer that?

23 A. It would be advantageous, because we could
24 look at that facility much easier than we can in terms
25 of transportation of getting to Oregon versus Salt Lake.

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1 Q. So your preference over a closer location
2 would be based on your ability to audit that facility?

3 A. Correct.

4 Q. Would you have any preference over a closer
5 location because of less time spent on the road for
6 transporting the waste?

7 A. Yes.

8 MR. JOHNSON: Objection, Your Honor, that's a
9 leading question.

10 JUDGE RENDAHL: Mr. Haffner, can you rephrase
11 the question.

12 BY MR. HAFFNER:

13 Q. Would there be any other reason why you would
14 prefer to have a closer location for your incineration
15 facility?

16 A. Yes, I do believe that the less time my
17 liability is on the road, the better off it is for my
18 company.

19 Q. Are you satisfied with the current
20 documentation of your transportation and collection of
21 medical waste?

22 A. No.

23 Q. Why not?

24 A. Currently I don't know what the official
25 requirements are from this Commission and from the State

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1 with regards to documenting biomedical waste. With
2 regards to hazardous waste, the EPA RCRA has pretty
3 stringent requirements. As a generator, we have become
4 very accustomed to following those stringent
5 requirements. We have numerous pages of manifests in
6 carbon copy where signed originals get returned to the
7 shipper. Followed by that once the material has
8 actually been destroyed, then the company that has
9 destroyed that sends a certificate of destruction, has
10 the manifest number and the line items from that
11 manifest of the waste stream that was destroyed
12 correlated back to that manifest. So when you receive
13 that certificate of destruction, you also will have all
14 the copies of the manifest signed from the primary and
15 secondary transporters on down to the waste receiving
16 facility.

17 Q. And you mentioned RCRA, R-C-R-A.

18 A. Mm-hm.

19 Q. That's for the transportation of hazardous
20 waste, correct?

21 A. Correct.

22 Q. Okay. If you could take a look at the first
23 binder in front of you and turn to Exhibit 65. It's the
24 document behind tab 65. I believe the evidence in this
25 hearing has been that this is an example of a manifest

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1 used by Stericycle. Is this the type of manifest that
2 you receive from Stericycle?

3 A. Yes.

4 Q. And is this manifest lacking in some way from
5 the information that you would prefer to have that you
6 just described?

7 A. I never receive the original copy back from
8 Stericycle. My signature will go on this manifest as
9 well as the first transporter signature. If there's a
10 transfer, then I assume that signature also occurs, but
11 that information is only available and made available to
12 me through our request of Stericycle. And it's, I
13 believe, I'm not positive about this, but I believe we,
14 ZymoGenetics, have requested Stericycle to give us a
15 copy of this. I don't know that that's a service that's
16 available to all customers, but through some effort on
17 our part we managed to receive copies, not the
18 originals.

19 Q. And your preference is to receive an
20 original?

21 A. An original document would be preferable.

22 Q. Do you consider the information on this
23 Exhibit 65 to constitute a certificate of destruction?

24 A. No, this just informs me of receipt. At no
25 point on this document is there anything that denotes

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1 that it was actually destroyed. The treatment facility
2 section even says certificate of receipt, it does not
3 say that that material has been destroyed.

4 Q. Have you asked Stericycle for a certificate
5 of destruction?

6 A. I have worked with Stericycle and have come
7 up with things that are agreeable, but they still are
8 not official certificates of destruction where somebody
9 has certified that the material is no longer in
10 inventory and that it has been destroyed.

11 Q. If you could look at Exhibit 67, is that a
12 document that you're familiar with?

13 A. Yes.

14 Q. Can you explain how you're familiar with that
15 document?

16 A. This is a bill.

17 Q. Is that the same format of bill that you
18 receive from Stericycle?

19 A. Yeah, even to the due to rising fuel costs
20 your invoice may reflect additional charges, exactly,
21 except ours is considerably more expensive.

22 Q. Would you consider this document to be a
23 certificate of destruction?

24 A. No, this just tells me that they received the
25 material and now they have the ability to bill me for

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1 it.

2 Q. Let's turn then to Exhibit 27.

3 JUDGE RENDAHL: Did you say 27?

4 MR. HAFFNER: Yes, Your Honor.

5 BY MR. HAFFNER:

6 Q. Can you tell us if you're familiar with that
7 document?

8 A. Yes, I am.

9 Q. And how is it that you're familiar with that
10 document?

11 A. I receive a certificate of destruction that
12 associates a certificate number up in the right-hand
13 corner to an invoice and also to a manifest number. You
14 can see it just below the name, the city name, Bothell,
15 Washington is the manifest number that this certificate
16 correlates to. It says here that sequence number 1 on
17 that particular manifest, which was RQ waste flammable
18 liquid corrosive, treated on the dates between 7-30-03
19 and 7-31 by incineration. If I was to pull up that
20 manifest, I would be able to note if there were any
21 additional items on that manifest that might still be in
22 inventory or had also been completely destroyed.

23 Q. Now it appears that this certificate is for
24 hazardous waste; is that correct?

25 A. That is correct.

1324

1 Q. And it's my understanding that you would
2 prefer to have this type of certificate also used for
3 your medical waste?

4 A. It would be preferable.

5 Q. Would this particular form of document be
6 sufficient for your company for a certificate of
7 disposal?

8 A. If it maintained a certificate number, an
9 invoice number that it correlated to, a manifest
10 document that it correlated to, and the number of items
11 of waste that were actually destroyed, yes.

12 Q. And this document does all those things?

13 A. It does do that.

14 Q. Now this document, let's see, I believe the
15 name below, the Chuck Slaughter, when you receive these
16 type of documents, well, let me ask you first, do you
17 receive these type of documents from either Kleen
18 Environmental or the generator of these documents?

19 A. Yes, I do.

20 Q. Who do you receive them from?

21 A. From Teris.

22 Q. Teris is the generator?

23 A. Teris is the company that provides this
24 document, correct.

25 Q. I should be careful when I say generator, I

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1 don't mean a waste generator but the company that does
2 the final disposal.

3 A. This is the Teris, yeah.

4 Q. How do we spell Teris?

5 A. T-E-R-I-S.

6 Q. Thank you. Does this document come back with
7 a signature?

8 A. I don't believe it does. I believe it's just
9 an individual that I have in the past, and Chuck
10 Slaughter's name is not familiar, but I have called to
11 ask a question about a CD, and this was several years
12 ago, but it gives me the name, his title, and an avenue
13 to address with my customer service representative if I
14 have any issues with a particular certificate of
15 destruction.

16 Q. Going back to Exhibit 65, what other
17 documentation do you receive from Stericycle in the
18 process of documenting the transportation and collection
19 of your company's waste?

20 A. There's a receipt that looks much like a
21 grocery store receipt that is usually attached to this
22 document. This document itself is a two part document,
23 a white page and a yellow page. The yellow page is mine
24 to keep, and then the white page continues on to whoever
25 else gets to sign it. Attached to that is the receipt

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1 that denotes how many containers were scanned into their
2 system and what type of containers those are. And this
3 little area in the upper right-hand corner of this
4 document usually denotes the quantity, type of
5 container, and type of disposal method. And on the
6 majority of my manifests I can have both the ETD filled
7 in as well as incinerate.

8 Q. And just so we make the record clear, if you
9 look at Exhibit 66, is that the receipt you're referring
10 to?

11 A. Correct.

12 Q. An example of the receipt?

13 A. Yeah, it's just enlarged.

14 Q. Has your company ever been billed for
15 overweight charges by Stericycle?

16 A. I haven't reviewed a invoice closely enough
17 to know if that's true.

18 Q. Okay. What type of containers do you
19 currently use?

20 A. Currently we use the Stericycle plastic tubs.
21 I'm trying to look on here to see if I can see the
22 container size in cubic feet.

23 Q. Do you use only the tubs?

24 A. Correct.

25 Q. Is that your choice to use only the tubs?

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1 A. That was the system that was implemented
2 prior to my arrival at ZymoGenetics, and a different
3 department has two full-time staff that manage that
4 process. So we in health and safety haven't imposed a
5 preference, because this is -- this is what they have
6 managed to use and do, and therefore we don't want to
7 rock the boat too much with them. Because they're
8 certainly doing us a service by managing that waste in
9 terms of taking it out of the labs, putting it into
10 these plastic tubs, and getting them prepared for
11 shipment, but that would not be my preference.

12 If I had something similar to what my
13 hazardous waste service is where I get service on site.
14 If I store my material, I get somebody that's extremely
15 trained and qualified come into the building, they
16 segregate my waste, they pack it up, they label it and
17 prepare it for shipment, load it onto the truck, and it
18 leaves. Right now we have two full-time employees that
19 that is essentially a large part of their job.

20 Q. So are you saying that you would be
21 interested in using boxes if somebody would come in and
22 provide the service to packing those boxes?

23 MR. JOHNSON: Your Honor, I object to that as
24 again a leading question.

25 JUDGE RENDAHL: I will sustain it --

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1 MR. JOHNSON: I don't think the witness
2 mentioned boxes.

3 JUDGE RENDAHL: I will sustain it and ask
4 Mr. Haffner if he can rephrase the question.

5 BY MR. HAFFNER:

6 Q. Are you interested in having a company
7 available to you that provides a packing service of
8 medical waste?

9 A. If a service existed where we were given the
10 choice to have an outside vendor come in and manage our
11 medical waste, yes, I would be interested in that. I
12 think it would free up our glass wash folks who do this
13 to spend more time working on glass wash and less time
14 working on medical waste.

15 Q. If that service were available to you, would
16 you prefer to use boxes in that circumstance?

17 MR. JOHNSON: Your Honor, I object again for
18 Mr. Haffner's leading question.

19 JUDGE RENDAHL: Well, I'm going to allow some
20 leeway so we can move this process along.

21 But if you can try to avoid the leading
22 questions, Mr. Haffner, I would appreciate it.

23 MR. HAFFNER: Thank you, Your Honor.

24 A. If I don't have to go through the process of
25 assembling the boxes or dealing with the issue of

1329

1 knowing whether or not the tubs that we currently use
2 are actually clean and decontaminated, yes, I would
3 prefer boxes. Tubs are impossible to verify that they
4 are actually free of any pathogen. Just a preference.

5 BY MR. HAFFNER:

6 Q. Have you asked Stericycle about using boxes
7 from them?

8 A. Not since I have been with ZymoGenetics.

9 Q. Has Stericycle ever provided your company
10 with any training regarding biomedical waste?

11 A. Not that I am aware of.

12 Q. How do you currently segregate your waste?

13 A. Pathological waste, the animal carcasses,
14 remain in the freezer until the day before the scheduled
15 shipment. At that time they are removed from the
16 freezer, put into a lined gray tub, and then that
17 material is wheeled to the loading dock for pickup the
18 next morning. The solid plastic waste is also put into
19 a tub, but it is a red tub, and that is also lined with
20 a liner. Most of this waste then is at least double
21 bagged, and that material is also stored on the loading
22 dock ready for disposal the next day, or pickup I should
23 say.

24 Q. And you mentioned your pickups were once a
25 week, so you keep all of your biomedical waste stored

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1 until that pickup in a freezer or cooler?

2 A. The pathological waste, putrefiable waste,
3 yes, that stays in either refrigeration or freezer. The
4 non-putrefiable waste, just the plastics, labware, et
5 cetera, it just gets collected like regular solid waste
6 but kept separate from solid waste.

7 Does that answer your question?

8 Q. Yes, thank you.

9 Are you aware of a notice of violation that
10 was issued to Stericycle in Pierce County regarding the
11 failure to immediately report boxes falling off of one
12 of their trucks?

13 A. I just became aware day before yesterday.

14 Q. Does that information give you any concern
15 about the Stericycle service?

16 A. I was very unhappy that that information was
17 never released to our company or to me at any point in
18 time, and that does lead me to wonder why.

19 Q. Are you aware that the Morton treatment
20 facility was shut down because of concerns about
21 tuberculosis?

22 A. Yes, I am.

23 Q. And why are you concerned about that?

24 A. I believe you asked me if I was aware.

25 Q. Oh, I'm sorry.

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1 MR. JOHNSON: Right.

2 Q. Does that cause a concern to you?

3 A. Initially yes, it did. Since that incident,
4 Stericycle has gone through some changes in ownership,
5 management. It's been Stericycle and BFI. They have
6 implemented things I believe at the plant to help
7 protect the employee population from that happening.
8 But I don't -- I don't have any assurances that that
9 couldn't happen again. If my material was in a
10 cardboard box and it was packaged and shipped for
11 incineration, no employee would be exposed to it. As it
12 is, employees at the Morton facility from my
13 understanding unload the material that's to be treated
14 there, dump it into a shredder, and that shredder then
15 has a vacuum system on it to try and protect those
16 employees from any potential exposures, and that's part
17 of their electrothermal deactivation.

18 Q. How familiar are you with the Morton
19 facility?

20 A. I have been there to visit. I don't know if
21 it's changed since I have been there, but I'm fairly
22 familiar with what the process looks like.

23 Q. When did you visit?

24 A. I believe it was in 2001.

25 Q. What did you observe about that site, if any

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1 concern you had, what did you observe about that site?

2 A. At the time that I visited that site I
3 observed containers being -- and I should note they are
4 different containers than are currently used. They were
5 black plastic containers that were much more flimsy than
6 these Rubbermaid totes that ZymoGenetics currently uses.
7 Those containers were put -- they were put in -- lifted
8 up, dumped into this chute where the chopper was. This
9 chute had a plastic drape in front of it to protect the
10 employee who was responsible to dump it. It was also
11 under negative pressure so it was drawing air in as
12 opposed to blowing air out. That material is chopped
13 up, put into a puck, that puck is then put on a conveyer
14 belt that goes through their ETD system. And that
15 system is very similar to a microwave, but they don't
16 like to use microwave, I think it's radiowave. And it
17 heats up that puck to some temperature in excess of 200
18 degrees Fahrenheit I believe.

19 The issue that has arisen is whether or not
20 that puck is uniformly 200 degrees throughout the entire
21 process. The analogy that I was given was that it's
22 similar to putting a muffin in a microwave, and parts of
23 that muffin get extremely hot, but other parts of it
24 remain completely cold. So, you know, that certainly
25 does leave you at a possibility for risk if not all of

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1 your material then becomes decontaminated and that
2 shredded material comes out of that ETD and there's
3 patches of it that maybe were extremely resistant, you
4 know, and just extrapolating out what could happen in a
5 bad situation.

6 The plastic then gets, they call it a puck,
7 that puck then gets taken and dumped into the back of
8 basically a box van. That box van is full of shredded
9 decontaminated electrothermal deactivated plastics which
10 then go to an approved landfill. So it's a much higher
11 volume of material than I would have if I had ash. But
12 as I noted before, due to cost considerations for the
13 volume of waste we do, we have accepted that level of
14 risk at our company. If we had another option, I
15 believe we would give it some serious consideration from
16 another hauler at a different price.

17 Q. Do you think that your service in the
18 transportation and collection, transportation and
19 collection of medical waste would be better if there was
20 another competitor?

21 A. Yeah, absolutely. My company is in the
22 process of developing a business continuity plan,
23 business impact analysis. We have to have contingency
24 plans in place. We have been tasked in the process of
25 developing this plan to identify secondary vendors for

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1 our waste streams, because if we can't get rid of our
2 waste, it makes it very difficult to continue our
3 research efforts. And in that process at the moment I
4 have no secondary vendor that I can even contact for my
5 medical waste. And in light of Mount Saint Helens
6 potentially erupting and Stericycle's Morton facility
7 being within the vicinity of Mount Saint Helens, that
8 does give me a little concern, because currently that's
9 our treatment method, ETD at Morton.

10 Q. How do you know about the applicant in this
11 hearing, Kleen Environmental Technologies?

12 A. Kleen Environmental Technologies handles my
13 universal waste.

14 Q. What do you consider universal waste?

15 A. The state has defined universal waste as D009
16 Mercury containing wastes, light bulbs, batteries,
17 thermometers. They classified it about two or three
18 years ago as universal wastes so as to exempt it from
19 the hazardous waste regulations, provided that it was
20 managed in accordance with the new universal waste
21 regulations.

22 Q. Is that waste that goes to recycling, or is
23 that waste that goes to disposal?

24 A. Recycling and reclamation.

25 Q. Has Kleen provided you any training?

1335

1 A. On?

2 Q. On the transportation or handling of
3 hazardous waste?

4 A. Not to my knowledge. I personally don't need
5 it. I am fairly well trained in that regard.

6 Q. How long have you been receiving services
7 from Kleen?

8 A. Before I started at ZymoGenetics, so I have
9 been there over two years now, and Kleen has done
10 business with ZymoGenetics for several years prior to
11 that.

12 Q. Are you satisfied with the services that
13 they're providing you?

14 A. Yes, I am.

15 Q. Do you have a preference about the number of
16 carriers involved in the transportation of your medical
17 waste?

18 A. I would prefer to minimize that as much as
19 possible.

20 Q. Meaning would it be most preferable to have
21 one carrier as opposed to multiple carriers?

22 A. It means that if I only have to have it
23 transported from our facility in downtown Seattle to a
24 transfer hub and to a treatment facility, that would be
25 great if that could be handled in that fashion, if it

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1 didn't have to go through multiple transporters,
2 multiple handling steps, which increases exposure to the
3 employees that are handling that material. In most
4 cases those are truck drivers, and they tend not to
5 necessarily be trained to the fullest level of knowledge
6 handling. Just speaking in generalities, I don't know
7 that that could be a 100% fact, but I know that by
8 comparison my employees are a highly trained scientific
9 staff and tend to follow the universal precautions to
10 the letter. Universal precautions is part of the
11 bloodborne pathogen standard, so that's how the medical
12 waste infectious materials are treated.

13 Q. Are you aware that in this application Kleen
14 is proposing to provide a service that consists
15 primarily of the use of cardboard boxes for
16 incineration?

17 A. I have been made aware of that, yes.

18 Q. Is that a service that would be acceptable to
19 you?

20 A. It would certainly warrant our investigation
21 and would encourage us to go back to our glass wash
22 people and say, if this was this kind of situation, what
23 would you think. I mean it would certainly open up
24 dialogue. As it is now, we really don't have that
25 dialogue open because for our business practice we're

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1 not going to be able to afford the \$30 or \$40 per
2 cardboard container that is currently charged by
3 Stericycle and through this tariff and the UTC. The
4 fact that I can't get an \$8 per container quote for my
5 -- for incinerate medical waste I think is extremely
6 frustrating. If that was -- and the reason I say that
7 is that I have received that quote before from open
8 market competition in Philadelphia.

9 Q. Well, I don't think the record reflects that
10 that price would be available to you here either, but --

11 A. No, I understand that.

12 Q. -- nonetheless, would you like to be able to
13 use Kleen as a source for your medical waste
14 transportation needs?

15 A. Yes.

16 Q. And why is that?

17 A. It would give me the opportunity to reduce
18 the number of vendors that I have to deal with handling
19 my waste streams. Currently I have three, I have four,
20 four waste streams that we deal with, radioactive waste,
21 biomedical waste, chemical waste, and universal waste.
22 Kleen at this point handles my universal waste, Teris
23 handles my chemical waste, Thomas Gray & Associates
24 handles our radioactive waste, and Stericycle handles my
25 biomedical waste. If I could reduce that by one, that

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1 would be beneficial to me, because then I wouldn't have
2 that place to go audit. I'm already going to audit my
3 chemical waste and radioactive waste. Just reduces the
4 burden on me and my department to have to go out and
5 visit these locations. And that's an internal policy
6 that we have, to visit these locations at least every
7 three years.

8 Q. Would you like to see this application
9 granted?

10 A. Absolutely.

11 MR. HAFFNER: Thank you.

12 No other questions for the witness, Your
13 Honor.

14 JUDGE RENDAHL: Okay.

15 Mr. Johnson.

16 MR. JOHNSON: Thank you, Your Honor.

17

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

19 BY MR. JOHNSON:

20 Q. Mr. Smith, my name is Steve Johnson, I
21 represent Stericycle of Washington. I'm going to ask
22 you a series of questions related to your testimony
23 today. If at any point my questions are unclear or
24 confusing, which could well happen at some point along
25 the way, please stop me and ask me to clarify, and I

1339

1 will try to do that.

2 Am I correct that a different department
3 within ZymoGenetics is involved with the selection of
4 the type of containers used by the company for internal
5 collection and packaging?

6 A. They're not involved in any way in the
7 determination. They are currently using what was
8 provided. My fear is that if I now ask them to have to
9 go through an additional labor step that they might balk
10 at that. I don't know that to be a fact.

11 Q. Let me go back to that just for a moment.
12 There is another department involved internally I think
13 you testified.

14 A. Correct.

15 Q. Excuse me, wait until I finish so we don't
16 confuse the record the court reporter is making.

17 But there is another department involved in
18 collecting waste internally and packaging it for
19 shipment in your company; is that right?

20 A. That is correct.

21 Q. And you are not part of that department; is
22 that right?

23 A. That is also correct.

24 Q. And currently that department I believe you
25 testified has chosen to use the reusable gray tubs?

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1 A. They have not chosen. That's what they were
2 given.

3 Q. Were they given those tubs by you?

4 A. That's what Stericycle provided.

5 Q. Okay. So you don't know whether they prefer
6 the reusable plastic or the cardboard boxes?

7 A. I do not know.

8 Q. Okay. So would their views be important to
9 the company's ultimate decision on what vendor to use?

10 A. Not in the sense of assisting us in saving
11 money if, in fact, we could do that and reducing our
12 overall liability of medical waste being transported and
13 how it's treated.

14 Q. For example, if this other department and the
15 people that handle the waste in that group thought it
16 was a safety issue to use or a safety advantage to use
17 the reusable plastic containers versus cardboard boxes,
18 would that be taken into account in making that kind of
19 decision?

20 A. Well, that's just a foolish notion, because
21 the plastic tubs increase your hazard and your exposure,
22 not decrease it.

23 Q. Mr. Smith, I understand your opinion on that.
24 I'm asking if you would be consulting the other group
25 that is involved in your company in collecting and

1341

1 packaging waste for transportation --

2 A. I'm --

3 Q. Excuse me.

4 -- with respect to that issue.

5 A. I apologize.

6 Q. I'm sorry.

7 A. I would be responsible to train those
8 individuals on the necessary hazards, and if somebody
9 had the opinion as you stated that they felt it was
10 safer for them to use the plastic tubs, I would then
11 explain to them my point of view on that and why I would
12 feel otherwise. And I do believe that they would take
13 that as fact, because that is my responsibility, to
14 mitigate safety hazards within our company.

15 Q. Okay. But I understood you to say that if
16 the Kleen service was available that that would I
17 believe you said "open a dialogue" with this other
18 department with respect to the use of the Kleen service;
19 is that correct?

20 A. It is correct. I would -- it would open a
21 dialogue, it would give us a reason to ask for a change.
22 At the moment we haven't -- we don't have another
23 option, and so I don't have a reason to go to them and
24 say, gee, would you guys be willing to do this.

25 Q. I understand, but that's the dialogue you

1342

1 were talking about --

2 A. Yes.

3 Q. -- that would be stimulated if the
4 application was granted?

5 A. Yes.

6 Q. And I think you said that if the Kleen
7 service was available that that would then warrant
8 investigation, I believe that was your language, with
9 respect to the desirability of making a change from your
10 existing service to a new service; is that correct?

11 A. Repeat that question, please.

12 Q. Sure. My notes indicate that you said that
13 if a service was available using cardboard boxes and
14 incineration as the exclusive means of disposal that
15 that would "warrant investigation" of whether that
16 service should be utilized. Does that suggest that you
17 would at that time make a decision about what vendor to
18 use?

19 A. I think something that may have been
20 forgotten in there is also the cost benefit to the
21 company. I did say it would warrant investigation. I
22 still think that, it does warrant investigation. I am
23 aware that Stericycle has on very limited occasions
24 granted certain customers the ability to maintain using
25 cardboard boxes. You have to understand that Stericycle

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1 and BFI when that was the process, customers used tubs.
2 Then they said no more tubs, everybody is to use
3 cardboard boxes. So for a period of two years everybody
4 in our industry got very accustomed to putting together
5 tubs or putting together cardboard boxes, lining them,
6 assembling them, and putting their waste in that. That
7 was after the initial here we go putting them in
8 cardboard boxes, Stericycle then switched again and
9 said, okay, now you have to use these tubs. We were
10 never consulted on what containers we were going to be
11 allowed to use. Stericycle dictated to us, the
12 customer, you will use this, no, now you will use this,
13 no, now you will use this. And in my history with
14 Stericycle, this is the third time that those containers
15 have changed.

16 Q. Okay, let's see if I understand correctly.
17 Are you saying that at some point in time Stericycle
18 provided ZymoGenetics with reusable tubs at an earlier
19 stage or ZymoGenetics and other let's say biotech
20 companies that you may have associated with?

21 A. Mm-hm.

22 Q. And then at some point in time they switched
23 over and said you must use cardboard?

24 A. Mm-hm.

25 JUDGE RENDAHL: If you can answer yes or no.

1344

1 A. Yes.

2 JUDGE RENDAHL: Thank you.

3 Q. Can you give me a time frame when that
4 occurred?

5 A. Yes, it was between the years of
6 approximately 1999 I believe and 2001 virtually every
7 customer in the Seattle area filled their medical waste
8 in cardboard boxes.

9 Q. Was this waste destined for incineration?

10 A. Yes, it was, and it was also destined for
11 electrothermal deactivation at Morton. The only
12 difference was the particular color of label that was on
13 your box at that time. If you had a white label that
14 Stericycle generated for you, slapped on the box, that
15 denoted that it was going to go to the Morton facility
16 and be treated in the electrothermal deactivation
17 process. If you had a yellow label, that denoted it was
18 going to go to the incinerator in Brooks, Oregon. This
19 was prior to Stericycle in Seattle deciding that they
20 were going to start using the facilities in Salt Lake
21 City.

22 Q. Right. So isn't it the case that the use of
23 tubs, the gray plastic tubs that you currently use for
24 your incinerate waste, is associated with the
25 availability of the north Salt Lake incineration

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1 facility and its capability of handling reusable tubs
2 and washing them?

3 A. You make a very interesting point in that as
4 a customer, my waste went from the Brooks, Oregon
5 facility in a cardboard box where there was virtually no
6 exposure to any employee to now a reusable tub where
7 Jessie Mushen from CTI at the point of Stericycle's
8 announcing now we as the customer have to use these gray
9 tubs that are reusable, he made a note that when he
10 audited the Salt Lake City facility that the temperature
11 used to rinse out those tubs never reached a temperature
12 that would qualify for sterilization or cleaning or any
13 of that in case the inside of those tubs had been
14 inadvertently contaminated by whatever waste material
15 they were handling.

16 JUDGE RENDAHL: Okay, before we have another
17 question there's a Jessie Mushen, is that the name?

18 THE WITNESS: Jessie Mushen.

19 JUDGE RENDAHL: And can you spell the last
20 name?

21 THE WITNESS: M-U-S-H-E-N.

22 JUDGE RENDAHL: And you also referenced CTI,
23 what is that?

24 THE WITNESS: Cell Therapeutics Incorporated,
25 which is another biotech company in Seattle.

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1 JUDGE RENDAHL: Okay, thank you.

2 Go ahead, Mr. Johnson.

3 BY MR. JOHNSON:

4 Q. Well, I think you responded to questions I
5 didn't ask, but that's okay, I mean we will pursue some
6 of those issues as well.

7 But isn't it your understanding that the
8 switchover to the gray plastic tubs was associated with
9 the availability of the north Salt Lake incineration
10 facility that could handle that kind of tub; isn't that
11 right?

12 A. Yes, and you're implying that that is
13 something that I as a customer would want.

14 Q. I'm not implying anything, I'm just trying to
15 get square the sequence with respect to the changes in
16 the type of containers; is that all right?

17 A. In terms of the changes in types of
18 containers, yes, it was -- it coincided with
19 Stericycle's internal business practice, the facility in
20 Salt Lake now being their primary facility as opposed to
21 the facility in Oregon, and that time line is correct,
22 now we as customers were said you will use these tubs.

23 Q. And you're aware that the facility previously
24 used by Stericycle for incineration was the facility at
25 Brooks, Oregon operated by Covanta, right?

1347

1 A. Correct.

2 Q. And you're aware that they can not handle
3 reusable tubs at that facility, right?

4 A. Correct.

5 Q. I would like to ask you just another question
6 about the dialogue with the folks that are involved in
7 the packaging of medical waste at your facility for
8 transportation. You mentioned that there would be
9 additional labor involved in using cardboard boxes; is
10 that right?

11 A. For our current facility, yeah, there would
12 be potentially some additional labor. To what extent
13 I'm not sure.

14 Q. And what would that additional labor involve?

15 A. Correct assemblage of those cardboard boxes.

16 Q. And would there be additional storage
17 requirements for assembled cardboard boxes as well?

18 A. No.

19 Q. Okay. Now, Mr. Smith, you mentioned
20 something that Jessie Mushen from Cell Therapeutics,
21 Inc., observed at the north Salt Lake incineration
22 facility; is that correct?

23 A. Correct.

24 Q. And did Mr. Mushen go there to audit the
25 operation of that facility?

1348

1 A. Correct.

2 Q. Was he able to do that?

3 A. Yes, he was.

4 Q. And he had reported to you something he
5 observed there; is that correct?

6 A. To myself and to all of the members in
7 attendance at the HELP group meeting. That would have
8 been in 2001, early 2002, late 2001, early 2002.

9 Q. And HELP stands for what again?

10 A. Health Environmental Laboratory
11 Professionals.

12 Q. And that's a group that consists of the
13 health and safety managers in the biotech community; is
14 that fair to say?

15 A. That is fair to say.

16 Q. Okay. And Mr. Mushen reported that the
17 temperatures for the tub wash did not reach temperatures
18 necessary to sterilize the tubs; is that correct?

19 A. That is correct.

20 Q. Do you know what temperature he observed?

21 A. Yeah, I recall a temperature of around 130
22 degrees or thereabouts, 120, 130. He had said that at
23 that time Stericycle admitted that their boiler was not
24 functioning or -- it's been a couple years, but I do
25 recall something to that effect, that -- but they were

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1 washing them anyway. And the response from the HELP
2 group was horror and surprise.

3 Q. Now do you know whether Stericycle's tub wash
4 is intended to sterilize tubs as a result of temperature
5 of the water used to sterilize the tub?

6 A. No, I don't know, but what other method would
7 you use to verify to your customer that your tubs are
8 clean and free from pathogen?

9 Q. I'm just asking you if you know that. Well,
10 let me ask you that. What other methods could be used
11 to disinfect tubs in a tub washing operation?

12 A. Autoclave.

13 Q. Could chemical disinfectants be used?

14 A. Potentially.

15 Q. Do you know whether chemical disinfectants
16 are used in the north Salt Lake tub wash operation?

17 A. At the time Jessie made this report they
18 weren't.

19 Q. Do you know that because he told you that; is
20 that correct?

21 A. Correct.

22 Q. He told you that disinfectants were not being
23 used in the tub wash?

24 A. That's what he said, yes. He said it was
25 just water.

1350

1 Q. Well, now I guess there's a possibility that
2 there could be two steps in the process, or is that not
3 possible?

4 A. Is what not possible?

5 Q. That there would be two steps, one a washing
6 step and one a disinfecting step?

7 A. I can speak to that from what I have
8 witnessed at the Morton facility in that they sit an
9 empty container on top of what is essentially a series
10 of spray nozzles, and that shoots up hot water into
11 those, into that container, and I don't recall at any
12 point ever seeing disinfectant mixed in with that hot
13 water. It was hot water, and then the tub was sent on
14 its way.

15 Q. So based on your --

16 A. So there was not a second step is what I'm
17 saying, I'm trying to answer that question.

18 Q. At Morton?

19 A. At what I witnessed at Morton, correct.

20 Q. Thank you. But you don't know whether there
21 was a second step at north Salt Lake?

22 A. No, I don't know, but I don't see where
23 that's relevant.

24 JUDGE RENDAHL: Well, we can argue that point
25 in brief, and I think let's not argue with the witness.

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1 I understand that there may be a dispute, let's do it in
2 a civil manner.

3 THE WITNESS: Sorry.

4 JUDGE RENDAHL: If you both can.

5 MR. JOHNSON: Well, I would appreciate if the
6 witness would answer my questions, and that's --

7 JUDGE RENDAHL: I think he is answering your
8 questions.

9 MR. JOHNSON: Thank you.

10 BY MR. JOHNSON:

11 Q. Now, Mr. Smith, with respect to the tub wash
12 system in Morton.

13 A. Yes.

14 Q. Do you know that the water that's used to
15 wash out the tubs does not contain a disinfectant, or is
16 that your assumption?

17 A. My recollection is that when we witnessed
18 that facility washing those tubs, we were informed by
19 the plant manager that that water reached I believe a
20 temperature of around 180 or 200 degrees, somewhere in
21 that ball park. A scalding temperature is what I
22 recall. I'm not positive.

23 Q. Now, Mr. Smith, a fair amount of your
24 biomedical waste consists of lab animals that have been
25 killed and frozen before disposal; is that correct?

1352

1 A. That is correct.

2 Q. And if you packed a package of frozen animal
3 carcasses in a cardboard box, would you expect that to
4 create any kind of problems in terms of the integrity of
5 the box?

6 A. Those packages are double and triple bagged,
7 so no.

8 Q. Would you expect condensation to form on the
9 outside of the bag as a result of the frozen material
10 inside the bag?

11 A. Stericycle's method of management was to
12 transload those onto pathological refrigerated vehicles,
13 so again no.

14 Q. I'm talking about during the period when you
15 put them in the cardboard box, would you expect
16 condensation to form on the outside of the bag, the
17 plastic bag?

18 A. Why would I? No.

19 Q. Okay. So it's your testimony that you don't
20 think that condensation forms on the outside of a frozen
21 plastic container basically in the ordinary atmosphere?

22 A. I have -- my testimony is that if I put
23 animals that were frozen, in many cases fairly
24 desiccated as well, in a plastic bag within another 2
25 mil. plastic bag or 5 mil. plastic bag, whatever

1353

1 Stericycle's requirement is, and then put that in a box,
2 I have not personally observed the condensation on those
3 bags, because the box is then sealed. Is it reasonable
4 to assume that condensation could form? I think that's
5 a reasonable assumption, but I could not testify that I
6 have witnessed that.

7 Q. Okay, thank you, that was what I was hoping
8 to elicit from you.

9 Is it your understanding that Kleen
10 Environmental would transport your waste in refrigerated
11 trucks if they were allowed to participate in the
12 biomedical waste collection business?

13 A. I have no idea.

14 Q. But that would be an appropriate way to
15 handle that kind of --

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

17 (Siren interruption.)

18 BY MR. JOHNSON:

19 Q. Would that be the appropriate way to handle
20 this kind of material to avoid the condensation problem
21 that might occur?

22 A. Sure.

23 JUDGE RENDAHL: Mr. Johnson, about how much
24 more do you have? I'm just trying to time our break.

25 MR. JOHNSON: Well, when do you think --

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1 JUDGE RENDAHL: Well, we usually break around
2 10:30, but I'm willing to go if you have a few more
3 minutes of questions and then break.

4 MR. JOHNSON: I think this would be a good
5 time to break, Your Honor, I think I have more than a
6 few minutes.

7 JUDGE RENDAHL: Okay, then let's be off the
8 record, we'll take our break until 10 to 11:00.

9 (Recess taken.)

10 JUDGE RENDAHL: Let's go back on the record
11 after our morning break.

12 Mr. Johnson.

13 BY MR. JOHNSON:

14 Q. Mr. Smith, I would like to ask you a few
15 questions about the documentation that Stericycle
16 currently provides you, but before going into that, do
17 you know how to reach the ZymoGenetics customer service
18 representative at Stericycle?

19 A. Yes.

20 Q. You have a phone number for the Kent
21 facility?

22 A. Yes.

23 Q. And do you call the representative there
24 sometimes?

25 A. Me personally or in the company?

1355

1 Q. You personally.

2 A. No.

3 Q. Do other people within the company call?

4 A. My boss does, yes.

5 Q. And who is your boss?

6 A. Don Wang, D-O-N, W-A-N-G.

7 Q. Okay. In your prior positions within the
8 biotech community, did you also know who your customer
9 service rep was?

10 A. Yes, I did.

11 Q. And who was that representative?

12 A. Jeff Norton.

13 Q. Okay. And did you know how to reach him by
14 telephone?

15 A. Yes.

16 Q. And did you call him from time to time and
17 request different things?

18 A. Very often, yes.

19 Q. Okay. And did he return your phone calls?

20 A. Initially that was a very big challenge, but
21 yes.

22 Q. Okay. And at ZymoGenetics however, you have
23 not been in the position to make phone calls to the
24 Stericycle customer service rep for that company?

25 A. No.

1356

1 Q. Do you know who the customer service rep is
2 for ZymoGenetics?

3 A. I think it's a gentleman by the name of Mike
4 or -- I don't know to be honest with you. I have heard
5 the gentleman's name, I don't know it. It's Jeff
6 Norton's replacement.

7 Q. Okay. But you know how to reach the Kent
8 facility and the Stericycle customer service reps if you
9 need something from them, do you not?

10 A. Yes.

11 Q. Okay. Now am I correct that ZymoGenetics is
12 receiving a signed copy of the regulated waste manifest
13 that's shown as Exhibit 65, and by signed I mean signed
14 both by the transporter and by the treatment facility?

15 A. Yes.

16 Q. And you arranged that by requesting it from
17 Stericycle?

18 A. The request was made I believe through the
19 customer service rep, and the agreement that I
20 understand it to be is that my boss Don takes the
21 invoices and does not agree to sign off and pay on those
22 until he gets a monthly faxed copy, because Stericycle
23 faxes back the manifests that say they have been treated
24 at such and such facility. So he cross references the
25 manifest number to the invoice that we're being billed

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1 for. That's as good as we have been able to get in
2 terms of something that, you know, we can qualify and
3 say, okay, yeah, that was destroyed and they provided
4 the service that we're responsible to now pay them for.
5 But that is entirely put upon us the customer to
6 initiate and do that process.

7 Q. But you did initiate it, and it is happening,
8 is it not?

9 A. It is, yes.

10 Q. Mr. Smith, you have worked for other biotech
11 companies, have you not?

12 A. Yes, I have.

13 Q. And would you just give us your background
14 there in terms of what other companies you have worked
15 for?

16 A. I worked for Immunex from 1997 until 2001,
17 from 2001 to 2002 I was at Targeted Genetics, and from
18 2002 to the present I am at ZymoGenetics.

19 Q. And did you have responsibility for oversight
20 of waste disposal at each of these positions, or were
21 you involved in those functions?

22 A. Yes. At Immunex I was predominantly
23 responsible for the medical waste packaging at several
24 of our facilities and locations and the coordination
25 with Stericycle and their drivers to gain access to

1358

1 those facilities for our waste removal. That would be
2 when I had that number at one point actually memorized.

3 Q. And was the service that you received at
4 Immunex or that Immunex received from Stericycle
5 satisfactory, perhaps with the exception of the things
6 you have commented on today?

7 A. It was satisfactory. It took a while, but
8 yes, it eventually evened things out.

9 Q. Okay, what, when you say it took a while,
10 what are you talking about, developing schedules that
11 worked for both sides?

12 A. Yeah, I think it's important to note that
13 Stericycle was a smaller company, took over BFI which
14 was a bigger company, and had serious integration
15 problems. Those problems created huge customer service
16 errors, mistakes, problems, tremendous amount of dissent
17 amongst the people in the biotechnology sector. I can't
18 speak on behalf of dentists and doctors, but I had heard
19 that some of them were quite annoyed with what they were
20 told to do, what they couldn't do. You know, that's
21 hearsay, I understand. But the reality is that over
22 time Stericycle started to provide a reasonable level of
23 service.

24 Q. And so by the end of your tenure with
25 Immunex, those problems were primarily resolved?

1359

1 A. Yes.

2 Q. How about during the period when you were
3 involved with Targeted Genetics, were you involved in
4 medical waste management there?

5 A. Yes, I was.

6 Q. And did Stericycle service that company?

7 A. Yes, they did.

8 Q. And was their service satisfactory?

9 A. That is the time when Stericycle opted to
10 move all of the customers in the Seattle area from
11 cardboard boxes to gray tubs, and I was allowed by my
12 customer service rep the option to maintain my cardboard
13 boxes. Because the system that I had in place was
14 working, to change that would disrupt a number of other
15 individuals within the company and potentially expose
16 them to higher liabilities from multiple handling steps.

17 Q. So you were able to work with your customer
18 service rep?

19 A. Yes, I was.

20 Q. To get the kind of service you needed?

21 A. Yes.

22 Q. Mr. Smith, could you look at Exhibit 68 and
23 tell me whether you are familiar with that type of
24 report headed container detail report?

25 A. I'm sorry, what did you call it?

1360

1 Q. Well, it says at the top container detail
2 report. It's Number 68.

3 A. Oh.

4 JUDGE RENDAHL: Can you repeat your question
5 for the witness maybe.

6 Q. Mr. Smith, does this type of report, is this
7 type of report familiar to you?

8 A. It's changed a little in format, but overall
9 yes.

10 Q. And in what context are you familiar with
11 this report or this type of report?

12 A. If you look at three pages back where it says
13 page 1 of 6.

14 Q. Yes.

15 A. This again is still slightly different but
16 more familiar with what I would receive or what I had
17 previously received from Stericycle when I was
18 responsible for looking at this information. This page
19 1 of 6 is the one that looks more familiar. This front
20 page, container detail report, I never -- I never saw a
21 breakdown summary type information.

22 Q. But the kind of detail that's shown on page 1
23 of 6 through the end of the document is familiar to you
24 from one of your positions in the biotech community?

25 A. With one exception, yes.

1361

1 Q. What's the exception?

2 A. When I used to receive these reports,
3 Stericycle had no way to verify the weights, so it would
4 say total amount incinerated zero pounds.

5 Q. Okay. So in what context did you previously
6 receive this kind of container detail report as you have
7 testified?

8 A. I'm sorry?

9 Q. Do you receive this report currently at
10 ZymoGenetics?

11 A. I'm not sure.

12 Q. If your company receives this, would it be
13 received by your boss?

14 A. Yes.

15 Q. Mr. Wang?

16 A. Yes.

17 Q. While you were employed with Targeted
18 Genetics, did you receive this report?

19 A. Yes, I did.

20 Q. And did you request it from Stericycle?

21 A. Yes, I did.

22 Q. And it was provided to you?

23 A. Yes, it was.

24 Q. Would you agree with me that this detail
25 shows the date and time on which containers are

1362

1 processed at the Stericycle facility?

2 A. Yes.

3 Q. Doesn't it also show the invoice number
4 that's related to each container?

5 A. Yes, it does.

6 Q. Doesn't it also show the manifest number for
7 each container?

8 A. Yes, it does.

9 Q. Mr. Smith, I would like you to look at
10 Exhibit 67, and I would like to draw your attention to
11 the language below the box or at the bottom of the box.
12 Now this document I think we have previously described
13 as Stericycle's form of invoice, and there is some
14 language there with respect to and it begins with the
15 word certification.

16 A. Mm-hm.

17 Q. I think you're looking at the wrong exhibit,
18 you may have a reason for doing so, which is okay, but
19 I'm referring to Exhibit 67.

20 A. I understand.

21 Q. Okay.

22 JUDGE RENDAHL: Can you repeat your question,
23 Mr. Johnson.

24 Q. I'm trying to draw the witness's attention to
25 the language at the bottom of the box.

1363

1 A. Yes.

2 Q. Where it says --

3 A. Where it says certification.

4 Q. Right, where it says certification. Would
5 you take a moment to read that.

6 A. Out loud or to myself?

7 Q. No, just to yourself.

8 A. Okay.

9 (Reading.)

10 And?

11 Q. Okay Is this a certification that material
12 has been received or that material has been processed?

13 MR. HAFFNER: Objection, the document speaks
14 for itself.

15 MR. JOHNSON: Your Honor, if I might, the
16 document speaks for itself, but Mr. Smith testified
17 earlier with respect to the type of certification that
18 he wants and the type he gets, and I want to ask a
19 question about that.

20 JUDGE RENDAHL: Maybe you can ask him what he
21 understands this document to be as opposed to what it
22 says. Maybe that's really what you're asking.

23 MR. JOHNSON: Okay, I will try that.

24 BY MR. JOHNSON:

25 Q. Mr. Smith, is it your understanding that this

1364

1 document and the particular language begins with the
2 word certification is a certification of receipt or a
3 certification of treatment or processing?

4 A. It is my understanding based on this document
5 that it is what it says it is, and that's an invoice.

6 Q. I'm talking about the language below the box.

7 A. The fine print?

8 Q. The words beginning certification.

9 A. Correct. I see that it says that the
10 materials listed on manifest such and such were treated
11 in accordance with the requirements of federal, state,
12 and local regulations. It doesn't tell me anything
13 else.

14 Q. Doesn't it also tell you the manifest number?

15 A. Yeah, it says manifest number listed up here.
16 I see that on my invoice.

17 Q. Okay. And doesn't it tell you the type of
18 material disposed of?

19 MR. HAFFNER: Objection again, the document
20 speaks for itself.

21 A. I understand this to be an invoice. The
22 language below it, to be honest with you, I don't really
23 -- I don't really have a feel for my invoice standing up
24 as my certificate of destruction, treatment and
25 disposal.

1365

1 Q. I don't think I asked you that question.

2 A. I think you are asking me to sit here and
3 read through this and say does this certify as a
4 certificate of destruction.

5 Q. No, no, I'm not asking you that, I'm asking
6 you what it is, and I think you already answered that
7 question. I guess what I'm looking for is --

8 A. You asked me what the document was.

9 THE WITNESS: I apologize.

10 JUDGE RENDAHL: He's in the middle of asking
11 you a question, and then you can respond.

12 Q. I'm trying to understand what's missing in
13 terms of the documentation provided to you by Stericycle
14 in terms of what your earlier testimony was. The
15 question is, given the certification that's found on the
16 invoice at Exhibit 67, the information available to you
17 through the container detail report in Exhibit 68.

18 A. Okay.

19 Q. And with reference as well to the shipping
20 manifest at Exhibit 65, what is it you aren't getting
21 that you want?

22 A. Well, I'm not clear based on Exhibit 69 which
23 part --

24 Q. I'm sorry, it's not Exhibit 69 I think.

25 A. 68, excuse me.

1366

1 Q. Okay.

2 A. I'm not clear on Exhibit 68 which part of 68
3 serves as my corroboration to this little box that says
4 certification. I don't know how I'm supposed to know
5 how to tie these two together. But I can see from the
6 next, you know, the more detailed, I see a service date,
7 an invoice date, and a process date. I do see that.
8 What I take Exhibit 68 to be is, you know, page 1 of 2,
9 and I don't have the name of anybody certifying that in
10 fact the material was treated and disposed.

11 I guess what I'm getting at is that if on a
12 separate document that wasn't labeled invoice, and
13 that's the difficulty I personally have, if I was to
14 show a regulator that yes in fact my waste had been
15 disposed of and treated or handled in accordance with
16 federal, state, and local regulations, if I was to show
17 them an invoice and say, but see this little fine print
18 down here, they said, you know, it was treated based on
19 this and I can show you that based on this as opposed to
20 a document that said this is a certificate of treatment,
21 disposal, destruction.

22 Q. Is it your understanding that you are legally
23 required to have a certificate of destruction of the
24 type you describe?

25 A. No, I'm not legally required. It's something

1367

1 that I need for my own personal records.

2 Q. But so this regulator that you just were
3 talking about is never going to come to your office to
4 talk to you about linking these things, is it?

5 A. It could -- not that ZymoGenetics is likely
6 to have this occur, but if say the Danish company that
7 has a majority interest in our company wants to perform
8 an audit on us, and they have a majority interest in
9 ZymoGenetics and in securing what their potential
10 liabilities could be, they would potentially be my
11 regulator that I referred to. They would be the person
12 coming through saying, you need to get something that
13 says this has been disposed of and destroyed and
14 witnessed by.

15 Q. Okay. Now that's a hypothetical possibility.
16 I'm not saying it isn't possible. I do understand that
17 you may want to have internal, you know, mechanisms for
18 your own purposes to reflect how you handle your medical
19 waste, so understood.

20 A. Okay.

21 Q. But I guess what I'm trying to ask is, what's
22 missing? I mean you've got a manifest number on the
23 invoice, you've got all the detail certainly including
24 date and time of processing on the container detail
25 report that you have testified you received at Targeted

1368

1 Genetics and you know is available to you, you've got a
2 signed shipping manifest returned to you indicating that
3 the processing facility has received the waste; what is
4 missing?

5 MR. HAFFNER: Objection, asked and answered.

6 JUDGE RENDAHL: Let's have it summarized,
7 because I think it would be helpful to the record.

8 A. I would like to state that what's missing is
9 a concise record. This is, as you just pointed out,
10 after you have flipped through three different pages to
11 determine that in fact yes it was handled. A concise
12 record of a document that says at the top of it not
13 invoice but certificate of treatment and disposal. And
14 that's something that as a generator I need for internal
15 purposes. I'm not here to say that a regulator within
16 the State of Washington would require that. I don't
17 mean to imply that. When I say regulator, I'm saying
18 somebody that's regulating me. It could mean a State
19 regulator, it could mean an audit by a shareholder,
20 somebody that has an interest in this company. What's
21 missing is a plain, obvious, clear, concise record that
22 I can look at and say, okay, this certificate goes with
23 this invoice which goes with this manifest. Right now I
24 have to pull through three different documents, as you
25 just pointed out, to get any kind of concise idea that

1369

1 that's the case.

2 Q. But don't you agree that within those three
3 documents is all the information you need?

4 A. Absolutely, but as a customer I would like a
5 document that I don't get.

6 Q. Okay, I understand.

7 Now referring to Exhibit 65 again, I think
8 that Mr. Haffner asked you about the signature block for
9 the treatment facility, that you referred to that as a
10 certificate of receipt rather than of destruction.

11 A. I think that's what it says.

12 Q. I agree with you, that's exactly what it
13 says. And would it affect your judgment as to what was
14 necessary or appropriate for a certification from a
15 treatment facility if you believed that there was a
16 regulation that required certification of receipt or
17 acceptance?

18 A. What are you asking?

19 Q. I guess the question is, do you think the
20 certification of receipt is an appropriate record of the
21 treatment facility's receipt of the waste?

22 A. What I interpret this to be is a record that
23 the treatment facility did receive my waste. Now as I
24 stated on record earlier when I was asked about this
25 upper right-hand corner of this document, there's often

1370

1 times where I have several containers under the column
2 labeled ETD and maybe four or five under the column
3 labeled incinerate. This document doesn't travel with
4 those four or five containers that say incinerate,
5 because those have to get on the road. At least that's
6 my understanding, this document stays in Morton with the
7 majority of my waste that's treated via the ETD method.
8 And I assume, but I don't know this to be a fact, that
9 Stericycle remanifests all of the pathologic waste that
10 goes on a refrigerated truck to Salt Lake. So, in fact,
11 this manifest will be signed here for the ETD treatment
12 but not necessarily for the four boxes that are
13 incinerated. Those two waste streams aren't separated
14 on my manifest.

15 Q. Well, is it your understanding that the
16 manifest doesn't go to Salt Lake, and if so, what's the
17 basis for that?

18 A. Just logistics. How can they sign off and
19 bill that my 40 plus containers treated at Morton were
20 done in a timely fashion to also allow their truck
21 that's leaving tomorrow for Salt Lake to take my
22 pathological waste so that this manifest can be --

23 Q. Do you know --

24 A. -- in both places at once effectively.

25 Q. I'm sorry.

1371

1 Do you know whether a copy of the manifest
2 accompanies your incinerate waste to north Salt Lake?

3 A. It doesn't matter, it needs to be the
4 original copy if it's on the road.

5 Q. Do you know whether a copy of the manifest
6 accompanies the waste that goes to north Salt Lake?

7 A. A copy or an original?

8 Q. I asked you about a copy.

9 A. I don't know, and it doesn't matter.

10 Q. Do you know whether an original of the
11 manifest goes to north Salt Lake?

12 A. No. Do you?

13 JUDGE RENDAHL: Well.

14 THE WITNESS: Sorry.

15 JUDGE RENDAHL: Unfortunately the format
16 isn't for you to ask questions. Although that might be
17 preferable, that's not what happens, so sorry.

18 Mr. Johnson.

19 BY MR. JOHNSON:

20 Q. Mr. Smith, Mr. Haffner asked you about
21 Exhibit 27, and I would like to ask you a question too
22 about that if I could. And this is, I believe the
23 testimony indicates this is a certificate of treatment
24 or disposal provided by a company called Teris,
25 T-E-R-I-S; is that right?

1372

1 A. Correct.

2 Q. And is this the kind of record you receive
3 from Teris for disposal of your chemical waste?

4 A. Correct.

5 Q. And is it your testimony that this
6 certificate of treatment/disposal is a satisfactory
7 certificate of treatment or disposal?

8 A. Yes.

9 Q. So this would meet your requirements, whereas
10 the documentation provided by Stericycle does not in
11 terms of if this were adapted to your biomedical waste?

12 A. Yes, because as you can note on this
13 document, the very last line says:

14 If you have any questions regarding this
15 certificate of treatment/disposal,
16 please contact your sales
17 representative.

18 Which I could do with Stericycle, but I can
19 also reference who is saying that they treated it and
20 when.

21 Q. In other words you have a name?

22 A. Yeah.

23 Q. Is that the principal difference between the
24 documentation that Stericycle provides and the document,
25 and this Exhibit 27, that there's a name at the bottom

1373

1 of the Teris plant manager?

2 A. No, the principal difference is that this
3 says at the very top of it, this is a document for
4 certificate of treatment/disposal. Stericycle's says
5 invoice.

6 Q. Mr. Smith, you made some comments in your
7 earlier testimony about the possibility of using an
8 outside vendor to package your waste for shipment on
9 site; is that right?

10 A. Which waste are we referring to?

11 Q. Biomedical waste.

12 A. Yes.

13 Q. Can you tell me how that would work? My
14 impression is you thought that maybe a third party
15 vendor could perform functions that are currently
16 performed by a couple of your employees or a couple of
17 ZymoGenetics employees that are currently involved in
18 that activity; is that right?

19 A. Are you asking me what I would like to see
20 happen or what my impression is of what would happen if
21 this certificate is approved.

22 Q. Well, I'm asking you to clarify what
23 functions you would -- you were talking about the
24 possibility of using a third party vendor to perform
25 some functions within your ZymoGenetics.

1374

1 A. Okay.

2 Q. That are currently performed by ZymoGenetics
3 employees.

4 A. Okay.

5 Q. And I'm trying to understand what those
6 functions are and how that would work.

7 A. Okay. Our individuals in house that
8 currently are responsible to remove the medical waste
9 from the laboratories and package that for shipment are
10 part of the glass wash crew. That's just sort of been
11 their assigned drudgery job. That's not their function.
12 They are glass wash personnel.

13 Q. Okay. What do they currently do, they go --
14 you have -- I think you said you have two buildings,
15 right?

16 A. Yes.

17 Q. And do they on a daily basis collect medical
18 waste from the laboratories and transport it or, you
19 know, collect it and move it to a storage area?

20 A. On a frequent basis. As to whether it's
21 daily or every other day I couldn't testify. But on a
22 frequent basis they go around and they are consolidating
23 the waste out of the labs and putting it into the
24 containers for pickup.

25 Q. Okay. So the containers they put it into are

1375

1 the Stericycle reusable tubs you are currently using?

2 A. Yes.

3 Q. Okay. And if you had an outside vendor doing
4 this, would they need to be on site either every day or
5 every other day to go around to the laboratories to
6 collect waste to put it in the transportation
7 containers?

8 A. I don't believe so, no.

9 Q. So you would leave the biomedical waste in
10 the labs a longer time?

11 A. No, I don't see where the overall
12 consolidation efforts by ZymoGenetics wouldn't still
13 occur, just the packaging and preparation for shipment
14 would be different. They wouldn't be responsible for
15 packaging and preparation for shipment, a third party
16 vendor would be.

17 Q. Currently what happens, do they, when these
18 folks go to the labs, do they take basically red bag
19 packages of waste and put it into some kind of cart or
20 other container?

21 A. I believe that's what happens, yes.

22 Q. Okay. And then they move that cart probably
23 on wheels to some place where they then transfer that
24 red bag to a container for shipment?

25 A. Correct.

1376

1 Q. So where in that process would the third
2 party vendor participate if that was -- if you decided
3 to do that?

4 A. If a third party vendor came in and all we
5 had -- all I had to set up was some sort of
6 consolidation effort, then I could find whatever works
7 best for those individuals from a consolidation
8 standpoint. If it's the existing tubs that Stericycle
9 provides, fine. If it's a different tub, fine. But I'm
10 not bound by what Stericycle dictates, which I currently
11 am. The third party vendor can then come in, take from
12 my consolidation efforts, and package it according to
13 the requirements of 49 CFR to transport to the disposal
14 facility.

15 Q. Let's just assume you have a choice of any
16 vendor you want for transportation.

17 A. Okay.

18 Q. So we're not talking about Stericycle's
19 current service.

20 A. Okay.

21 Q. I'm still having trouble understanding what
22 role a third party vendor would play in on-site
23 packaging. You're going to be bringing -- these folks
24 that currently collect and consolidate the waste from
25 your laboratories would be bringing that waste close to

1377

1 the loading area.

2 A. Let me give you --

3 Q. In carts, right? Then they transport, they
4 transfer it currently immediately into a container that
5 is then used for pickup and shipment, right?

6 A. What if the consolidation efforts were
7 analogous to a giant dumpster and my employees acted
8 very similar to a janitorial staff that through the
9 night goes through the building, collects up all the
10 garbage, loads it into a giant dumpster, and then a
11 garbage hauler comes in, dumps that dumpster, and takes
12 off. If my third party vendor came in, took the
13 materials out of my dumpster, and packaged that in
14 accordance with the regulations in whatever container
15 they deemed appropriate, I don't care if it's cardboard,
16 plastic, whatever, that's now theirs, my employees don't
17 have to handle it, they can put it in some satellite
18 type accumulation, some sort of consolidation container,
19 be it one small tub of Stericycle's choosing or a giant
20 dumpster, the consolidation can take place, that third
21 party vendor can then come in and be responsible to
22 appropriately package that material.

23 Q. So you would have to create a new container
24 system within your facility, you called it a giant
25 dumpster, just take that as a container, a large

1378

1 container to receive a large volume of biomedical waste.

2 A. Okay.

3 Q. They would -- your personnel would do the
4 collection in the labs, they would bring it to this
5 location, they would put it in the large container or
6 dumpster, and then a third party vendor would then come
7 in and take it out of that dumpster and put it into
8 shipping containers. Is that your idea?

9 A. That would be a level of service that I would
10 seriously find beneficial, yes.

11 Q. Well, I'm having a hard time seeing how that
12 replaces any function that your employees are currently
13 doing. Since they currently bring the waste to the
14 loading facility and simply place it into a container
15 for shipment, how does creating an intermediate
16 transfer --

17 A. Right now --

18 Q. -- into a large container for then later
19 retransfer into shipping containers save time or
20 function for your employees?

21 A. It saves my employees time because they're
22 not responsible now for the appropriate packaging
23 requirements necessary to transport the material.

24 Q. But what are those requirements, they tie off
25 the bag and put it in the tub, right, and put the lid on

1379

1 it?

2 A. Depends on what the container is.

3 Q. But of your current containers, let's take
4 the gray tubs or the red tubs, aren't that -- isn't that
5 the sole function that they're doing after they bring
6 the material in the red bags to the loading area?

7 A. You're basing this off of the assumption that
8 we are going to continue to use gray tubs indefinitely.

9 Q. Well, just assume that for the moment. Isn't
10 that the function that they perform, they take the red
11 bags, put it in the tub, and put the lid on?

12 A. And I believe they're responsible to slap a
13 label on it.

14 Q. Okay, put a label on it. So the third party
15 vendor instead of that function, your people would come
16 down and put the red bags into a large container or a
17 dumpster?

18 A. Sure.

19 Q. That would be in a secure place, it would be
20 isolated from passers by and protected from rodents and
21 insects and all that kind of thing, and then the third
22 party vendor would come in and transfer that to the
23 container, to the shipping container?

24 A. Which could be cardboard boxes, plastic tubs.

25 Q. Right.

1380

1 A. Whatever the shipper deems appropriate with
2 the caveat that the shipper like myself would say, now I
3 want incineration, so they're packaging up in cardboard
4 boxes. If I as the shipper was to move to cardboard
5 boxes, I would have a requirement to make sure that the
6 people assembling those boxes know how to assemble them
7 in accordance with the regulations for appropriate
8 shipping. Currently the tubs that are used don't have
9 that requirement, and I think that that eliminates that
10 source of error. But I'm not -- I mean we discussed a
11 dumpster, it could be several of those large Rubbermaid
12 bins.

13 The point, key point in this process is that
14 I already have a designated satellite accumulation area,
15 I wheel the, I don't, these glass wash people wheel the
16 tubs in to that accumulation area for pickup on a weekly
17 basis. If these gray bins, you know, if the satellite
18 accumulation bins that my folks were using were nothing
19 more than an open top, one of those big open top things
20 that I see janitors use all the time. Are you familiar
21 with the Rubbermaid container I'm referring to?

22 Q. I can imagine.

23 A. Okay, some wheeled container. I mean I don't
24 obviously have the specifics of this idea, you know,
25 down, I don't know what they would be, I don't know what

1381

1 they would cost. My point is that if my people don't
2 have to have the responsibility for packaging should we
3 decide to switch to cardboard, that's a benefit.

4 Q. Okay, you would still and your people would
5 still be responsible for labeling, would they not?

6 A. No.

7 Q. Isn't that a requirement of the DOT
8 regulation?

9 A. If they're not shipping it, they wouldn't
10 have the responsibility for labeling it.

11 Q. So you think that you would no longer be the
12 shipper?

13 A. I'm still the shipper, but I have the third
14 party vendor who is the expert in preparing packages for
15 shipment take care of the labeling requirements.

16 Q. So you would not believe it is your
17 responsibility to oversee the labeling of the container?

18 A. It's my responsibility to verify that they
19 did it correctly. That's not glassware's
20 responsibility, that's mine.

21 Q. Okay. And it would be your responsibility to
22 make sure that the shipping containers were properly
23 assembled and prepared for shipment; would it not?

24 A. Yeah.

25 Q. And don't you agree that this concept of

1382

1 transferring from consolidation containers that were
2 used in the laboratories to a bin or dumpster at the
3 loading area would involve an additional -- would
4 involve additional handling of the waste?

5 A. I don't see -- I don't -- I think right now
6 we're talking about what would be great to have, you
7 know, serendipity if we could do this. If you want to
8 talk in those terms, I think it would be great if
9 somebody came through with a dump truck that was nothing
10 more than a biomedical waste dump truck and that nobody
11 had to handle anything. But currently that is not an
12 option for anybody. That doesn't exist, and as long as
13 we keep these kind of proceedings up, that can never
14 exist. But it's set up to be managed in much the same
15 way as your traditional solid waste with one exception,
16 we have to package it up in accordance with DOT
17 regulations, and it has to go on a box van type vehicle
18 to its facility as opposed to we could use a dumpster,
19 that dumpster could be loaded into a biomedical only
20 waste garbage truck, and that truck could then go to
21 Morton, and they could do whatever they want with that
22 at that point. So I mean you're talking about in my
23 mind what I would do if I could make the rules here.

24 Q. Okay, what I asked you though was whether
25 there would be an additional transfer of the waste and

1383

1 therefore additional handling of the waste if your
2 people brought it down, put it in a consolidation
3 container, and then the transporter had to take it out
4 of that and put it in a container for shipment?

5 A. Yes.

6 Q. And do you have any concern about liability
7 issues involved in additional handling of biomedical
8 waste?

9 A. I guess it depends on where that additional
10 handling takes place.

11 Q. But I think in an earlier part of your
12 testimony you talked about having a preference to use a
13 single company so that there aren't transfers between
14 companies. Isn't the issue -- and you expressed concern
15 about drivers handling waste and transferring waste from
16 one vehicle to another. Doesn't that same set of
17 considerations apply to the kind of additional handling
18 that would be required in this sort of consolidation,
19 the hypothetical we have been talking about?

20 A. You're talking about a different level of
21 competency for the driver.

22 Q. You're --

23 A. My --

24 Q. You're --

25 A. My hazardous waste vendors currently, and I'm

1384

1 modeling this concept off of how hazardous waste is
2 handled, I have satellite accumulation areas for the
3 most nasty toxic stuff you can imagine, and that
4 material is kept in appropriate lockdown containers,
5 areas, whatever. I remove that, me, from the labs, put
6 it where it's safe, and then on a 90 day calendar have
7 the impact division of Teris come in, and they lab pack.
8 Kleen Environmental does the exact same thing for some
9 of the smaller customers. They come in and they
10 segregate those wastes according to their hazards, their
11 hazard class, and they package them according to the DOT
12 and manifest them and prepare them for shipment. That's
13 something that I would find beneficial if we could do
14 similar in the medical waste field. I don't know if it
15 can be done, I'm just speaking as if I could do this, I
16 would like to see it that way.

17 Q. So you're not sure this would be practical,
18 but if -- but you would like to have the opportunity to
19 investigate it?

20 A. Okay.

21 Q. So you're agreeing with my statement; is that
22 right?

23 A. I'm not sure which would be practical. You
24 said I'm not sure this would be practical, I don't know
25 what this is.

1385

1 Q. Okay, we have been talking about a
2 hypothetical where you would have a third party vendor
3 involved in the packaging of your waste.

4 A. I'm sure it would be practical if we could
5 have a dump truck that was specifically for medical
6 waste go around and pick up the medical waste in the
7 community. That doesn't exist. I am sure that would be
8 practical. I agree with you that there is an additional
9 handling step by my third party vendor. What it does
10 get me off the hook for though is my glass wash people
11 aren't having to package and label shipping containers.
12 The handling takes place at my facility, not at somebody
13 else's, and that gives me a measure of comfort and
14 control. If the additional handling takes place in
15 Morton or it takes place in Salt Lake or it takes place
16 in New York, that's out of my control, I have no concept
17 of what's going on, I don't get to authorize it. In
18 essence, if a third party vendor came in and took care
19 of it however they would take care of it, I would have
20 oversight over that third party vendor, and I would be
21 able to say yes, you guys did this correctly, and the
22 handling is done.

23 Q. Is there something preventing you from using
24 Kleen Environmental or some third party vendor to
25 package your biomedical waste now?

1386

1 A. Yeah, it's not their job right now.

2 Q. Okay, you have not asked them to do it?

3 A. No.

4 Q. But there's nothing to prevent them from
5 doing it, is there?

6 A. No.

7 Q. But you're not having them do it?

8 A. No.

9 Q. Mr. Smith, I think you indicated that you are
10 -- the biomedical waste you're shipping is currently
11 consists of path waste in gray tubs and then solid
12 plastic waste put into red tubs for processing at Morton
13 I believe.

14 A. That is correct.

15 Q. And what about your sharps?

16 A. Those go with the plastics.

17 Q. Okay. And they are packed in the same
18 containers?

19 A. In the red tubs?

20 Q. Same transportation containers, yeah.

21 A. Yeah, but they're in a sharps container.

22 Q. Understood.

23 A. Okay.

24 Q. Would it be a problem for you to have to
25 segregate your sharps waste from the solid plastic, the

1387

1 other solid plastic waste and put them into separate
2 containers?

3 A. Me personally?

4 Q. No, your company.

5 A. I don't think so.

6 Q. Wouldn't it add to your cost?

7 A. Why?

8 Q. Because you can't consolidate the waste that
9 you have to fill a tub necessarily, you have to put --
10 where you have sharps waste and this other plastic
11 that's amenable for disposal, let's assume it's all
12 going to be incinerated, but let's assume that the
13 requirement is that you segregate your sharps waste from
14 all your other waste, doesn't that mean you're going to
15 use more containers?

16 A. No, actually it means just the opposite, in
17 fact, because I have actually experienced that at
18 Targeted Genetics. I could only fit a certain number of
19 sharps containers in one of those cardboard boxes, and
20 therefore could not fit any additional plastics in it,
21 and as such by necessity those containers were
22 segregated.

23 Q. Well, but doesn't that cause you to use
24 additional shipping containers because you can't
25 consolidate the materials?

1388

1 A. What?

2 Q. Okay, well, let me try again. You've got
3 sharps waste and you've got this solid plastic waste
4 that you referred to.

5 A. Okay.

6 Q. And you have path waste.

7 A. Okay.

8 Q. And let's assume you're sending all of this
9 material for incineration just for the hypothetical.

10 A. Okay.

11 Q. If you can't pack your sharps waste with the
12 other types of waste, does that require you then to use
13 more containers?

14 A. No, I don't believe it does, because it
15 allows me to consolidate the sharps into one container
16 and plastics into another. Those plastics, what you
17 don't understand, are a high volume. If you fill a
18 container with the plastics, you really have no room for
19 anything else. The sharps are a more dense material,
20 and you can -- they're usually in sharps containers,
21 which stack and can be arranged in such a fashion that
22 you can get more of those into one of those shipping
23 containers.

24 Q. But you just testified a moment ago that you
25 currently pack your sharps waste and your solid plastic

1389

1 waste together.

2 A. In a plastic tub, yes. You just asked me
3 about the incineration. I assumed we were referring to
4 putting it into a cardboard box, because I also
5 testified to having segregated them like that earlier.

6 Q. But isn't there an advantage of being able to
7 have the flexibility to pack those two types of
8 biomedical waste together?

9 A. I don't believe that there's an advantage,
10 and I don't believe that it affects your overall
11 containers. I have noticed that when I have segregated
12 the sharps containers from the high density or low
13 density high volume plastic waste, I can get more of the
14 plastics into a plastic container and more of the sharps
15 into a sharp container as opposed to consolidating them
16 all into one.

17 Q. Well, then why do you currently pack them
18 together?

19 A. Because I'm not responsible for doing that.
20 The glass wash people do it, and I'm not dictating how
21 they do it.

22 Q. Okay, so maybe I -- would it be fair to say
23 that you don't know if there are advantages to being
24 able to pack those together?

25 A. You asked me how it was done and I told you,

1390

1 it was done this way. I didn't imply or state that I
2 thought that was the best method or the best way to do
3 that. In fact, I don't. I have noticed that at times
4 when you can consolidate your wastes by segregating
5 them, sharps in one container, high volume low density
6 plastics in another, you end up with less overall
7 containers. And that I believe Mr. Norton can testify
8 to, because that's why he allowed me to maintain the
9 cardboard boxes over the plastic shipping containers at
10 my job at Targeted Genetics.

11 Q. So basically at times I think you said
12 there's an advantage to segregating. Wouldn't you also
13 agree that at times there's an advantage to combining
14 them?

15 A. Understand that I have personally had to pack
16 in the gray tubs for incineration and in the cardboard
17 boxes, the shape of those gray tubs actually allows you
18 less packing ability of sharps and plastic materials. I
19 counted it up at Targeted Genetics and found that by
20 being able to use the cardboard boxes we were able to
21 save on about three to five shipping containers per
22 week, which translated into a couple hundred dollars
23 because of what we were being charged at the time. Jeff
24 Norton allowed me to maintain using cardboard boxes
25 because the plastic shipping containers actually

1391

1 required me to use more shipping containers, which
2 translated into more dollars that I had to pay. Do you
3 understand why I don't agree with what you're asking?

4 Q. I guess I don't, because it would seem to me
5 that flexibility would be an advantage however it might
6 be most efficient to pack a box.

7 A. I don't disagree with that, but I don't make
8 that rule.

9 MR. HAFFNER: Objection, I don't think there
10 was a question.

11 JUDGE RENDAHL: I don't think there was a
12 question. I think you all are having a conversation,
13 which isn't exactly what we do at these proceedings. So
14 we need to have a question, and then we need to have an
15 answer.

16 BY MR. JOHNSON:

17 Q. Mr. Smith, you're aware that the cardboard
18 boxes that Kleen proposes to offer, that one size is a
19 40 pound maximum box, are you aware that the gray
20 plastic tubs you are currently using have a 60 pound
21 maximum weight limit? Does the --

22 JUDGE RENDAHL: Let's let him answer the
23 question you ask --

24 MR. JOHNSON: Sorry.

25 JUDGE RENDAHL: -- before you move on to

1392

1 another.

2 A. Yes on the box and yes on the tub.

3 BY MR. JOHNSON:

4 Q. Thank you. These gray tubs and the boxes are
5 roughly equivalent volume?

6 A. Different shape, but roughly, yes.

7 Q. Okay. Would it add to your cost if you were
8 limited to a container with a lower weight limit --

9 A. No.

10 Q. -- than is currently permitted with the
11 reusable tubs you're now using?

12 A. No.

13 Q. Is that because you never load those tubs to
14 the maximum weight?

15 A. Yes.

16 Q. Do you have a way internally of determining
17 what the weight of your tubs is?

18 A. Basically it's a kick test. I have a scale
19 if we need it to verify so that we don't get
20 overcharged. But if you can pick it up, you can assume
21 that it is of a certain weight.

22 Q. You get a sense for it after a while?

23 A. Yes.

24 Q. But really it's your tub wash people that
25 would be packing these things and would be determining

1393

1 how much weight to put in it; is that right?

2 A. Currently?

3 Q. Yeah.

4 A. Yes.

5 Q. Have you ever observed the Covanta facility
6 at Brooks, Oregon?

7 A. No, I have not.

8 Q. Would you want to observe that facility
9 before signing on with a service that was using that
10 facility exclusively?

11 A. I believe my boss has observed that facility,
12 because it is a designated facility that Stericycle has
13 used and has listed as a backup facility. So to go look
14 at it again, if it fell within our internal policy of
15 within that three year window, then yes. But if service
16 was to begin tomorrow, it wouldn't be necessary.

17 Q. Mr. Smith, would it be fair to characterize
18 your position overall that you would like to maximize
19 the number of choices available to you and you believe
20 that additional competition in the medical waste area
21 would be beneficial?

22 A. Yes, that would be fair.

23 MR. JOHNSON: Thank you.

24 I have no further questions.

25 JUDGE RENDAHL: Mr. Sells, do you have any

1394

1 questions?

2 MR. SELLS: About three, Your Honor.

3 JUDGE RENDAHL: Okay, go ahead.

4

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

6 BY MR. SELLS:

7 Q. Mr. Smith, just to clarify, your two

8 buildings are located in Seattle, correct?

9 A. Yes.

10 Q. Are you aware of any plans to expand outside

11 of King County physically?

12 A. We just finished an expansion of about \$60

13 Million where we built a development facility adding on

14 to our existing building, so currently no, there are no

15 additional plans to expand out of King County.

16 Q. And you are served I presume by a for lack of

17 a better term regular garbage hauler?

18 A. Yes.

19 Q. Which company is that?

20 A. I believe it's Rabanco.

21 Q. Are you satisfied with that service?

22 A. Mostly, yes.

23 Q. In your desire to see some extra competition,

24 can I presume that that's not just limited to Kleen

25 Environmental, meaning that if there were some other

1395

1 company or companies that came along offering the
2 service, you would be interested in talking to them?

3 A. Yes.

4 MR. SELLS: That's all I have, Your Honor.

5 JUDGE RENDAHL: All right.

6 MR. SELLS: Thank you.

7 JUDGE RENDAHL: Mr. Smith, I just have a few
8 questions, and then the process is we will allow
9 Mr. Haffner to ask any questions he needs to clarify,
10 and then go back to Mr. Johnson. So my hope is that we
11 will get you out of here by noon.

12 THE WITNESS: Thank you.

13

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

15 BY JUDGE RENDAHL:

16 Q. You were asked a number of questions about
17 the various manifests, both the one you receive from
18 Teris.

19 A. Mm-hm.

20 Q. Which is marked as exhibit or which is
21 Exhibit 27, and the various Stericycle invoice, well,
22 we'll get there next, but the invoice is one of them.

23 MR. JOHNSON: Your Honor, I believe you
24 misspoke, I believe you referred to it as the Teris
25 manifest.

1396

1 Q. Certificate of destruction.

2 Do you receive an original, what you consider
3 to be an original of what is Exhibit 27 from Teris?

4 A. The certificate of destruction?

5 Q. Correct.

6 A. It's printed on -- I believe it to be an
7 original because when I have reprinted the certificate
8 via our on line web access, it says copy or something
9 across it. I'm not entirely -- it's been a while since
10 I have had to reprint one, but they send you a document
11 and the getting another one says copy on it.

12 Q. Have you ever asked Teris for a signed, an
13 actual signature on the certificate of treatment and
14 disposal?

15 A. I don't recall.

16 Q. Okay.

17 A. They may come that way, it's been something
18 that I have become so accustomed to getting, I just file
19 it.

20 Q. But the fact that you have a name to you is
21 satisfactory?

22 A. Yeah.

23 Q. Thank you.

24 You talked a bit about the glass washers
25 being in another department, what's the name of that

1397

1 department?

2 A. Lab operations.

3 Q. And just to clarify to make sure the record
4 is clear, does the lab operations department make the
5 decision as to which biomedical waste hauler to use, or
6 is it your department?

7 A. It's my department.

8 Q. But you would consult that department and
9 possibly other departments within the company before
10 making a decision as to which hauler to use?

11 A. Especially if it changed the amount of labor
12 that they were required to do, yes.

13 Q. But whose ultimate decision is it to make
14 that -- to choose a hauler?

15 A. Our department's.

16 Q. Does Kleen package any of the waste, the
17 chemical waste that goes to Teris, for you?

18 A. No, they only package the universal waste,
19 which are handled mostly locally by a company called
20 Eccolights.

21 Q. Can you spell that?

22 A. E-C-C-O-L-I-G-H-T-S, I believe, Eccolights.

23 Q. Okay, thank you.

24 Concerning the documentation that we
25 discussed, you testified that your boss takes the

1398

1 invoices from Stericycle and then compares them to the
2 manifests that Stericycle will fax to the company and
3 then cross references them; is that correct?

4 A. Yes.

5 Q. Do you know if that is something that your
6 company has to make a request for every month, meaning
7 the faxed copies of the manifest, or is that now a set
8 arrangement with Stericycle?

9 A. I believe that it is a standing arrangement
10 with Stericycle and my boss, and I know that we're one
11 of the few companies that have made that arrangement.

12 Q. Okay. If you could look at Exhibit 68, which
13 is titled container detail report, and look at the pages
14 that you stated you were most familiar with, meaning
15 those pages about --

16 A. Yes.

17 Q. -- four pages in.

18 A. Okay.

19 Q. On the bottom saying page 1 through 6.

20 A. Yes.

21 Q. Is there a date on this container detail
22 report for the disposal of the waste?

23 A. There is a date that says process date, and I
24 can assume that to mean that it was handled, but nothing
25 on this thing except for page down 1 it says tub

1399

1 incinerate versus medium box disposal. I'm not clear
2 looking at this report what the treatment methods were,
3 but as was noted in the record, by cross referencing the
4 tub ID number, which is the container ID here, with the
5 manifest that it says it came from, I can look and see
6 what was marked on that manifest, but that is a
7 considerable amount of busy work for my department to
8 have to do.

9 If you would like to look at that previous
10 certificate of destruction, you only see on this one
11 that's in the record one line because there was one item
12 or one sequence that was treated by incineration. But I
13 have typically on my certificates of destruction that I
14 receive from Teris, it will have the sequence numbers, 1
15 through however many we shipped on that particular
16 manifest, and it will say either it was incineration or
17 fuel blending, because we also get -- we also -- some of
18 our waste is such a highly flammable high BTU value
19 waste that they give us a different price based on that
20 waste and call it fuel blending, as well as seeing
21 something on that thing that would say reclaim. If I
22 ship mercury, that certificate of destruction would say
23 reclaim on it.

24 JUDGE RENDAHL: And I think that that's all
25 that I have.

1400

1 Mr. Haffner, do you have anything further?

2 MR. HAFFNER: I may not, Your Honor.

3 Nothing, Your Honor.

4 JUDGE RENDAHL: Okay.

5 Mr. Johnson, did you have anything based on
6 my questions?

7 MR. JOHNSON: No, Your Honor.

8 JUDGE RENDAHL: Or Mr. Sells' questions?

9 MR. JOHNSON: No, Your Honor.

10 JUDGE RENDAHL: All right.

11 Well, thank you very much, Mr. Smith, you are
12 excused. We appreciate your being here all morning and
13 answering our very detailed questions.

14 Let's be off the record.

15 (Luncheon recess taken at 11:50 a.m.)

16

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

18 (1:05 p.m.)

19 JUDGE RENDAHL: While we were off the record
20 we marked as Exhibit 201 the October 7th Declaration of
21 Rusty Cole, and the parties have stipulated to its
22 admission, so I have admitted it as Exhibit 201.

23 Mr. Johnson has circulated the October 6,
24 2004, letter from Garden Terrace, which I have marked as
25 Exhibit 202, and at some point later in the proceeding

1401

1 we'll address it's admission.

2 And now we're proceeding to hear the
3 testimony of Ms. Hoskins, who is here, so let's have you
4 state your full name and work address on the record,
5 please.

6 MS. HOSKINS: Donna B. Hoskins, Berlex
7 Laboratories, 21511 - 23rd Drive Southeast, Bothell,
8 Washington 98021.

9 JUDGE RENDAHL: Thank you. And if you could
10 raise your right hand, please.

11 (Witness Donna B. Hoskins was sworn.)

12 JUDGE RENDAHL: Before you go ahead, just a
13 reminder, which you probably are aware of from observing
14 this morning, but if you can wait until the attorneys
15 ask a question to answer, and likewise if you will wait
16 to ask the question, counsel, until the witness is
17 finished, then it will be a cleaner record.

18 So go ahead, Mr. Haffner.

19 MR. HAFFNER: Thank you, Your Honor.

20

21 Whereupon,

22 DONNA B. HOSKINS,
23 having been first duly sworn, was called as a witness
24 herein and was examined and testified as follows:

25

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

2 BY MR. HAFFNER:

3 Q. Ms. Hoskins, you indicated that your address
4 was in Bothell, do you know if that is in King or
5 Snohomish County?

6 A. That is in Snohomish County, but we also have
7 facilities in the city of Seattle.

8 Q. Do you have facilities anywhere else in the
9 state of Washington?

10 A. No.

11 Q. What is the name of your employer?

12 A. Berlex Laboratories.

13 Q. Spell it, please.

14 A. B-E-R-L-E-X, Laboratories, and it's a wholly
15 owned subsidiary of Schering AG, Berlin, Germany.

16 Q. And can you spell Schering, please.

17 A. S-C-H-E-R-I-N-G.

18 Q. Thank you.

19 What is your position at Berlex?

20 A. Environmental Health and Safety Manager.

21 Q. How long have you held that position?

22 A. Two and a half years.

23 Q. What are your responsibilities in that
24 position?

25 A. I'm responsible for all the environmental

1403

1 health and safety programs in the Seattle area.

2 Q. Can you give us a brief description of what
3 that entails?

4 A. In addition to hazardous waste management,
5 it's occupational medicine, Labor and Industry claims,
6 all the permitting, environmental permitting, training,
7 et cetera.

8 Q. Are you responsible in your position for
9 making decisions regarding your company's treatment and
10 collection of medical waste?

11 A. Yes.

12 Q. Are you authorized by your company to be here
13 and speak on its behalf in respect to the treatment and
14 collection of medical waste?

15 A. Yes.

16 Q. Can you describe the types of waste, medical
17 waste, that your company generates?

18 A. Yes, we generate basically laboratory medical
19 waste, which includes sharps and petrie dishes,
20 cultures, stock cultures, in addition to that rejected
21 or expired pharmaceutical drug.

22 Q. Do you generate any pathological waste?

23 A. Pathological waste, you will have to define
24 that.

25 Q. I'm not probably the best person to define

1404

1 that.

2 Do you generate any waste that has come in
3 exact with bloodborne pathogens?

4 A. Yes.

5 Q. And what would that waste be?

6 A. It's just some of the clinical trial material
7 that's sent back from the clinical trials throughout the
8 world that might be contaminated with bloodborne
9 pathogens.

10 Q. Of the waste that you generate, what
11 percentage of it is segregated apart from the other, and
12 which wastes do you segregate?

13 A. The biomedical waste we don't segregate. You
14 mean segregate the pharmaceutical from the laboratory
15 waste?

16 Q. If that's what you do. So you separate
17 pharmaceutical from biomedical?

18 A. Yes.

19 Q. Okay. And when you talk about
20 pharmaceutical, is that pharmaceutical that's not
21 included in the definition of biomedical?

22 A. Well, it is biomedical waste, because it's
23 the active drug that we manufacture.

24 Q. Okay. Do you have an idea of the volume of
25 medical waste that your company generates each month?

1405

1 A. At the Seattle location perhaps anywhere from
2 4 to 6 tubs. At the Bothell location anywhere from 1 to
3 20, it depends if we have rejected pharmaceutical that
4 month.

5 Q. Okay. And what size tubs are you talking
6 about there?

7 A. They're the red, I don't know how many
8 gallons they are.

9 Q. Okay.

10 A. The red tubs.

11 Q. How frequently are your medical waste items
12 collected by an outside source?

13 A. Monthly.

14 MR. JOHNSON: I'm sorry, I didn't hear.

15 THE WITNESS: Monthly.

16 BY MR. HAFFNER:

17 Q. And who is that source, who is the provider
18 of your medical waste collection service?

19 A. Stericycle.

20 Q. Has anyone else or any other company
21 contacted you or your company to provide medical waste
22 collection and transportation service in the last three
23 years?

24 A. No.

25 Q. Have you tried to contact anybody during that

1406

1 three year time to provide service?

2 A. I have made inquiries, but there was no
3 company in Washington state.

4 Q. And when you say none in Washington state, do
5 you mean that you found none to provide service to your
6 facilities in Bothell or Seattle?

7 A. Yes.

8 Q. Do you have a preferred method of how your
9 medical waste is treated?

10 A. Incineration.

11 Q. Why is that?

12 A. It's very important for my company to be
13 assured that all of the pharmaceuticals and the medical
14 waste have been incinerated and destroyed because of the
15 liability to the company if this material should ever
16 find its way out into the public.

17 Q. How is your waste currently being treated or
18 disposed?

19 A. Incineration.

20 Q. Do you know where it is being treated or
21 disposed?

22 A. Utah.

23 Q. If given the opportunity to have that
24 incineration at a closer facility, would you prefer
25 that?

1407

1 A. Yes.

2 Q. Do you have any concerns or issues with
3 Stericycle's documentation that they are currently
4 providing you?

5 A. Yes.

6 Q. Can you explain what those are, please.

7 A. Well, the manifest is signed by the original
8 transporter, the truck that comes to pick it up.

9 Q. And if we could, if I could interrupt you,
10 maybe we could take a look at what's been represented as
11 Stericycle's manifest, I believe it's Exhibit 65.

12 A. Well, this is the manifest that we used to
13 get, but this last week or so we received a manifest
14 that's different from this. The manifest that I just
15 received has four locations at the bottom of different
16 places that your waste could go.

17 Q. Okay, I believe the Commission will look at
18 the facts that existed prior to the --

19 A. Oh, okay.

20 Q. -- filing of this application, which I
21 believe was around February or so of this year. Was
22 this the type of manifest that you were receiving prior
23 to the recently received manifest?

24 A. Yes.

25 Q. And I had asked you a question about issues

1408

1 and concerns that you had with Stericycle's
2 documentation, I believe you were answering, can you go
3 ahead and provide that answer?

4 A. Well, I don't receive back a copy of this
5 manifest. At the bottom where it says treatment
6 facility, it says Morton, Washington, and then it says
7 north Salt Lake, Utah, and I don't, and authorized
8 signature underneath, and I never receive back a copy of
9 this manifest with that information on it.

10 Q. So you don't ever receive anything that has
11 anything on the treatment facility portion filled out?

12 A. Right.

13 Q. Why is that a concern for you?

14 A. Because I have no documentation or proof that
15 it was received at the incinerator in north Salt Lake or
16 that it was incinerated. Because it says here treatment
17 by incineration Utah, and then it says print name,
18 authorized signature, and date, and that's the
19 documentation that I'm looking for.

20 Q. If the --

21 A. And actually I'm required to have by my
22 company.

23 Q. Why is that?

24 A. Schering AG out of Berlin has global
25 directives for all of their sites throughout the world,

1409

1 and they require, especially with the chemical,
2 radioactive, and biomedical waste, they require
3 documentation of disposal, treatment and disposal.

4 Q. If you could turn to Exhibit 27, are you
5 familiar with that document at all?

6 A. Yes.

7 Q. Can you explain how you're familiar with it?

8 A. This is a certificate of destruction from
9 Teris, a chemical incinerator in El Dorado, Arkansas.

10 Q. Do you use that company to handle your
11 chemical waste?

12 A. Yes, I do.

13 Q. Is that a certificate of destruction that is
14 satisfactory to you and your company?

15 A. Yes, it is.

16 Q. If you could look at Exhibit 68, and there
17 are actually I believe a couple of sets of documents
18 here, the first one is a, I believe there's even three,
19 there's a two page document, then a one page document,
20 then a six page document, are you familiar with any of
21 those documents?

22 A. I know I have never seen the first document,
23 Exhibit MP-9.

24 Q. Have you seen the third page, the second
25 document?

1410

1 A. I have requested and received yearly when I
2 audit, when I have to do my year end audit, page 1 of 6,
3 these pages, I have received those if I request them.

4 Q. Are there concerns that you have with the
5 type of information that's on the document that's
6 identified as page 1 of 6 and so on, that set of
7 documents?

8 A. Yes. If you will turn to page 5 of 6, about
9 a third of the way down you will see it says dates of
10 service, June 28th, 28 gallon tub, incinerate, process
11 date is empty, I'm assuming that that hasn't been
12 processed, and yet this person has been billed for that.

13 Q. And have you received documents that
14 similarly represent that an invoice has been issued
15 before the processing date?

16 A. Yes. Another concern here is you can see the
17 length of time it takes to move this waste from Seattle
18 or Washington state to Utah.

19 Q. Where is that evident?

20 A. Well, it's on the line above you have June
21 24th, received July 9th. I have concerns about how long
22 the company waste is on the road and in storage or being
23 transloaded. At each one of those points in time
24 there's a possibility that something may occur. So the
25 shorter the distance is preferable.

1411

1 Q. And is the information that's contained in
2 that document similar to lengths of time that you have
3 seen in documents provided to you in terms of again
4 you're indicating the time frame of pickup of 6-24 and
5 processing of July 9, have you experienced similar time
6 frames in the documents that have been presented to you
7 by Stericycle?

8 A. Yes.

9 Q. Has your company ever been billed for
10 overweight charges by Stericycle?

11 A. Yes.

12 Q. What type of documentation did you receive?

13 A. Just an invoice with an overweight charge but
14 no poundage, so it was hard for me to determine how, if
15 we were over the 40 pounds, how much over and if it --
16 if that charge was a charge per pound that you were
17 overweight or just a flat overweight fee.

18 Q. Has Stericycle ever provided you any training
19 for handling your medical waste?

20 A. No.

21 Q. Have they ever provided you any training
22 manuals for handling your medical waste?

23 A. No.

24 Q. I believe you mentioned that, when I asked
25 you about the volume of your waste, that you used a

1412

1 number of tubs. What type of containers are you
2 currently using?

3 A. I'm using the tubs.

4 Q. Are those the recyclable steritubs?

5 A. Yes.

6 Q. Do you have a preference for the type of
7 container that you would --

8 A. Yes, I would prefer boxes, cardboard boxes.

9 Q. Why is that?

10 A. The tubs that are returned to us don't appear
11 to be very clean. They're stacked, and when you take
12 the first one off the stack, there's free water and
13 moisture in between, which could harbor bacteria. And
14 unlike many of my fellow biotech people, we are strictly
15 regulated by the FDA, and we can't allow dirty or
16 suspected dirty material back into the plant or our
17 buildings.

18 Q. So how do you accommodate that regulation and
19 your perception that the tubs are not clean?

20 A. Well, at 51 University in Seattle we have to
21 keep those boxes out in the freight elevator lobby
22 outside of the plant or the labs.

23 Q. And I believe you said that --

24 A. And then all the people inside the plant have
25 to carry their biomedical waste out to the freight

1413

1 lobby, and in order to go back into the plant, they have
2 to regown up again.

3 Q. I believe you may have said boxes out in the
4 lobby, did you mean tubs?

5 A. I mean, yeah, tubs out in our freight lobby.

6 In Bothell we keep the tubs in the compacter
7 room where the waste compacter is, and again the
8 personnel in the laboratories bring their waste to that
9 room.

10 Q. Have you asked Stericycle if you could use
11 boxes?

12 A. I requested about three years ago, I asked if
13 we could have cardboard boxes, and they said that they
14 weren't available.

15 Q. Are you aware that Stericycle received a
16 notice of violation for not immediately reporting a
17 spill after boxes of medical waste being transported by
18 Stericycle were found along the roadway?

19 A. I was made aware of that last week.

20 Q. And is that a concern to you?

21 A. Yes, it is a concern. I mean accidents do
22 happen, but I would have appreciated being notified.

23 Q. Are you aware that the Morton facility of
24 Stericycle was once shut down because of tuberculosis?

25 A. Yes.

1414

1 Q. Is that a concern to you?

2 A. Yes, it is.

3 Q. Why?

4 A. Well, the health, of course being an
5 environmental health and safety person, the health and
6 safety of employees is very important to me, and that
7 was a very -- a concern that a vendor that we're using
8 had such serious problems at their plant.

9 Q. Have you ever tried to audit any of the
10 Stericycle facilities?

11 A. I audited Morton about three or four years
12 ago.

13 Q. And what did you observe at that time?

14 A. Well, I wasn't allowed to go into the
15 interior processing part of the plant because I didn't
16 have a respirator, which was required. However, I did
17 review their training records and asked about neighbors
18 and security, about their transloading processes, and I
19 had a few concerns. One was that all the training
20 material for bloodborne pathogens and hazardous
21 communication were in English, and it was my observation
22 that the majority of the people that were in the plant
23 were Spanish speaking.

24 Q. Why was it that -- you testified that you
25 weren't allowed in the plant because you didn't have a

1415

1 respirator?

2 A. That's correct.

3 Q. Did they not have a respirator that you could
4 use?

5 A. No.

6 Q. Did they expect you to -- was it your
7 understanding that you were expected to bring one with
8 you?

9 A. No. However, they couldn't have provided me
10 with a respirator, because that's something that would
11 require a fit test, and you really can't provide a
12 visitor a respirator.

13 Q. Okay. Did they know you were coming in
14 advance to the audit?

15 A. Yes.

16 Q. Did they warn you of the need to have a
17 respirator to go into the interior of the facility?

18 A. No.

19 Q. Do you believe that the service of
20 transportation and collection of medical waste would be
21 better if there was more competition in this field?

22 A. Yes, as long as the competition was a good
23 provider.

24 Q. And why do you think that competition would
25 improve the service?

1416

1 A. Well, I think competition in the marketplace
2 is often advantageous, not only for cost benefit, but
3 also increases service to the customer.

4 Q. How do you know about the current services
5 provided by Kleen Environmental Technologies?

6 A. Well, I really haven't -- I really don't know
7 very much about it. I do not do business with Kleen
8 Environmental with Berlex Laboratories, although I have
9 had business dealings with them in some of my previous
10 jobs. However, I'm assuming that through the course of
11 these hearings that Kleen Environmental is coming to a
12 full understanding of what their customers require and
13 desire in the Seattle area.

14 Q. When you say that you have used Kleen in
15 previous jobs, what were those previous jobs?

16 A. Prior to Berlex Laboratories I worked for
17 Immunex Corporation. Prior to that I worked for ICOS
18 Corporation. Prior to that I worked for Seattle
19 Biomedical Research. And so I have been in a series of
20 biomedical companies over the last 20 years.

21 Q. When were you with Immunex?

22 A. Just prior to them being -- I was with
23 Immunex for five years, and then they were sold to Amgen
24 and Berlex, and that was the split.

25 Q. And so when -- can you give us some dates

1417

1 while you were with Immunex that you would have been
2 using Kleen for the --

3 A. Well, it wasn't when I was with Immunex, it
4 was when I was with ICOS Corporation.

5 Q. Oh, okay. And do you recall what dates those
6 would have been? Years would be fine.

7 A. Oh, I was with ICOS Corporation for about
8 five years.

9 Q. And I guess when I say years, I mean the
10 year.

11 A. Oh, you mean you actually want a year?

12 Q. If it's possible.

13 A. Okay, all right, let me think. It must have
14 been the early '90's then, 1990 to 1995. Please, that's
15 a guesstimate.

16 JUDGE RENDAHL: Approximately.

17 A. Yeah, I need a calculator to do this.

18 Q. Do you have a preference about whether your
19 medical waste is handled by one carrier rather than
20 multiple carriers?

21 A. Well, yes, because the less handling, the
22 better.

23 Q. Can you explain why you feel that it's more
24 advantageous to have it handled less often?

25 A. If medical waste and spent pharmaceuticals

1418

1 are picked up from my facilities and then they go to
2 another facility and they're transloaded and then they
3 go to another transporter and they move it to another
4 place and so on and so forth, you can see that in each
5 one of those functions in each one of those operations
6 is an opportunity for something to occur, for an
7 accident to happen or -- and plus the fact that it's
8 being -- it's just the fact that it's being handled.

9 Q. Are you aware of any audits that have been
10 done of the Salt Lake facility of Stericycle?

11 A. Just the one that Mr. Smith alluded to. I
12 was at the same meeting of that same group, the HELP
13 group, which is a biomedical biotech safety managers
14 organization, and a Jessie Mushen from CTI reported on
15 an on-site audit that he had performed at Salt Lake.

16 Q. Okay. And were the statements made by
17 Mr. Smith consistent with what you heard about --

18 A. Yes.

19 Q. -- Mr. Mushen's audit?

20 A. Yes.

21 Q. Are you aware that the services proposed by
22 Kleen Environmental in this application consist
23 primarily of providing cardboard boxes to the generators
24 for incineration?

25 A. Yes, and I just learned that this morning,

1419

1 so.

2 Q. Okay. Is that a service that is acceptable
3 to you?

4 A. That would work very, very well for me.

5 Q. Would you like to be able to use Kleen as a
6 source for your medical waste transportation?

7 A. If I had more information, I would certainly
8 consider it, but they would have to go through the same
9 rigorous auditing process that most of my waste vendors
10 do.

11 Q. Do you currently have a backup provider of
12 services?

13 A. No.

14 Q. Is that a concern for your company?

15 A. Yes, it is. Again, our parent company
16 requires that we always have a backup for any essential
17 activity, so at this point I do not have a secondary
18 biomedical waste hauler.

19 Q. Would you like to see this application
20 granted?

21 A. Yes.

22 MR. HAFFNER: Thank you.

23 Your Honor, I have no other questions for the
24 witness.

25 JUDGE RENDAHL: Okay, thank you, Mr. Haffner.

1420

1 Mr. Johnson.

2

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

4 BY MR. JOHNSON:

5 Q. Hello, Ms. Hoskins.

6 A. Hi.

7 Q. My name is Steve Johnson, I represent
8 Stericycle of Washington. And you sat here for most of
9 the day, so I think you understand the arrangement. But
10 if I ask you a question that's unclear or that is
11 confusing to you, would you please stop me, and I will
12 try to do better and so that we can make a clear record
13 of your testimony.

14 And you should answer audibly so that the
15 court reporter can take something down, so your answer
16 was yes, right?

17 A. Yes.

18 Q. Thank you. Ms. Hoskins, just going back to
19 your most recent statement, I think you said you would
20 consider Kleen after audit; is that correct?

21 A. Yes.

22 Q. And are you aware that Kleen has no
23 facilities, no trucks, no drivers, and no one that has
24 been identified by them as having expertise in the
25 handling of biomedical waste; does that concern you?

1421

1 A. Well, I wasn't aware of that, but if --

2 Q. If true, would that concern you?

3 A. If that is true, then I would have to see
4 some -- I would have to, as I stated before, audit the
5 company and ensure that I wasn't sending my waste off
6 without making those determinations.

7 Q. I gather that Berlex manufactures
8 pharmaceuticals; is that correct?

9 A. Yes, we're the only manufacturer,
10 pharmaceutical manufacturing company in the state of
11 Washington.

12 Q. Okay. So that was kind of what I was going
13 to, so you have particularly unique needs with respect
14 to your waste handling?

15 A. That's correct.

16 Q. Mr. Haffner asked you a question about
17 whether you would prefer to use a single carrier or
18 multiple carriers. Is it your impression that your
19 current service involves use of multiple carriers?

20 A. I don't know how often that biomedical waste
21 is actually moved. I know that it goes to Morton, and
22 from there it's put on a trailer, but from that point I
23 don't know if that trailer goes directly to Utah or if
24 it's making other pickups, transloaded. And so yes, to
25 answer your question, I think I'm answering your

1422

1 question, the less hands on the waste, the better.

2 Q. That is --

3 A. And the shorter the distance.

4 Q. Are you aware that Stericycle of Washington
5 and Stericycle, Inc., its parent corporation, handle
6 your waste currently from pickup to disposal?

7 A. Yes, they own the incinerator in Salt Lake.

8 Q. Right, so you have one company that you're
9 dealing with.

10 Do you have a customer service representative
11 at Stericycle that you know how to contact?

12 A. Well, it used to be Jeff Norton, but I really
13 haven't contacted anybody at Stericycle except for
14 calling the main number to request this report.

15 Q. By this report, I think you're referring
16 to --

17 A. Yes, I'm sorry.

18 Q. -- Exhibit --

19 A. Exhibit --

20 Q. Excuse me, exhibit --

21 JUDGE RENDAHL: If you will wait until he is
22 finished, we do want to hear what you have to say, but
23 it will be clearer if you wait.

24 Q. You're referring to Exhibit 68, and I believe
25 you're referring to the back three quarters of the

1423

1 document that begins with page 1 of 6 and continues?

2 A. That's correct.

3 Q. Okay. But you do know Jeff Norton, and you
4 know how to pick up the phone and call him if you need
5 assistance?

6 A. Yes.

7 Q. Has he been responsive to your inquiries or
8 requests?

9 A. Reasonably, yes.

10 Q. Reasonably?

11 A. (Nodding head.)

12 Q. Thank you. Have you asked for information
13 from Mr. Norton or others at Stericycle with respect to
14 how your waste is handled between Morton and Salt Lake
15 for example?

16 A. Not recently, but I have asked.

17 Q. And --

18 A. And basically I'm told that it goes to, from
19 Morton, it goes to Utah.

20 Q. Did you ask about whether there was any
21 intermediate stops or anything like that? I mean you
22 seem to have an uncertainty about that.

23 A. I do have an uncertainty about that.

24 Q. Did you ask that question?

25 A. No, I did not.

1424

1 Q. Okay. You know how to get the answer if you
2 need it?

3 A. Yes, I do.

4 Q. Okay. Now when you went to visit the
5 Stericycle plant, do you know when that was?

6 A. I apologize, I'm terrible with dates, it
7 would have to have been 2000 or 2001, 2000.

8 Q. Okay. And who did you contact to arrange
9 that visit?

10 A. The plant manager at Morton, and I'm sorry, I
11 don't recall his name.

12 Q. Would it have been Ed McMaines?

13 A. I don't recall.

14 Q. Okay. But you had a telephone number, and
15 you picked up the phone and gave him a call, and he said
16 fine, come and visit?

17 A. Right.

18 Q. Okay.

19 A. We scheduled a visit, yes.

20 Q. Okay. When you said you weren't allowed in
21 the plant, I was unclear. Were you not -- were you
22 allowed in the plant but not in the containment area?

23 A. That's -- I wasn't allowed where they were
24 actually processing the waste.

25 Q. And that's the area inside the -- I think

1425

1 that it -- after the -- and this is in the ETD
2 operation; is that correct?

3 A. That's right.

4 Q. Okay. And that's the I believe it's called
5 the containment room after the waste is dumped from a
6 container into a negative atmosphere chute, it goes
7 inside a contained area in which the waste is shredded
8 and then heated process; is that right?

9 A. That's right, but I wasn't allowed actually
10 to see that loading process where it goes into the
11 chute. That was --

12 Q. I --

13 A. That was a confined area for plant workers
14 only that had to have the proper personal protective
15 equipment.

16 Q. So did you observe those workers? I mean
17 could you see them with their gear on or --

18 A. Yes, you could look through some of the doors
19 and look into the rooms.

20 Q. Okay. So you saw them, and they were wearing
21 respirators to protect them from exposure to --

22 A. And coveralls.

23 Q. Excuse me.

24 -- exposure to pathogens?

25 A. Yes.

1426

1 Q. And coveralls and so on?

2 A. (Nodding head.)

3 Q. Okay. And so you were not allowed into that
4 area where those folks had the special personal
5 protective equipment?

6 A. That's correct.

7 Q. But you -- and you could not see the actual
8 dumping of the waste into the chute that goes in the
9 containment area?

10 A. No.

11 Q. You understand the reasons for not giving
12 visitors respirators, I assume?

13 A. Oh, absolutely, and I would have been
14 appalled if I was allowed in there.

15 Q. Okay. So not being allowed in there was not
16 a --

17 A. That wasn't an issue, no.

18 Q. That wasn't an issue. So maybe that
19 confirmed that they were doing things the right way at
20 the plant?

21 A. Right.

22 Q. I think you indicated that you requested an
23 opportunity to use cardboard boxes at one point in time
24 from a Stericycle --

25 A. Yes, it was --

1427

1 Q. -- representative.

2 JUDGE RENDAHL: You will have to wait, sorry.

3 Q. Is that true? And who did you ask?

4 A. Yes, that is true, I did ask for cardboard
5 boxes, and I really can't recall who I spoke to. That
6 was three years ago.

7 Q. Were you given any reason?

8 A. That the company had decided to use these
9 Rubbermaid totes and they were no longer providing
10 cardboard boxes or accepting cardboard boxes.

11 Q. Did you talk to Mr. Norton about that?

12 A. I don't recall, I might have.

13 Q. But is it your recollection that he was the
14 person who told you that?

15 A. No, I really don't recall. I know I spoke
16 with a representative from Stericycle, but I honestly
17 can't recall who it was.

18 Q. Do you know whether the reusable tubs that
19 you're currently using are deodorized or otherwise
20 treated before they're provided to you?

21 A. I don't know if they are deodorized.

22 Q. Okay. So you haven't had a discussion with
23 anyone about that?

24 A. No.

25 Q. Okay. So if there's moisture on the tubs and

1428

1 if you were informed that that was as a result of use of
2 a deodorant or a deodorizer on the tub, would that
3 affect your judgment about the cleanliness of the tubs?

4 A. No, it probably wouldn't. Because no matter
5 what the, unless it was a 10% solution of bleach, any
6 liquid, whether it's a deodorizer or water or whatever
7 it is that's, you know, in the tubs is going to grow
8 bacteria.

9 Q. So your concern is basically anything that
10 could bring any kind of contaminant into your
11 pharmaceutical manufacturing unit?

12 A. Exactly.

13 Q. So you, for example, must wear special
14 clothing and boots and everything when you go into the
15 manufacturing area?

16 A. Absolutely.

17 Q. Okay. So that's a particularly sensitive
18 operation?

19 A. Yes, it is.

20 Q. Do you have a copy of the Stericycle tariff?
21 Are you familiar with the tariff?

22 A. No.

23 JUDGE RENDAHL: Is your response you don't
24 have a copy of it or that you're not familiar with it or
25 both?

1429

1 THE WITNESS: Both.

2 JUDGE RENDAHL: Okay.

3 BY MR. JOHNSON:

4 Q. You have never received a mailing of the
5 tariff from Stericycle?

6 A. No.

7 Q. You have never seen the tariff as far as you
8 can remember?

9 A. No.

10 Q. Would it surprise you to know that there is a
11 explanation of the charge for overweight containers in
12 the tariff?

13 A. Maybe I need a copy.

14 Q. I will be happy to give you one after the
15 hearing.

16 Ms. Hoskins, could I ask you to refer again
17 to Exhibit 68, which I think you have open in front of
18 you.

19 A. Okay.

20 Q. And I think you referred us to page 5 of 6
21 earlier, and you referenced a line where there is a
22 missing item of information, which is the, I don't know
23 which line it is, but it's -- I guess it's the first
24 entry for June 28, 2004, and on the far right it says 28
25 gallon tub incinerate, and then there's a dollar figure.

1430

1 No, I'm sorry, it's not a dollar figure, it's a weight
2 figure, isn't it, at the end of that line.

3 MR. HAFFNER: Is that a question?

4 JUDGE RENDAHL: Is that a question?

5 MR. JOHNSON: I'm trying to lay the
6 foundation for a question here.

7 JUDGE RENDAHL: Okay.

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

9 (Discussion off the record.)

10 JUDGE RENDAHL: Mr. Johnson.

11 BY MR. JOHNSON:

12 Q. Ms. Hoskins, just referring you to that line
13 again, I guess I'm asking you whether you know whether
14 an invoice that is identified there is actually sent on
15 that date or if it is held to complete the processing of
16 the manifests that are reflected?

17 A. I don't know.

18 Q. You assume that I guess it was sent before
19 the process --

20 A. I'm assuming that they printed the invoice on
21 the date that it says, just like I'm assuming that the
22 service date was the date that they picked it up from
23 the facility.

24 Q. And you're also assuming that it was actually
25 sent on that date; is that right?

1431

1 A. Yes.

2 Q. Ms. Hoskins, you testified that you would
3 prefer to have an incinerator closer to your facility if
4 possible?

5 A. Yes.

6 Q. That would be one factor amongst many, I
7 assume?

8 A. That's very important.

9 Q. Okay. Where are you currently sending your
10 hazardous materials?

11 A. To Teris in El Dorado, Arkansas, chemical
12 waste.

13 Q. Chemical waste. That's quite a bit further
14 than north Salt Lake, Utah?

15 A. Yes, it is.

16 Q. But that's okay, is it?

17 A. It is because that is the best vendor that's
18 been identified by Berlex, and we incinerate all of our
19 chemical waste as well.

20 Q. Right. So there are various factors, and
21 distance is just one of them, right?

22 A. Yes, that's correct.

23 Q. You testified in reference to Exhibit 65 that
24 you are not currently receiving back, I believe you said
25 you were not receiving back a copy of the manifest

1432

1 showing the signature of the treatment facility; is that
2 right?

3 A. That's correct.

4 Q. Okay. Have you asked Stericycle for a copy
5 of the manifest signed by the treatment facility?

6 A. No.

7 Q. Is there any reason you don't just pick up
8 the phone and ask them for a copy?

9 A. No, there's no reason. I just think that my
10 expectations have come to the point where, you know,
11 that making the request and then making the request
12 again, I just don't have the time in the day to follow
13 up on every biohazardous shipment that I send out.

14 Q. Okay. But I believe you heard the testimony
15 of Mr. Smith earlier today that his company has set up a
16 standing arrangement he called it for receipt of signed
17 manifests or manifests signed by the treatment facility.

18 A. Yes, and I was very surprised to hear that
19 arrangement.

20 Q. But you have not asked for --

21 A. No, I haven't.

22 Q. -- for anything like that or even for a
23 single signed manifest signed by the treatment facility?

24 A. No, I haven't, I didn't realize it was
25 available.

1433

1 Q. I believe you said in reference to Exhibit
2 68, pages 1 of 6 and following, that you were familiar
3 with that document or the type of document that's
4 represented there?

5 A. Not this first one, container detail report.

6 Q. Right, I'm referring to the pages --

7 A. But these others, yes.

8 Q. -- 1 of 6 to the end?

9 A. Yes.

10 Q. And you do get that kind of a statement from
11 Stericycle?

12 A. Yes, I request it annually.

13 Q. And you asked for it, and you got it?

14 A. Yes.

15 Q. Are you aware that you could have this
16 container detail report more frequently than that?

17 A. No, I wasn't aware of that.

18 Q. Have you asked for it?

19 A. No.

20 Q. Ms. Hoskins, I believe in answering
21 Mr. Haffner's questions you indicated that Exhibit 27,
22 which is the Teris certificate of treatment/disposal,
23 that that form of document would be satisfactory for
24 you; is that correct?

25 A. Yes.

1434

1 Q. What is the information on here or what is
2 the character of the information on this Exhibit 27 that
3 meets your requirements?

4 A. Well, it states it is a certificate of
5 treatment/disposal, it references the manifest number,
6 it has the invoice number, and then the line items
7 sequence number 1 a description of the waste, its
8 treatment dates, and its method of
9 treatment/incineration with a name and the person's
10 title. In this case or this exhibit it's the plant
11 manager at El Dorado, Arkansas.

12 Q. Okay. Now if you look at Exhibit 65, which
13 is the regulated waste manifest that Stericycle
14 currently provides to you, if that was signed by the
15 treatment facility, would that satisfy your need?

16 A. Yes, if this bottom portion where it says
17 treatment facility, print name, authorized signature,
18 and date, and then treatment by incineration would be
19 the same information that's on Exhibit 27.

20 Q. Okay. And you now realize that that would be
21 available to you on request, right?

22 A. This waste manifest?

23 Q. Right.

24 A. Returned and signed?

25 Q. Right. Are you aware that that is available

1435

1 to you on request?

2 A. I am now, yes.

3 Q. Ms. Hoskins, I think you said you're using
4 red tubs currently?

5 A. Yes. Are they for incineration? No, it's
6 gray tubs, sorry, they're gray.

7 Q. So are you directly involved in the --

8 A. Yes, I am.

9 Q. -- in the oversight of the collection of your
10 biomedical waste and the packaging of that waste for
11 pickup and transportation?

12 A. Well, I don't package the waste myself, but
13 yes, I am directly involved.

14 Q. So the color is actually gray; is that right?

15 A. Yes, the color is gray.

16 Q. Okay. Now the waste that you currently pack
17 into these gray reusable plastic tubs, or not you but
18 your company, do you segregate it at all, or is it all
19 packed in each container?

20 A. The only thing that is segregated is the
21 pharmaceutical spent drug vials from all the other
22 biomedical waste.

23 Q. Where does the pharmaceutical spent drug --
24 where do the pharmaceutical spent drug vials go?

25 A. Hopefully to the incinerator.

1436

1 Q. But do they go in the gray tubs?

2 A. Yes.

3 Q. But in a separate container, is that it?

4 A. Yes, they're in containers.

5 Q. Okay. So when you say you segregate them,
6 when they go into the gray tubs, you don't put one type
7 of waste in one tub and another type of waste in another
8 tub, do you?

9 A. No, with the exception of those
10 pharmaceutical vials, and those are segregated from
11 petrie dishes and tips and plastic.

12 Q. But doesn't it all go into the gray tub?

13 A. Yes.

14 Q. Including the spent pharmaceutical vials?

15 A. Yes.

16 Q. Okay. They're just -- the contained internal
17 -- containers internal to the gray tub; is that right?

18 A. Yes.

19 Q. Are you aware that at least the testimony --
20 well, let me ask you this. Would it affect your
21 judgment about the desirability of Kleen's service if
22 they were going to require you to segregate your sharps
23 waste from all the other types of waste that you
24 generate for transportation and disposal?

25 A. I don't know if I understand your question,

1437

1 I'm sorry.

2 Q. Well, would it affect your judgment about the
3 desirability of a biomedical waste collection service if
4 there was -- if that service required you to put your
5 sharps waste in a separate container from your other
6 types of waste?

7 A. No.

8 Q. And why is that?

9 A. Because I'm assuming we're using boxes, if I
10 was using cardboard boxes it's very simple just to stack
11 your sharp boxes in one box and your other waste in
12 another box.

13 Q. Once you pack all your boxes with sharps
14 waste and you have one sharps container left and you put
15 that in the last --

16 A. Well, that's a bother.

17 Q. -- and you put that in the last cardboard
18 box, don't you have an empty, almost empty 33 gallon box
19 to hold that last sharps container?

20 A. Yes.

21 Q. And if that were the situation, wouldn't you
22 want to be able to pack other biomedical waste in that
23 same box for disposal?

24 A. Perhaps.

25 Q. Wouldn't it add to your cost if you end up

1438

1 with having to separate your waste streams into
2 different boxes and you weren't able to consolidate them
3 and do whatever was most efficient in terms of reducing
4 your cost?

5 A. Well, to be quite candid with you, cost isn't
6 an issue, especially with biomedical waste, because we
7 don't really generate great amounts of it. Actually, I
8 prefer smaller containers for ergonomic reasons. I like
9 to keep the weight of the containers way under 40 pounds
10 just because of the back injury risk and moving them
11 around. So yes, I would have to agree that most people
12 would benefit by being able to consolidate their waste,
13 but I can't see it as a major issue for Berlex.

14 Q. But it would add to your cost if you had to
15 separate it?

16 A. Yes, oh, yes, it would.

17 Q. And if your -- you generate some pathological
18 waste I believe?

19 A. Yes, very little.

20 Q. Okay. Would it affect your cost if that
21 waste had to be separately segregated and packed
22 entirely separate from both sharps waste and other
23 medical waste?

24 A. Yes, yes, it would.

25 Q. Would you think that's a disadvantage?

1439

1 A. That would be a disadvantage.

2 Q. If Kleen Environmental were proposing a
3 service that would require at least segregation into
4 three different waste streams for transportation, would
5 that affect your judgment as to the desirability of that
6 service?

7 A. So this is hypothetically speaking?

8 Q. Yes. If it's true that Kleen would require
9 segregation of pathological waste from all other types
10 of waste, sharps waste from all other types of waste,
11 and then the third stream would be what's left, would
12 that affect your judgment about the desirability of the
13 service?

14 A. It would affect my judgment.

15 Q. Would you change your opinion as to the
16 desirability of the service?

17 A. I think in a hypothetical issue it's hard to
18 answer your question, because I don't feel as though I
19 have enough information.

20 Q. I think that's a very good answer. I think
21 you have said that it might affect your judgment, and
22 what you're saying is there's a lot of factors you would
23 be considering?

24 A. Right.

25 Q. Okay. And if Kleen's application is granted,

1440

1 I assume what your testimony indicates is that you would
2 then look at their operation, look at their facilities,
3 look at their requirements, and make a decision as to
4 whether that service would be something your company
5 would want?

6 A. Absolutely, I have to do the due diligence.

7 Q. Somewhere here I have one more piece of
8 paper. Aha.

9 Ms. Hoskins, are you aware that Kleen
10 Environmental has identified a processing facility in
11 Canada as a potential backup facility for processing of
12 waste it collects?

13 A. No, I was not aware of that.

14 Q. Would that be a problem for you?

15 A. Again, I would have to have some more
16 information about that facility and understand what that
17 meant to move waste internationally.

18 Q. So it would be another part of what you would
19 investigate; is that right?

20 A. Yes.

21 MR. JOHNSON: I think that's all the
22 questions I have, thank you very much.

23 THE WITNESS: Thank you.

24 JUDGE RENDAHL: Mr. Sells, do you have any
25 questions?

1441

1 MR. SELLS: A few, Your Honor.

2

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

4 BY MR. SELLS:

5 Q. Ms. Hoskins, yours is an international
6 company, is it not?

7 A. That's correct.

8 Q. It has facilities worldwide?

9 A. We have 108 facilities in many countries.

10 Q. Do you get to go to any of them?

11 A. I wish I could.

12 Q. You've got facilities in New Jersey and
13 California according to your web site.

14 A. That's correct.

15 Q. Do those two facilities generate biomedical
16 waste?

17 A. Yes, they do.

18 Q. Do you know how they're served?

19 A. Until recently the Richmond, California
20 facility was a Stericycle customer, but another company
21 has started up in southern California, and they have --
22 Berlex Richmond, California is now using this other
23 company, and I don't recall their name.

24 Q. It looks like the New Jersey facilities are
25 mostly administrative?

1442

1 A. Yes, there's two buildings there, and it's
2 mostly a packaging facility and administrative
3 buildings.

4 Q. Do you know who is your regular garbage
5 hauler at the Bothell facility?

6 A. No, I don't.

7 Q. Is it Waste Management?

8 A. Yes, it is, thank you.

9 Q. That's the most enthusiastic I have ever seen
10 anybody about waste management.

11 A. Well, I just have the yellow letters on the
12 green truck.

13 Q. And if there were other carriers who were to
14 apply for and seek authority to serve your medical waste
15 routes, would you give them the same scrutiny and do the
16 same due diligence and the same consideration as you're
17 giving Kleen?

18 A. Absolutely.

19 MR. SELLS: Thank you, that's all I have.

20 JUDGE RENDAHL: All right, Ms. Hoskins, I
21 just have a few questions. Some of them may have been
22 answered already.

23

24

25

1443

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

2 BY JUDGE RENDAHL:

3 Q. I think Mr. Johnson was trying to clarify is
4 all of your waste incinerated?

5 A. Yes.

6 Q. So none of it goes to Morton to be treated
7 through the process at Morton?

8 A. No, it goes there, but it's not treated at
9 Morton, it goes -- it's transloaded there.

10 Q. And then it's sent to Salt Lake for
11 incineration?

12 A. That's correct.

13 Q. In response to a question by Mr. Johnson, you
14 indicated that your customer service representative was
15 reasonably responsive to calls you had made, and what do
16 you mean by that?

17 A. That the phone call is returned within three
18 days.

19 Q. And is that acceptable?

20 A. No.

21 Q. Okay. Have you ever discussed the
22 responsiveness with the company?

23 A. Yes.

24 Q. And do you feel your concerns have been
25 responded to?

1444

1 A. Sometimes.

2 Q. And what do you mean by that?

3 A. Sometimes when I call, I will -- my phone
4 call will be returned in an expedient manner, within 24
5 hours. And then other times I will call, and I will
6 have to wait two or three days to have a phone call
7 returned. So it's not consistent.

8 Q. And that's your primary issue?

9 A. Yes.

10 Q. Okay. In your discussion with Mr. Johnson
11 about packaging of sharps waste and separating them, I'm
12 just curious about your company's requirements for
13 shipping. If the situation that Mr. Johnson described
14 where you had one sharps box remaining, sharps container
15 remaining, and had to put it in a 30 gallon box, are you
16 required under your company's protocols to ship the
17 waste on a certain schedule, or could that be saved for
18 the next --

19 A. It could be saved for the next shipment.

20 Q. Okay. So in that respect, you wouldn't
21 consider that to be a big problem?

22 A. No.

23 Q. In terms of segregating the sharps waste?

24 A. That's correct.

25 JUDGE RENDAHL: And I think that's it.

1445

1 Mr. Haffner, do you have anything?

2 MR. HAFFNER: I do, Your Honor, two areas.

3

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

5 BY MR. HAFFNER:

6 Q. Ms. Hoskins, going back to this issue of
7 segregation, and maybe it would be helpful for you to
8 look at Stericycle's tariff. I know that you're not
9 familiar with it, but it's in Exhibit 62, and it's
10 towards the middle of that document. Keep going quite a
11 ways in. I think you've got it there further on --

12 MR. JOHNSON: Which page are we on,
13 Mr. Haffner?

14 MR. HAFFNER: Well, I'm just asking her to
15 get to the first page of the tariff.

16 BY MR. HAFFNER:

17 Q. Right there.

18 A. Okay.

19 Q. And then if you could turn let's go to item
20 30, which is second revised page number 4. And I'm just
21 going to be using this as a reference, because I know
22 you have not seen this document before; is that correct?

23 A. Right, no, I haven't.

24 Q. Okay. I'm trying to understand your waste
25 stream. I believe you testified that you had

1446

1 pathological waste.

2 A. Yes, very small amount.

3 Q. Pharmaceutical waste, and as I read this item
4 30, those items would not be permitted in the normal
5 waste stream of Stericycle. Is that your understanding
6 with Stericycle?

7 A. Except for pathological, chemotherapy, and
8 pharmaceutical waste.

9 Q. And if we turn to item 95, which is, I'm
10 sorry, not 95, item 90, which is on first revised page
11 8, that item provides rates for pathological waste,
12 chemotherapy waste, and pharmaceutical waste. Are the
13 rates there consistent with the rates that you are
14 paying Stericycle for your tubs?

15 A. Well, I really can't answer that question.
16 There's only one here that would -- the 28 gallon medium
17 to large tub, because we don't have boxes, which the
18 other two are, and that's \$30 for a 28 gallon tub. I
19 should have brought my invoices with me.

20 Q. Do you know the size of the containers that
21 you're using currently?

22 A. I believe it's larger than 28 gallons, but
23 I'm not very --

24 Q. And do you know the dollar per tub that you
25 are currently paying?

1447

1 A. I can't answer that with complete accuracy.

2 Q. Are you putting in the tubs -- are you doing
3 any segregation currently?

4 A. Yes, we segregate pharmaceutical from
5 biohazardous.

6 Q. But everything else goes in the tubs?

7 A. Yes.

8 Q. Including pathological, sharps, and any other
9 biomedical waste?

10 A. Yes.

11 Q. Has Stericycle talked to you at all about
12 segregating your waste so that the pathological waste is
13 not included with the rest of your waste?

14 A. No. But I want to be clear on pathological
15 waste, is that anything that could be a bloodborne
16 pathogen?

17 Q. I'm not the right person to ask that, and
18 it's not proper for you to ask me a question, so I will
19 leave that.

20 JUDGE RENDAHL: Let's be off the record for a
21 moment.

22 (Discussion off the record.)

23 (Recess taken.)

24 JUDGE RENDAHL: So, Ms. Hoskins, you have had
25 a chance to look at WAC 480-70-041.

1448

1 THE WITNESS: Yes.

2 JUDGE RENDAHL: And you familiarized yourself
3 with what pathological waste means within Stericycle's
4 tariff?

5 THE WITNESS: Yes.

6 JUDGE RENDAHL: Okay, go ahead, Mr. Johnson,
7 with the question that you were asking, or maybe
8 Mr. Haffner, I'm sorry.

9 MR. HAFFNER: Yes, thank you, Your Honor.

10 BY MR. HAFFNER:

11 Q. And I think based on our interpretation of
12 the definition of pathological waste, we have determined
13 that your company is not generating pathological waste;
14 is that correct?

15 A. Correct.

16 Q. So it's not actually entering your waste
17 stream or being packed into any of the tubs?

18 A. Correct.

19 Q. With that knowledge, my line of questioning
20 is no longer relevant, so I won't pursue it.

21 The only other question I have then or line
22 of questioning has to do with Exhibit 65, and I believe,
23 if you could turn to that, please, I believe your
24 testimony was to Mr. Johnson that although you had not
25 previously been receiving signed pages of the treatment

1449

1 portion of this manifest, that if that were signed off
2 that that would satisfy your requirements, and I don't
3 want to put words in your mouth, but I thought you had
4 said that it would satisfy your requirements for
5 certifying treatment and disposal. Is that what you
6 understood your testimony to be, and if so, is that what
7 you intended to say?

8 MR. JOHNSON: Your Honor, Mr. Haffner is
9 leading the witness, and the witness's testimony speaks
10 for itself. It's on the record.

11 JUDGE RENDAHL: Okay, but this is his
12 opportunity to clarify what he heard the witness say in
13 cross-examination and make sure that the testimony is
14 what he understood, and I understand that's the question
15 he's asking.

16 MR. JOHNSON: Okay, Your Honor.

17 JUDGE RENDAHL: And I think the record,
18 whatever the transcript shows will indicate what the
19 first answer was, and if there's any difference, I think
20 that's what he's trying to clarify.

21 MR. HAFFNER: That's exactly it, Your Honor.
22 May I proceed?

23 JUDGE RENDAHL: Maybe it's better to rephrase
24 your question and ask maybe what the witness's
25 understanding of the exhibit is.

1450

1 MR. HAFFNER: Okay.

2 BY MR. HAFFNER:

3 Q. Ms. Hoskins, if this bottom portion of
4 Exhibit 65 is fully executed, is that a sufficient
5 document for you for a certificate of disposal?

6 A. No.

7 Q. And why is that?

8 A. If I recall, I was asked if the treatment
9 facility portion of this manifest was completed and
10 returned to me, then that would be what I required for
11 the manifest, but there still needs to be a certificate
12 of disposal.

13 Q. And I think you testified earlier that the
14 document at Exhibit 27 would be a sufficient form of
15 that, if you could turn to that document.

16 A. Yes.

17 Q. And I will assume that Mr. Johnson may ask
18 you this, so I may go ahead and do it, what is there
19 about Exhibit 27 that is different from Exhibit 65 that
20 allows the Exhibit 27 to be a satisfactory certificate
21 of disposal?

22 A. Exhibit 65 completes the journey of the waste
23 from the generator's facility to the treatment facility.
24 Exhibit 25 is a document that states that this waste has
25 been treated and destroyed.

1451

1 Q. And I believe you just mentioned Exhibit 25,
2 did you mean Exhibit 27?

3 A. I'm sorry, 27.

4 MR. HAFFNER: I have no other questions for
5 the witness, Your Honor.

6 JUDGE RENDAHL: Mr. Johnson.

7

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

9 BY MR. JOHNSON:

10 Q. I guess, Ms. Hoskins, I would like you to
11 look at Exhibit Number 67, which is a form of a
12 Stericycle invoice, and I would like to draw your
13 attention to the words below the bottom of the box
14 beginning with the word certification. Have you -- are
15 you familiar with this?

16 A. Yes.

17 Q. So this is not new to you, this language
18 that's at the bottom of the box here beginning with the
19 word certification?

20 A. Yes, I'm familiar with this.

21 Q. Okay. And does this meet your requirements
22 for a certification of treatment?

23 A. No.

24 Q. Why?

25 A. Well, it's, first of all, it's entitled an

1452

1 invoice, and secondly nowhere here does it say
2 incineration or the date that it was incinerated. It's
3 not specific enough for my needs.

4 Q. So the title of the document is important?

5 A. It is very important.

6 Q. And the reference to incineration?

7 A. Yes.

8 Q. And the date of process?

9 A. Exactly.

10 Q. Referring you to Exhibit 27, which you said
11 was a certificate of treatment or a certificate of
12 disposal that you would find adequate in form, can you
13 tell me what -- on what date that item was treated?

14 A. 7-30/7-31.

15 Q. So is it your understanding from that that it
16 took them two days to treat it?

17 A. No, this incinerator works 24-7, and so I
18 could understand that why they would use that two day
19 date.

20 Q. So it's a 24 hour period?

21 A. Right, because they have to feed that
22 incinerator at a certain speed, and not that I'm an
23 expert at incinerating chemical waste, but that doesn't
24 concern me.

25 Q. So it suggests that somewhere within that two

1453

1 day period that the waste was incinerated?

2 A. Correct.

3 Q. And that's sufficient for your needs?

4 A. Yes.

5 Q. Have you ever expressed your need for a
6 certificate of disposal to Stericycle?

7 A. Yes.

8 Q. And to whom did you express that?

9 A. Again, that was three years ago when the
10 transition from BFI to Stericycle, and the explanation
11 actually that I was given was that the invoice served as
12 the certificate of destruction.

13 Q. And who did you speak with at Stericycle?

14 A. I can't recall.

15 Q. Would it have been Jeff Norton?

16 A. Probably, but I really can't with full
17 confidence.

18 Q. Did you ask him for a specific document or
19 something additional?

20 A. Yes, and that's when I received Exhibit 68,
21 that summary report.

22 Q. Okay. So then that did give you the detail
23 you were looking for?

24 A. It did give me the detail I was looking for,
25 but it still isn't that piece of paper that says

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1 certificate of destruction with all that information on
2 it.

3 Q. Okay. So it's mostly -- it's not the
4 information that you're looking for, because Stericycle
5 provided the information, but it's the sort of one
6 document with the right heading on it; is that right?

7 A. The convenience of having one document with
8 all the information on it, but still -- it's still
9 incomplete. If you look at Exhibit 68, it doesn't --
10 the information is there, but there's no one has signed
11 this or there's no name attached to it. There's no
12 responsibility or accountability. This is just a
13 printout, with the information on it agreed, but there's
14 no signature.

15 Q. So if there were a printed name at the bottom
16 of this Exhibit 68, would that meet your requirements?

17 A. If there, excuse me?

18 Q. If there were a printed name of a Stericycle
19 person at the bottom of this Exhibit 68, pages 1 of 6
20 through 6 of 6, would that meet your needs?

21 A. If there was a printed name, title, and
22 contact number, it would meet my needs, but I would
23 prefer to see it in a different form.

24 Q. So you would need the name, title, and
25 contact number?

1455

1 A. Yes.

2 Q. Well, Exhibit 27 I don't think has a contact
3 number, does it? Am I wrong? So is it just the name
4 and title that would make it satisfactory?

5 A. Well, I thought your question was, would that
6 satisfy requirements, and I believe my reply was what I
7 would prefer to see --

8 Q. Okay.

9 A. -- is a name, a title, and a telephone
10 number.

11 Q. And I can understand why you would.

12 A. Yes.

13 Q. But Exhibit 27 doesn't have a phone number,
14 but so you're saying that Exhibit 27 is sort of
15 acceptable, but you would like one more thing and that's
16 the contact number?

17 A. Oh, sure.

18 Q. Okay. Ms. Hoskins, when Judge Rendahl asked
19 you a couple questions, I think you indicated that you
20 sometimes got a call back from Stericycle when you made
21 a call to them within 24 hours, and sometimes it took
22 two or three days. I gather it's both reasonable and
23 acceptable to get a call back within 24 hours; is that
24 right?

25 A. Yes.

1456

1 Q. And it was the two or three days occasions
2 that were perhaps not to your preference or your view of
3 acceptability?

4 A. Correct.

5 Q. Did you always get a call back?

6 A. Yes.

7 Q. I guess Judge Rendahl asked you also about
8 the packaging of the last sharps container. My intent
9 in my question was to describe a situation where it
10 might be advantageous to combine materials in a single
11 box. You agree that there would be circumstances when
12 it would be desirable to combine sharps containers with
13 other containers in a single box?

14 A. It would be desirable but not necessary.

15 Q. That's basically because cost is not the
16 critical factor?

17 A. Exactly.

18 Q. This is small potatoes in the big picture of
19 your company?

20 A. Yes.

21 Q. Would it be fair to describe your basic
22 position as one favoring increased competition and the
23 potential benefits that increased competition in this
24 sector might offer?

25 A. If the competition is customer orientated and

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1 high quality. Just in competition for itself may not be
2 advantageous.

3 Q. Actually you would want competition that was
4 better than Stericycle, wouldn't you?

5 A. Well, of course.

6 MR. JOHNSON: Thank you, no more questions.

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

8 JUDGE RENDAHL: Mr. Sells.

9 MR. SELLS: None, Your Honor.

10 JUDGE RENDAHL: All right, well, thank you
11 very much, Ms. Hoskins. I hope you enjoyed your time.

12 THE WITNESS: I did, it was interesting.

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

14 (Recess taken.)

15 JUDGE RENDAHL: We're back on the record
16 after our afternoon break, and we're here for the
17 rebuttal testimony of Mr. Lee.

18 Mr. Lee, you remain under oath from last week
19 I believe it was.

20 MR. LEE: Yes, Your Honor.

21 JUDGE RENDAHL: And thanks for coming back
22 today.

23 Mr. Haffner.

24 MR. HAFFNER: Yes, Your Honor, I apologize,
25 now I have forgotten where we put those last exhibits

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1 that we had for Mr. Lee. Here we go, 52 and 53.

2 JUDGE RENDAHL: Yes, they have been marked as
3 52 and 53, and I believe I stated it on the record, but
4 just to be sure I will do so again. We have marked as
5 Exhibit 52 a series of four pages of commercial property
6 listings, the pages on the bottom include page 5, page
7 8, page 11, and page 13. And then we have marked as
8 Exhibit 53 a multiple page document from Harris Ford,
9 and I believe is it just by Harris Ford or is there
10 another company also, Triban Truck Body, LLC, or is that
11 also Harris Ford?

12 MR. HAFFNER: It's all one fax that came from
13 Harris Ford.

14 JUDGE RENDAHL: All right, so it says an 18
15 page including cover fax from Harris Ford to Mr. Ken
16 Lee.

17 MR. HAFFNER: Are we ready, Your Honor?

18 JUDGE RENDAHL: And we are ready, we're on
19 the record.

20

21 Whereupon,

22

KENNETH LEE,

23 having been previously duly sworn, was called as a
24 witness herein and was examined and testified as
25 follows:

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

3

BY MR. HAFFNER:

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Q. Mr. Lee, thank you for coming back. If I could have you take a look at what's been marked as Exhibit 52. Can you tell me if you're familiar with the pages in that exhibit?

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MR. JOHNSON: Your Honor, before we go any further, I intend to object to the admission of Exhibit 52 and any testimony with respect to Exhibit 52. And if I may, I would like to state my reasons.

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JUDGE RENDAHL: Please go ahead.

MR. JOHNSON: This is not proper rebuttal testimony. I suspect Mr. Lee is offering these materials in support of his own prior testimony with respect to the availability of price of commercial properties in south King County. And while that would have been an appropriate thing to present on direct testimony, there was no testimony provided by Stericycle with respect to either price or availability of commercial property in south King County, so there is no basis for rebuttal with respect to these issues. This is only a supplement to Mr. Lee's direct testimony and as such is improper.

25

JUDGE RENDAHL: Mr. Haffner.

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1 MR. HAFFNER: And I would disagree with that,
2 Your Honor. I believe Ms. Walker and Mr. Philpott both
3 testified about the availability of commercial real
4 estate at the rates offered by us in our proforma
5 statement.

6 MR. JOHNSON: Your Honor, Ms. Walker's work
7 assumes Mr. Lee's lease statement. There is no
8 adjustment for Mr. Lee's leasing in Ms. Walker's
9 exhibits.

10 JUDGE RENDAHL: Yes, but I do recall
11 testimony by Ms. Walker in her work with other clients,
12 I believe there was testimony for work with other solid
13 waste clients and she had not seen rates similar.

14 MR. JOHNSON: The only testimony that she
15 provided had to do with insurance and the public utility
16 tax on those issues.

17 JUDGE RENDAHL: Let's be off the record for a
18 moment, I'm going to review my notes for a minute.

19 (Discussion off the record.)

20 JUDGE RENDAHL: My review of my notes, which
21 granted is not the transcript, indicate that
22 Ms. Walker's testimony concerning other solid waste
23 clients or medical waste clients is as Mr. Johnson
24 described relating to the public utility tax and other
25 taxes generally. I don't see anything in my notes

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1 relating to the cost of commercial real estate
2 facilities.

3 And then in reviewing Mr. Philpott's
4 testimony which immediately followed, I don't see
5 anything in my notes addressing that issue, but I'm not
6 looking at his written testimony per se.

7 So, Mr. Haffner, do you have anything further
8 on that on Mr. Philpott, is there something in
9 Mr. Philpott's written testimony?

10 MR. HAFFNER: I haven't found anything in my
11 own notes. I have not yet looked at Mr. Philpott's
12 testimony, but --

13 MR. JOHNSON: Your Honor, if I might --

14 MR. HAFFNER: -- it was my understanding, it
15 was my recollection that during the testimony, his oral
16 testimony, that he -- that they both testified about the
17 availability of commercial property at those rates, but
18 I don't have the notes to support that.

19 MR. JOHNSON: Your Honor, with respect to
20 Ms. Walker, she's from Richfield in the Portland,
21 Vancouver area. I have never asked her, never expected
22 her to be able to comment on lease rates or availability
23 in south King County. With respect to Mr. Philpott and
24 his prefiled testimony, that was prepared and filed
25 before we even knew that Kleen was not intending to use

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1 his current facility. The only information that came to
2 us about Kleen's decision not to use its current
3 facility and to attempt to find another facility came
4 out during the hearing.

5 JUDGE RENDAHL: I'm still looking over my
6 notes here for Mr. Philpott just to be sure that I
7 didn't miss anything.

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

9 (Discussion off the record.)

10 JUDGE RENDAHL: So at this point,
11 Mr. Johnson, you are moving to strike what's been marked
12 as Exhibit 52 or objecting to admission of Exhibit 52
13 because your argument is improper rebuttal, an improper
14 rebuttal exhibit.

15 MR. JOHNSON: That's exactly correct, Your
16 Honor.

17 JUDGE RENDAHL: And intended only to
18 supplement the direct.

19 MR. JOHNSON: Exactly.

20 JUDGE RENDAHL: Mr. Haffner.

21 MR. HAFFNER: Well, Your Honor, I think it
22 would be inappropriate not to allow the documents to
23 come in and to have evidence of the documents excluded
24 until we can get a clear understanding of what's on the
25 record. I do not have a transcript in front of me, so I

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1 can not cite to the oral testimony that I believe was
2 given regarding the availability of commercial space at
3 the rates in Kleen's proformas, but I thought that there
4 was testimony to that effect, and I think that the
5 transcript would bear that out. I would suggest that
6 Your Honor allow the exhibit and the testimony to come
7 in now, and if it turns out that the transcript does not
8 support the entry of admission of this evidence that
9 Your Honor act accordingly.

10 JUDGE RENDAHL: Mr. Johnson.

11 MR. JOHNSON: Your Honor, this goes to the
12 basic question I raised back in August in our prehearing
13 conference. If we raise issues, and this goes to the
14 Harris Ford materials as well, if we raise issues in our
15 response to Kleen's application and their prefiled
16 testimony that points out flaws in it, are they going to
17 be allowed to simply come back in and change their
18 direct case. And I believe what we have here with
19 Exhibit 52 is an effort by Mr. Haffner to supplement his
20 direct case. There was no testimony with respect to
21 availability of commercial lease, commercial space
22 suitable for a prospective Kleen facility in south King
23 County nor the lease rates at which such a facility
24 might be obtained in the testimony provided by anybody
25 else except Mr. Lee.

1 MR. HAFFNER: Your Honor, I --

2 MR. JOHNSON: And what I think Mr. Haffner is
3 doing is responding to my cross-examination of Mr. Lee
4 in which I pointed out that there was no documentation
5 for his position.

6 MR. HAFFNER: I guess I might be able to
7 stipulate if counsel is willing to stipulate that this
8 evidence is not necessary because there has been no
9 rebuttal to the testimony of our clients as to the rates
10 being reasonable for both real estate and leased
11 vehicles, then I guess there would be no need for this
12 testimony to come in. But it was my thought that they
13 challenged those rates, and that was why it was
14 necessary to bring them in.

15 MR. JOHNSON: Your Honor, I certainly
16 challenged Mr. Lee's testimony on cross-examination or
17 attempted to do so.

18 JUDGE RENDAHL: Well, I remember that, yes.

19 MR. JOHNSON: But that's different,
20 correcting, supplementing and correcting Mr. Lee's
21 testimony to respond to my cross-examination would not
22 be appropriate rebuttal.

23 MR. HAFFNER: If you're willing to stipulate
24 that there is no evidence to the contrary and that you
25 have not offered any evidence to the contrary, I don't

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1 think I need the exhibits.

2 MR. JOHNSON: To this date I will stipulate
3 to that.

4 MR. HAFFNER: And that you won't offer any
5 additional?

6 MR. JOHNSON: I'm not stipulating with
7 respect to anything with respect to our rebuttal.

8 MR. HAFFNER: Because you are offering a
9 lease that has a lease rate in it.

10 MR. JOHNSON: I have not offered it yet. We
11 have marked it.

12 JUDGE RENDAHL: Correct, so it's potential,
13 and it's out there.

14 MR. JOHNSON: I will tell you my intention,
15 Your Honor.

16 JUDGE RENDAHL: Well, I'm not sure I need it
17 at this point.

18 MR. JOHNSON: Okay.

19 JUDGE RENDAHL: The question here is whether
20 there is, in fact, a need to rebut testimony made by
21 Ms. Walker or Mr. Philpott. And as I stated, my notes
22 are not the transcript, they are notes I have taken
23 during hearing, and while numerous, they are not the
24 transcript. And what I'm going to do at this point is
25 allow the testimony. I'm not going to admit the exhibit

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1 yet. I'm going to allow the testimony, and then upon
2 further review of the transcript, if it appears that
3 there is sufficient basis for the rebuttal testimony on
4 the exhibits and for the exhibit to come in, I will
5 admit the exhibit. If not, I will strike the testimony.

6 MR. JOHNSON: And to clarify, if that
7 procedure is followed and there is review of the record
8 by the Commission itself, would these stricken exhibits
9 go with the record or not?

10 JUDGE RENDAHL: They would be -- the way the
11 Commission marks exhibits is since they're not -- since
12 it's not admitted now, when the final determination is
13 made whether it's admitted or rejected, it bears a stamp
14 that indicates admitted, rejected, or withdrawn, and
15 when I'm marking them, I would check the appropriate
16 box. So if this was rejected upon further review of the
17 record, I would check the rejected box. It would be
18 included, but it's a rejected exhibit.

19 MR. JOHNSON: Well, of course, that is not
20 entirely satisfactory, but, Your Honor, you are the
21 presiding officer here, and of course I defer to your
22 judgment.

23 JUDGE RENDAHL: So in that respect, when the
24 Commissioners review a record upon review, they will
25 only consider the exhibits that are admitted. Similar

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1 to the discussion of Mr. Philpott's testimony, we're not
2 dealing with a jury here, we're dealing with people who
3 are lawyers. In fact, at this point all three
4 commissioners are lawyers and respect the rules of
5 evidence as to what's been admitted and what's not to be
6 considered. So I don't think the fact that there would
7 be an exhibit that would be marked rejected is something
8 that they would consider persuasive and could rely on in
9 a decision. So I don't think that that in and of itself
10 is an issue in my mind.

11 So at this point I would like to hear the
12 testimony, and I would like to determine -- and I'm
13 trying to think when the transcripts would be available.
14 Let's be off the record for a moment.

15 (Discussion off the record.)

16 JUDGE RENDAHL: While we were off the record,
17 I determined that it would be appropriate to hear
18 testimony on what's been marked as Exhibits 52 and 53
19 today, and I will not be ruling on the exhibits but will
20 reserve ruling on the exhibits until we can review the
21 transcript, which should be for September 30th for
22 Ms. Walker's testimony and Mr. Philpott's testimony.
23 That should be available by the 14th, on or around the
24 14th of October. The parties should submit to me by the
25 end of the day on October 25th electronically with a

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1 paper copy to follow the next business day, October
2 26th, their pleading as to whether the transcript of the
3 30th bears out the need for rebuttal testimony and
4 exhibits. And I will enter a decision on that issue by
5 Friday, November the 5th, as to whether the testimony
6 given today in rebuttal on these two exhibits should be
7 stricken or whether Exhibits 52 and 53 should be
8 admitted or rejected. So that will be my ruling, and it
9 will resolve the evidentiary issue that we have before
10 us today.

11 MR. JOHNSON: Your Honor, just to clarify,
12 the ruling would deal with whether the Exhibits 52 and
13 53 should be admitted or stricken and whether the
14 testimony of Mr. Lee with respect to that subject matter
15 should also be permitted or stricken; is that correct?

16 JUDGE RENDAHL: I'm permitting it today, but
17 if it appeared not appropriate, it will be stricken.

18 MR. JOHNSON: Thank you.

19 JUDGE RENDAHL: Okay. So with that,
20 Mr. Haffner, why don't you go ahead and ask your
21 questions of Mr. Lee.

22 MR. HAFFNER: Thank you, Your Honor.

23 BY MR. HAFFNER:

24 Q. Mr. Lee, please take a look at the exhibits
25 behind tab 52 and tell me if you are familiar with those

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1 documents?

2 A. I am.

3 Q. How is it that you are familiar with those
4 documents?

5 A. I obtained these documents after the prior
6 testimony that I gave and was questioned about the
7 availability of leases at the rates that I quoted in my
8 proforma. I got these to substantiate that the rates
9 are available and properties are available.

10 Q. And are these true and correct copies of the
11 documents that you obtained off the Internet?

12 A. Actually, I obtained them from Collier's.

13 Q. Okay.

14 A. Commercial Real Estate. And they are true.

15 Q. Okay. If you could look at the documents
16 behind tab number 53, can you tell us if you are
17 familiar with those documents?

18 A. I am.

19 Q. And how is it that you are familiar with
20 those documents?

21 A. I obtained these documents from Harris Ford
22 in April as you can see from the fax date at the top of
23 the page, long prior to my testimony. And here again I
24 was questioned during testimony or rebuttal, I'm not
25 sure which, about the veracity of, one, not having money

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1 set aside in capital to cover the initial payment, and
2 the second page of this document clearly states or the
3 first page clearly states that there is no downpayment
4 as such and also that my rates fall, that I quoted for
5 lease rates fall within the range of what I stipulated
6 in my proformas.

7 Q. Did you rely on this document when you were
8 preparing your proformas?

9 A. I did.

10 Q. Mr. Lee, going back to Exhibit 52, after your
11 review of these documents that are marked as Exhibit 52,
12 do you believe that the lease rates that you used in
13 your proformas are still reasonable based on the
14 information in the market?

15 A. Oh, absolutely. In fact, my rates were
16 probably a little high for warehouse rates. I've got a
17 high of 65 cents I think, and they're actually much
18 lower than that, about half that.

19 Q. All right.

20 If you could now turn, Mr. Lee, to page 50.

21 JUDGE RENDAHL: Page 50 or Exhibit 50?

22 MR. HAFFNER: I'm sorry, Exhibit 50, pardon
23 me, Your Honor.

24 And what I was going to ask the witness, Your
25 Honor and Mr. Johnson, was to explain any differences in

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1 the assumptions that were in the proforma documents, and
2 I apologize for not having this reviewed earlier, I just
3 want to go through and make sure whether there were any
4 changes.

5 THE WITNESS: There really weren't any.

6 MR. JOHNSON: Excuse me just one second. I
7 don't think there was a question there, but what I would
8 like to do is clarify the intention.

9 JUDGE RENDAHL: Well, first of all,
10 Mr. Haffner, was that a question, or were you just
11 stating your intent to review.

12 MR. HAFFNER: Just statement of an intent to
13 review, Your Honor.

14 JUDGE RENDAHL: Okay.

15 Now, Mr. Johnson, go ahead.

16 MR. JOHNSON: Okay. Well, I just want to
17 make sure I understand where you're headed. You want to
18 provide an explanation of changes in assumptions between
19 Exhibit 50 and Exhibit 51?

20 MR. HAFFNER: And I just looked through
21 there, and I realize now that there's only one change,
22 and I believe I recall him covering it during his
23 testimony, and I believe that's one change with respect
24 to the mileage rate. If you find other changes, I will
25 certainly let you examine that.

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1 MR. JOHNSON: I think we covered that.

2 MR. HAFFNER: I think we did, yeah, I won't
3 be going there.

4 BY MR. HAFFNER:

5 Q. Mr. Lee, in the testimony of Ms. Walker, I
6 believe that she alleged that your company was not going
7 to have sufficient cash reserves to fund this endeavor
8 of this application. Were you here during her
9 testimony?

10 A. I was.

11 Q. And do you recall her making that allegation?

12 A. I do.

13 Q. How do you respond to that allegation?

14 A. Well, she stated that I should have a 90 day
15 reserve of cash, meaning I should have 90 days of cash
16 to cover all expenses, and I stipulate that I totally
17 disagree with her assumptions. I have been running
18 businesses for 20 years, and I have never retained that
19 kind of cash. To me it's not an appropriate use of good
20 cash management. In fact, I looked at some other
21 statistics based on her comment, and I would like to
22 reiterate that if I could. As I said, my cash reserve
23 is about 40 days. I looked at Stericycle's cash reserve
24 for the corporate, and I got it off on the Net, their
25 cash reserves is 8 days. Now granted they're a larger

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1 company, but I think they're a well run company, and
2 their cash is only 8 days. Yet I maintain 40 days, so I
3 don't understand her comments, don't agree with them.

4 MR. HAFFNER: Your Honor, those are all the
5 questions I have of the witness.

6 JUDGE RENDAHL: All right.

7 Mr. Johnson.

8

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

10 BY MR. JOHNSON:

11 Q. Mr. Lee, I don't suppose you're an expert on
12 the Stericycle business nationally, but I'm going to ask
13 you a question about it. Based on your understanding
14 from perhaps these hearings, is it your understanding
15 that Stericycle is a project oriented business?

16 A. No, I don't think it is.

17 Q. And would you say that Kleen is a project
18 oriented business?

19 A. It's 50/50, sir.

20 MR. JOHNSON: I have no questions for this
21 witness.

22 JUDGE RENDAHL: And I don't have anything.

23 Mr. Haffner, do you have anything in
24 redirect?

25 MR. HAFFNER: I have no redirect, Your Honor.

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1 And I guess just to make the record complete, subject to
2 the objection that was raised earlier, I will officially
3 offer those Exhibits 52 and 53.

4 JUDGE RENDAHL: All right, and I will again
5 reserve ruling on 52 and 53 until I see the pleadings
6 from the two of you and make my ruling based on the
7 transcript of September 30th.

8 MR. JOHNSON: Your Honor.

9 JUDGE RENDAHL: Mr. Johnson.

10 MR. JOHNSON: One more housekeeping matter
11 before we perhaps wrap up for the day. We have marked
12 an exhibit as Exhibit 202, which is the Garden Terrace
13 written statement.

14 JUDGE RENDAHL: Yes.

15 MR. JOHNSON: With respect to the Kleen
16 application. I would like to offer that statement for
17 admission into the record at this time.

18 JUDGE RENDAHL: Mr. Haffner, have you had a
19 chance to take a look at what's been marked as Exhibit
20 202, the October 6th, 2004, letter from Garden Terrace?

21 MR. HAFFNER: I was given this document
22 earlier in the day, but I did not get the opportunity
23 actually yet, so if I could read it at this time, I
24 would appreciate that.

25 JUDGE RENDAHL: Sure, let's be off the record

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1 for a moment.

2 (Discussion off the record.)

3 JUDGE RENDAHL: While we were off the record,
4 we determined that or Mr. Haffner stipulated to the
5 admission of Exhibits Number 128, I'm sorry, 124 through
6 128, which were the additional rebuttal exhibits for
7 Ms. Walker, and I don't believe I identified those on
8 the record, so let me do that now.

9 Exhibit 124 is captioned Kleen Environmental
10 Technologies notes to profit analysis and is dated
11 October 6th, 2004, at the bottom. It is a four page
12 document, five page document. Exhibit 125 is titled
13 Kleen Environmental Technologies, Incorporated profit
14 analysis using Stericycle's revenue history, revenue
15 adjustments to Kleen proforma, and is dated October 6,
16 2004, on the bottom. Exhibit 126 is entitled Kleen
17 Environmental Technologies profit analysis cost
18 adjustments, cost adjustments to Kleen proforma, again
19 dated October 6th at the bottom. Exhibit 127 is titled
20 Kleen Environmental Technologies, Incorporated, profit
21 analysis combining revenue and cost adjustments,
22 combined revenue and cost adjustments to proforma for
23 Kleen, again dated October, 6, 2004, at the bottom. And
24 the last exhibit, Exhibit 128, is titled Kleen
25 Environmental Technologies, Inc., cash requirements

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1 first 12 months, and again dated -- this one is dated
2 October 7th, 2004.

3 And so those will be admitted into the
4 record.

5 Mr. Haffner, you have also stipulated to the
6 admission of what's been marked as Exhibit 202; is that
7 correct?

8 MR. HAFFNER: Yes, Your Honor.

9 JUDGE RENDAHL: And that I believe has been
10 identified as the October 6, 2004, letter from Garden
11 Terrace, and that will be admitted.

12 We also discussed our agenda or what we're
13 going to be doing the next hearing day, which is Tuesday
14 the 12th. We will be here as you all remember but in
15 the other room, and we are going to start at 9:00, and
16 we will start up with Mr. Knight from Hospital Shared
17 Services Association, take Mr. Rogers of MultiCare
18 Health Systems the second witness, and Mr. Radder of
19 Fred Hutchinson Cancer Research Institute third, and
20 hopefully Mr. Philpott will be available if we manage to
21 have time at the end of the day.

22 The parties have agreed to try to prepare
23 declarations for Mr. Perrollaz for Kleen and for
24 Mr. Norton, Mr. Jeff Norton, Mr. Stromerson, and
25 Mr. Eric Jacobsen for Stericycle to avoid that

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1 additional testimony. But we have scheduled October the
2 22nd, which is a Friday, at the Commission unless I can
3 find this room is available that day. If it is, I will
4 schedule it for here, and I will advise the parties of
5 that on Tuesday the 12th as to whether we are here or at
6 the Commission on the 22nd.

7 So with that, is there anything I have not
8 stated on the record that we discussed off the record
9 that needs to be on the record?

10 MR. HAFFNER: Not that I can think of, Your
11 Honor.

12 JUDGE RENDAHL: Mr. Johnson.

13 MR. JOHNSON: Well, I do remember a few
14 things, I was wondering whether to mention them.

15 JUDGE RENDAHL: Well, that's why I'm asking,
16 because sometimes my memory isn't exactly --

17 MR. JOHNSON: We talked about identifying any
18 further witnesses that Stericycle might offer in the
19 nature of generator witnesses by the 12th of October.

20 JUDGE RENDAHL: Yes, what I had stated off
21 the record was that Stericycle should identify any
22 witnesses, any additional shipper generator witnesses it
23 would like to appear in person at the hearing on the
24 22nd by Tuesday the 12th, or provide any written
25 statements of shipper generator witnesses by Tuesday the

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1 12th. I believe that was what I said. And I also
2 indicated that if the applicant had any additional
3 shipper generator witnesses, it needed to identify them
4 by that date, by the 12th. And I understand,
5 Mr. Johnson, you objected to that, and if it comes to
6 play, we'll deal with that on the 12th, but that's where
7 we stand at this time.

8 MR. JOHNSON: Thank you, Your Honor.

9 JUDGE RENDAHL: Anything further?

10 MR. HAFFNER: No, Your Honor.

11 JUDGE RENDAHL: All right, at 10 to 4:00
12 we're adjourned for today, we will be off the record.

13 (Hearing adjourned at 3:50 p.m.)

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