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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining)
the Proper Carrier Classifi-)
cation of:)
ENOCH ROWLAND d/b/a KLEENWELL)
BIOHAZARD AND GENERAL ECOLOGY)
CONSULTANTS)

DOCKET NO. TG-920304

ORIGINAL

Washington Utilities and
Transportation Commission
1313 West Meeker
Kent, Washington

Wednesday,
May 13, 1992

This matter came on for hearing, pursuant to
Notice, at 9:30 a.m.

BEFORE: LISA ANDERL
Administrative Law Judge

STATE OF WASH
UTIL & TRANSP
COMMISSION

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APPEARANCES:

On behalf of the Applicant:

JAMES T. JOHNSON, Attorney at Law
Two Union Square
Suite 3000
601 Union Street
Seattle, Washington 98101-2324

On behalf of the Washington Utilities and
Transportation Commission:

STEVEN W. SMITH, Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
Olympia, Washington 98504

On behalf of the Intervenors:

Rabanco Companies:

RICHARD A. FINNIGAN, Attorney at Law
1201 Pacific Avenue
Suite 1900
Tacoma, Washington 98402

Washington Waste Management Association:

JAMES SELLS, Special Counsel
510 Washington Avenue
Bremerton, Washington 98310

Ryder Distribution Resources, Inc.:

BOYD HARTMAN, Attorney at Law
11000 Main
Bellevue, Washington 98004

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APPEARANCES (Cont.)

On behalf of the Intervenors:

American Environmental Management Corporation:

DAVID W. WILEY, Attorney at Law
1700 Bellevue Place
10500 N.E. 8th Street
Bellevue, Washington 98004

Clark County Disposal, Inc., and
Buchmann Sanitary Service, Inc.:

CINDY HORENSTEIN, Attorney at Law
900 Washington Street
Suite 900
Vancouver, Washington 98660

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I N D E X

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<u>WITNESSES</u> <u>Applicant's:</u>	(Johnson) <u>DIRECT</u>	(Smith) <u>CROSS</u>	(Hartman) <u>CROSS</u>	(Finnigan) <u>CROSS</u>	(Sells) <u>CROSS</u>	(Wiley) <u>CROSS</u>	(Horenstein) <u>CROSS</u>	BY THE <u>COURT</u>
Enoch Rowland	23	53	77	87	98	99	108	110
	<u>REDIRECT</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	BY THE <u>COURT</u>
Enoch Rowland	114	--	115	--	118	119	--	117

<u>WITNESSES</u> <u>Commission's:</u>	(Smith) <u>DIRECT</u>	(Johnson) <u>CROSS</u>	(Hartman) <u>CROSS</u>	(Finnigan) <u>CROSS</u>	(Sells) <u>CROSS</u>	(Wiley) <u>CROSS</u>	(Horenstein) <u>CROSS</u>	BY THE <u>COURT</u>
Wayne Turnberg	120	131	136	--	--	139	--	--
	<u>REDIRECT</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	BY THE <u>COURT</u>
Wayne Turnberg	--	--	--	--	--	--	--	--

<u>WITNESSES</u> <u>Intervenor's:</u>	(Finnigan) <u>DIRECT</u>	(Johnson) <u>CROSS</u>	(Smith) <u>CROSS</u>	(Hartman) <u>CROSS</u>	(Sells) <u>CROSS</u>	(Wiley) <u>CROSS</u>	(Horenstein) <u>CROSS</u>	BY THE <u>COURT</u>
Stan Robinson	142	147	--	--	--	--	--	150
	<u>REDIRECT</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	BY THE <u>COURT</u>
Stan Robinson	--	151	--	--	--	--	--	--

<u>WITNESSES</u> <u>Intervenor's:</u>	(Wiley) <u>DIRECT</u>	(Johnson) <u>CROSS</u>	(Smith) <u>CROSS</u>	(Hartman) <u>CROSS</u>	(Finnigan) <u>CROSS</u>	(Sells) <u>CROSS</u>	(Horenstein) <u>CROSS</u>	BY THE <u>COURT</u>
Jeff Daub	152	170	176	--	--	--	--	--
	<u>REDIRECT</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	<u>RECROSS</u>	BY THE <u>COURT</u>
Jeff Daub	179	178	--	--	--	--	--	--

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I N D E X (Cont.)

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>ADMITTED</u>	<u>REJECTED</u>
1	24	114	--
2	24	114	--
3	24	53	--
4	24	53	--
5	25	114	--
6	25	114	--
7	25	114	--
8	25	114	--
9	25	53	--
10	25	53	--
11	26	35 (Withdrawn)	--
12	45	53	--
13	62	63	--
14	95	113	--
15	101	104	--
16	101	104	--
17	141	147	--
18	141	147	--
19	145	147	--
20	161	170	--

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I N D E X (Cont.)

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>ADMITTED</u>	<u>REJECTED</u>
21	161	170	--
22	164	170	--
23	165	170	--
24	182	187	--
25	183	187	--
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P R O C E E D I N G S

9:30 a.m.

JUDGE ANDERL: This hearing will please come to order.

The Washington Utilities and Transportation Commission has set for hearing at this time and place, Docket No. TG-920304, before Administrative Law Judge, Lisa Anderl. The hearing is being held at the Commission hearing room in Kent, Washington; today's date is May 13, 1992.

This is a classification proceeding, and it is captioned, "In the Matter of Determining the Proper Carrier Classification of Enoch Rowland, d/b/a Kleenwell Biohazard and General Ecology Consultants."

I'd like to take appearances at this time, beginning with the Commission, please.

MR. SMITH: Your Honor, my name is Steven W. Smith, Assistant Attorney General. My business address is South 1400, Evergreen Park Drive S.W., Olympia, Washington, 98504.

JUDGE ANDERL: The Respondent?

MR. JOHNSON: Your Honor, I am James T. Johnson. My address is Suite 3000, Two Union Square at 601 University Street in Seattle, Washington, 98101-2324. I'm the attorney appearing on behalf of -- while this

1 procedure is in the name of Enoch Rowland, d/b/a Kleen-
2 well Biohazard and General Ecology Consultants, I think
3 the operations that are involved are actually those of
4 Kleenwell Biohazard and General Ecology Consultants,
5 Incorporated.

6 JUDGE ANDERL: Mr. Hartman?

7 MR. HARTMAN: Yes, Your Honor, Boyd Hartman,
8 Attorney at law, 11000 Main, Bellevue, Washington,
9 98004, requesting this morning intervention on behalf
10 of Ryder Distribution Resources, Inc. I have submitted
11 this morning for Your Honor and for the parties my
12 petition.

13 JUDGE ANDERL: We'll take comments on the Pe-
14 titions to Intervene in just a minute. We'll get the
15 names and the appearances on the record first.

16 Mr. Finnigan?

17 MR. FINNIGAN: Thank you. Rick Finnigan with
18 the firm of Vandeberg and Johnson. The address is 401
19 Pacific Avenue, Suite 1900, Tacoma, Washington, 98402.
20 This morning, I'm appearing on behalf of the Rabanco
21 Companies, operating under permit 212.

22 JUDGE ANDERL: Mr. Sells?

23 MR. SELLS: Thank you, Your Honor. James
24 Sells, Attorney at law, 510 Washington Avenue, Bremer-
25 ton, 98201, appearing on behalf of proposed intervenor,

1 Washington Waste Management Association.

2 JUDGE ANDERL: Mr. Wiley?

3 MR. WILEY: Yes, Your Honor, I'm David Wiley,
4 Attorney at Law, 1700 Bellevue Place, 10500 N.E. 8th
5 Street, Bellevue, Washington, 98004; appearing today on
6 behalf of the proposed intervenor, American Environmen-
7 tal Management Corporation.

8 JUDGE ANDERL: And is it Ms. Horenstein?

9 MS. HORENSTEIN: Cindy Horenstein. Business
10 address is 900 Washington, Suite 900, Vancouver, Wash-
11 ington, 98660; appearing on behalf of proposed inter-
12 venors Clark County Disposal, Inc., and Buchmann Sani-
13 tary Service, Inc.

14 JUDGE ANDERL: I'd like to go ahead and take
15 the Petitions to Intervene at this time. I believe
16 I've received petitions from each of the proposed in-
17 tervenors in writing. Mr. Hartman, why don't we start
18 with you and state briefly the basis for your interven-
19 tion.

20 MR. HARTMAN: My intervention is basically in
21 the interest of my client that I appear since it is a
22 classification proceeding, and we are presently in-
23 volved in a proceeding before the Commission in which
24 that proceeding has raised a good number of issues re-
25 garding the appropriate classification for both the

1 shipper we represent or contract with, and for Ryder
2 Distribution Resources, which is a contract carrier.
3 The issues that result in this proceeding may have an
4 impact upon the determination for the application we
5 now have pending. I participate for the purpose of de-
6 veloping the record on classification points if neces-
7 sary.

8 JUDGE ANDERL: Any comments on the Petition
9 to Intervene?

10 MR. JOHNSON: As I understand this proceed-
11 ing, it's to make a determination as to the status of
12 the operations of Kleenwell. I'm not so sure what
13 these various other carriers can add to the record on
14 that, but -- in any event, the only effect of allowing
15 all the interventions would be to prolong this proceed-
16 ing, so I oppose the interventions.

17 JUDGE ANDERL: Mr. Smith, any comments?

18 MR. SMITH: No, I have no objection to the
19 intervention of Ryder.

20 JUDGE ANDERL: I believe that Ryder has
21 stated a sufficient basis to intervene in the proceed-
22 ing, and that petition will be granted.

23 JUDGE ANDERL: Mr. Finnigan?

24 MR. FINNIGAN: Thank you. The Rabanco Com-
25 panies operates the authority sought, or the authority

1 they have under Certificate 212. Under that certifi-
2 cate, they do engage in the hauling and disposal of
3 medical and infectious waste, and in fact, they have
4 been impacted by the operations of Kleenwell and have
5 lost customers and accounts to Kleenwell under its un-
6 licensed operations. We have a very substantial inter-
7 est in this proceeding, and on that basis seek to in-
8 tervene.

9 JUDGE ANDERL: Mr. Johnson, any comments?

10 MR. JOHNSON: No, I think what I've said ap-
11 plies to each of these.

12 JUDGE ANDERL: Mr. Smith?

13 MR. SMITH: No objection.

14 JUDGE ANDERL: Rabanco's petition will also
15 be granted.

16 MR. JOHNSON: What was your ruling?

17 JUDGE ANDERL: Granted. The petition is
18 granted and the intervention is allowed.

19 Mr. Sells?

20 MR. SELLS: Thank you. If Your Honor,
21 please, the Washington Waste Management Association is
22 a trade association which represents virtually all the
23 privately owned solid waste haulers in the state of
24 Washington. We were a party to the previous Kleenwell
25 proceeding. We have been parties, or intervenors, or

1 protestants to virtually every solid waste proceeding
2 in the last five to ten years in the state. Some of
3 our members are individually represented here, Clark
4 County Disposal and Rabanco because they have a special
5 interest in this application. However, we represent
6 some numerous other members who would be impacted by
7 this application.

8 We're also gravely concerned about the con-
9 stitutional issues as they relate to the solid waste
10 industry in this state.

11 JUDGE ANDERL: Anything other than what
12 you've added before, Mr. Johnson?

13 MR. JOHNSON: I have no objections.

14 JUDGE ANDERL: Mr. Smith?

15 MR. SMITH: I have no objection.

16 JUDGE ANDERL: The Petition to Intervene --
17 and in each of these cases, unless the parties specify
18 otherwise, it's considered as a General Petition to In-
19 tervene rather than a Special Intervention. That peti-
20 tion is also granted.

21 Mr. Wiley?

22 MR. WILEY: Yes, Your Honor, just to briefly
23 summarize what my previously filed Petition to Inter-
24 vene said; essentially, American Environmental is a
25 specialty solid waste hauler who holds statewide

1 authority from this Commission to transport precisely
2 the same type of material that Kleenwell is transport-
3 ing. American Environmental is uniquely situated to
4 the extent that it's an out-of-state corporation hold-
5 ing authority from this Commission, and disposing of
6 its material, both out of state and in the state of
7 Washington. As such, it is keenly interested in the
8 outcome of this proceeding, and is feeling the effect
9 of the operations of the intervenor on a daily basis,
10 who was previously a protestant in the proceeding by
11 which Kleenwell's authority was denied by the Commis-
12 sion, and thus, seeks intervention on those numerous
13 basis.

14 JUDGE ANDERL: Any opposition to that
15 petition?

16 MR. JOHNSON: No.

17 JUDGE ANDERL: There being none, that peti-
18 tion will also be granted.

19 And finally?

20 MS. HORENSTEIN: Your Honor, we represent
21 most of, or all of the Clark County area, Clark County
22 Disposal and Buchmann Sanitary Services. We feel our
23 particular interest in this procedure is with a unique
24 background in this in that we've had the experience of
25 unfettered competition down in the Clark County area,

1 and as Mr. Sells' raised, we have concerns about the
2 constitutional issues that may be raised in this case,
3 and the particularly bearing on us because we are a
4 board community that connects to Oregon, which posses-
5 ses unregulated powers and the effect that would have
6 on our territory.

7 JUDGE ANDERL: Any opposition to that peti-
8 tion?

9 MR. JOHNSON: No.

10 JUDGE ANDERL: That petition will also be
11 granted.

12 Is there anything further that we need to ad-
13 dress, or any other preliminary matters?

14 [NO RESPONSE]

15 Mr. Johnson?

16 JUDGE ANDERL: This proceeding has been in-
17 stituted by the Washington Utilities and Transportation
18 Commission on its own motion to determine whether Enoch
19 Rowland d/b/a Kleenwell Biohazard and General Ecology
20 Consultants is in the business of transporting solid
21 waste for collection and disposal for compensation over
22 the public highways in this state and territory for
23 which it holds no certificate authority for the trans-
24 portation of solid waste as required by RCW 81.77.040
25 and WAC 480-70-070.

1 The respondent concedes that it is engaged in
2 the transportation of biohazardous or medical waste and
3 that the material it transports from various generators
4 in the state of Washington is ultimately transported to
5 an out of state disposal facility that meets all local,
6 state and federal environmental regulations. Kleenwell
7 urges that under the reasoning of a decision entered
8 January 22, 1992, by the United States District Judge
9 John T. Copenhaver, Jr., in the United States District
10 Court for the Southern District of West Virginia at
11 Charleston in the case of Medigen of Kentucky, Inc. and
12 Medigen of Pennsylvania, Inc. v. Public Service Commis-
13 sion of West Virginia, et al., Civil Action No. 2:09-
14 076, any effort by the Washington Utilities and Trans-
15 portation Commission to require transporters of infec-
16 tious medical waste who are common carriers by motor
17 vehicle engaged solely in the interstate transporta-
18 tion of infectious medical waste to obtain a certifi-
19 cate of convenience and necessity prior to providing
20 those services would be a violation of rights protected
21 by the Commerce Clause of the United States Constitu-
22 tion.

23 We believe the evidence will show that the
24 essential character of the shipments transported by
25 Kleenwell is determined from the shipper's fixed and

1 persisting transportation intent at the time of ship-
2 ment, citing Baltimore & Ohio Southwest Railway Com-
3 pany, v. Settle, 260 U.S. 166 (1992). The intent is
4 ascertained from all the facts surrounding the trans-
5 portation. Armstrong, Inc. - Transportation Within
6 Texas, 2 ICC 2d 63, 69 (1986), and Pacific Coast Build-
7 ing Products, Inc. - Petition for Declaratory Order de-
8 cided January 6, 1989 (not printed), at page 3.

9 The transportation in question can be con-
10 sidered of the subsequent movement in interstate com-
11 merce. We believe the evidence will show beyond any
12 doubt that the services performed by Kleenwell fall
13 within the parameters of the Medigen case.

14 In the Medigen case, it was pointed out that
15 Medigen of Kentucky transports medical waste from West
16 Virginia to a disposal facility in Kentucky and that
17 Medigen of Pennsylvania transports medical waste from
18 West Virginia to a waste processing facility in Penn-
19 sylvania.

20 After the briefing in the matter was com-
21 pleted, West Virginia Enacted a Medical Waste Act, West
22 Virginia Code Section 20-5J-1 through 20-SJ-10. The
23 act provides that effective July 1, 1991, transporters
24 of infectious medical waste shall be regulated by the
25 PSC under the Common Carriers of Motor Vehicles Act;

1 West Virginia Code Section 24a-2-1 through 24a-2-5.

2 The Common Carriers Act requires a prospec-
3 tive common carrier transporter to first obtain a cer-
4 tificate of convenience and necessity from the PSC be-
5 fore commencing operations in the state. Upon applica-
6 tion for the certificate, a legal notice, like our
7 docket of the application is published in the foremost
8 and existing transporters are given opportunity to op-
9 pose the application. If no protest is made, the cer-
10 tificate may be granted without hearing. If protest is
11 received, the applicant must appear at a hearing and
12 demonstrate that the public convenience and necessity
13 require the proposed service.

14 Existing transporters may present contradic-
15 tory evidence. Thus, it is evident that the West Vir-
16 ginia Act is virtually identical to the regulatory
17 scheme in the state of Washington.

18 On July 27, 1990, a member of the West Vir-
19 ginia PSC staff contacted Medigen of Kentucky and ad-
20 vised it to cease transporting medical waste from West
21 Virginia customers until it had obtained the necessary
22 certificate. In our case, a penalty notice was given
23 to Kleenwell.

24 In Medigen, the sole issue before the court
25 was whether defendants can require plaintiffs to obtain

1 a certificate of convenience and necessity prior to
2 transporting medical waste from West Virginia to
3 another state for disposal.

4 As is our position here, it was the conten-
5 tion of the plaintiffs in the West Virginia case that
6 requiring a certificate of convenience and necessity is
7 unconstitutional and violates the Commerce Clause of
8 the United States Constitution because it is in direct
9 regulation of interstate commerce and because its pur-
10 pose is economic protection as it is designed to pre-
11 vent free competition.

12 The plaintiffs in the West Virginia case and
13 Kleenwell in this case maintain that the requirement
14 violates the Supremacy Clause of the United States Con-
15 stitution because Congress has preempted the field of
16 market or economic regulation of motor carriers operat-
17 ing in interstate commerce.

18 Kleenwell acknowledges that at the present
19 time the ICC has declined to exercise jurisdiction over
20 the interstate transportation of waste, concluding that
21 it is not "property" within the meaning of the Inter-
22 state Commerce Act. Nonetheless, Kleenwell maintains
23 that Congress, through the ICA, has so entirely occu-
24 pied the entire field of economic regulation of inter-
25 state motor carriage in favor of the competitive forces

1 of the marketplace that the state's ability to require
2 a certificate of convenience and necessity is impliedly
3 preempted.

4 As did the plaintiffs in the West Virginia
5 case, Kleenwell offers in support of its position the
6 following portion of Castle v. Hayes Freight Lines, 348
7 U.S. 61, 63 (1954):

8 "Congress in the Motor Carrier Act, now re-
9 codified as part of the Interstate Commerce Act,
10 adopted a comprehensive plan for regulating the car-
11 riage of goods by motor truck in interstate commerce.
12 The federal plan of control was so all embracing that
13 former power of states over interstate motor carriers
14 was greatly reduced. No power at all was left to
15 states to determine what carriers could or could not
16 operate in interstate commerce."

17 Kleenwell contends that the state statutes at
18 issue here are per se invalid because they are an at-
19 tempt to effect direct regulation of interstate com-
20 merce and because their purpose and effect is economic
21 protection. The principal cases relied upon by plain-
22 tiffs in the Medigen case and Kleenwell here are Buck
23 v. Kirkendahl, 267 U.S. 307 (1925), and George W. Bush
24 & Sons v. Malloy, 267 U.S. 317, a 1925 case, both de-
25 cided on the same day.

1 Both before and after Buck and Bush, it has
2 been consistently held that a state may not require a
3 certificate of convenience and necessity from a carrier
4 engaged exclusively in interstate commerce before it
5 can operate within the state's borders. E.g., Sprout
6 v. South Bend, 277 U.S. 163, 171, a (1928) case; ("the
7 privilege of engage in interstate commerce is one which
8 a state cannot deny"); Interstate Buses Corp. v. Holy-
9 oak Street Railway Co., 273 U.S. 45, 51, a (1927) case
10 ("no certificate of public convenience and necessity is
11 required in respect of transportation that is exclu-
12 sively interstate"); Barnett v. New York, 232 U.S. 14,
13 31 (1914). Local police regulations cannot go so far
14 as to deny the right to engage in interstate commerce,
15 or to treat it as a local privilege, and prohibit its
16 exercise in the absence of a local license.

17 The case of Port of Seattle v. Washington
18 Utilities & Transportation Commission, 597 P.2d 383,
19 390 (Wash. 1979) ("state's certification requirements
20 for carriers cannot be applied to a common carrier en-
21 gaged in exclusively interstate commerce").

22 In Brown v. Foreman, 476 U.S. at 579, it is
23 indicated that state statutes which directly regulate
24 interstate commerce or discriminate against interstate
25 commerce are generally invalid per se.

1 In the Medigen case, the court concluded that
2 the defendants' requirement of a certificate of conven-
3 ience and necessity as a condition of allowing plain-
4 tiffs to operate in interstate commerce is a direct
5 rather than an incidental burden on interstate com-
6 merce.

7 In Medigen, the court concluded that to the
8 extent the state agency requires motor carriers to make
9 a showing of convenience and necessity prior to engag-
10 ing in the interstate transportation of infectious med-
11 ical waste, the requirement violates plaintiff's rights
12 under the Commerce Clause of the United States Con-
13 stitution.

14 With that, I'm prepared to call my first wit-
15 ness.

16 JUDGE ANDERL: Thank you, Mr. Johnson.

17 I don't know if the other parties would like
18 an opportunity to make opening statements at this time,
19 or if they would like to wait until --

20 MR. JOHNSON: Your Honor, my hearing is pret-
21 ty bad, and I would appreciate it if you could speak up
22 a little.

23 JUDGE ANDERL: I was asking if the other par-
24 ties would like an opportunity to present opening
25 statements at this time, or if they would waive that,

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or would like to wait until they are calling their own witnesses, Mr. Smith?

MR. SMITH: Your Honor, I will have no opening argument.

JUDGE ANDERL: Mr. Hartman?

MR. HARTMAN: Having not had the opportunity to review the brief before, I certainly could not respond to such a scholarly endeavor at this moment extemporaneously, so I would waive any opening statement.

JUDGE ANDERL: And the other intervenors, Mr. Sells?

MR. SELLS: We'll waive, Your Honor, please.

JUDGE ANDERL: Mr. Wiley?

MR. WILEY: I'll hold off for now, Your Honor.

JUDGE ANDERL: And Ms. Horenstein?

MS. HORENSTEIN: We waive as well.

JUDGE ANDERL: Mr. Johnson, you may call your first witness then.

MR. JOHNSON: Yes, I'll call Mr. Rowland.

ENOCH ROWLAND

having been first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

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DIRECT EXAMINATION

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BY MR. JOHNSON:

Q Will you please state your name?

A Enoch Rowland.

Q And what is your business address?

A It's 17800 Des Moines Memorial Drive, Seattle, Washington.

Q And in what form do you conduct the medical waste transportation business in which you're engaged; is it a corporation, an individual?

A Yes, it's a corporation.

Q What is the name of the corporation?

A Kleenwell Biohazard Medical Waste Ecology and Associates.

JUDGE ANDERL: I'm sorry, can you repeat that again, please? I'm not sure that I got that correctly.

THE WITNESS: Kleenwell Biohazard and Medical Waste and Ecology Consultants.

MR. JOHNSON: Your Honor, I have a set of exhibits here and ask that they be marked.

JUDGE ANDERL: I have been handed a packet of several documents. Would you like those all identified at this time?

MR. JOHNSON: Yes.

JUDGE ANDERL: Exhibit 1 for identification

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is a certificate for Medical Laboratory personnel.

[EXHIBIT NO. 1 MARKED FOR
IDENTIFICATION]

Exhibit 2 is a certificate from the American
Society --

MR. JOHNSON: Excuse me, I missed a couple
here.

MR. HARTMAN: Thank you.

JUDGE ANDERL: Has everyone got their copies
now?

MR. JOHNSON: I believe so.

JUDGE ANDERL: Exhibits 1 and 2 are certifi-
cates.

[EXHIBIT NO. 2 MARKED FOR
IDENTIFICATION]

Exhibit 3 is a Certificate of Incorporation.

[EXHIBIT NO. 3 MARKED FOR
IDENTIFICATION]

Exhibit 4 for identification is a cover sheet
from the Department of Licensing.

[EXHIBIT NO. 4 MARKED FOR
IDENTIFICATION]

Exhibit 5 is a Seattle King County Public
Health Permit.

* * * * *

24 Rowland - Direct (Johnson)

1 [EXHIBIT NO. 5 MARKED FOR
2 IDENTIFICATION]

3 Exhibit 6 is a letter from the Seattle King
4 County Department of Public Health.

5 [EXHIBIT NO. 6 MARKED FOR
6 IDENTIFICATION]

7 Exhibit 7 is a letter from the U.S. Depart-
8 ment of Transportation.

9 [EXHIBIT NO. 7 MARKED FOR
10 IDENTIFICATION]

11 Exhibit 8 is another letter from the Seattle
12 King County Department of Public Health dated September
13 24, 1990.

14 [EXHIBIT NO. 8 MARKED FOR
15 IDENTIFICATION]

16 Exhibit No. 9 is a document entitled Insur-
17 ance Binder.

18 [EXHIBIT NO. 9 MARKED FOR
19 IDENTIFICATION]

20 Exhibit 10 is an application for registration
21 of Interstate Motor Carrier Operations.

22 [EXHIBIT NO. 10 MARKED FOR
23 IDENTIFICATION]

24 And Exhibit 11 is a single sheet. It says
25 "Kleenwell" at the top.

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1 [EXHIBIT NO. 11 MARKED FOR
2 IDENTIFICATION]

3 MR. JOHNSON: I believe it's 12, is it not?

4 JUDGE ANDERL: Is it? Unless I double-marked
5 something, I'm only up to 11 there.

6 MR. JOHNSON: I thought the application for
7 registration was 11 -- oh, no, I mis-stated, excuse me.

8 JUDGE ANDERL: Okay. All of the documents
9 have been identified as exhibits.

10 Q (By Mr. Johnson) We've just identified the corporation
11 which you operate. Is that the corporation for which
12 Exhibit No. 3 is the Certificate of Incorporation?

13 A Yes, it is.

14 Q Now how long have you been engaged in the transporta-
15 tion of medical waste, either under a temporary author-
16 ity from the Washington Commission or on an interstate
17 basis?

18 A Since 1989.

19 Q Now directing your attention to Exhibit 1, which is a
20 National Certification for Medical Laboratory Person-
21 nel, are you the Enoch Rowland that's named on that
22 certificate?

23 A Yes, I am.

24 Q And that was issued in June of 1988, is that correct?

25 A Yes.

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1 Q And Exhibit 2 is a certificate from the American Soci-
2 ety for Microbiology. Is that also issued to you?

3 A Yes, it is, or was.

4 Q And will you please give us what your academic back-
5 ground is that qualifies you to handle issues relating
6 to medical waste?

7 A I have a bachelor's degree in medical technology from
8 Long Beach State College; a pharmacy degree from the
9 University of California at Los Angeles; I have a
10 Master's degree in clinical microbiology from the Uni-
11 versity of California.

12 I have an honorary doctor's degree now from
13 the National Certification Agency for Medical Labora-
14 tory Personnel, Inc. My certifications are through the
15 American Society of Clinical Pathology; American Soci-
16 ety of Microbiology; National Certification Agency for
17 Medical Laboratory Personnel, and the Medicare Act
18 Laboratory Personnel.

19 My affiliations are among staff at Highline
20 Community Hospital laboratory services for 18 years; on
21 staff at Quantum Laboratory for two years; on staff at
22 Shoreline Community College as a teacher of medical
23 technology and microbiology for the last 18 years for
24 the medical technician and nursing program.

25 Q And is there any of your work history that you haven't

1 mentioned in connection with your academic background
2 that involved you in medical waste matters?
3 A Since 1958, I have been a medical laboratory technolo-
4 gist, and then a microbiologist that worked with infec-
5 tious diseases and infection control with nursing home
6 and hospitals as an infection control officer. I think
7 that's --
8 Q Now do you concede that you are engaged in the trans-
9 portation of medical waste?
10 A Yes.
11 Q And what is the nature of that involvement?
12 A Should I go into a little background?
13 Q Well, I mean, what is the type of customer that you
14 serve; what is the area that you serve?
15 A Primarily, doctors and dentists.
16 Q And what area have you --
17 A Seattle, King County.
18 Q And both Seattle and the rest of King County?
19 A That's right.
20 Q And would you describe just what you do for each cus-
21 tomer; first what you do once they come on board as a
22 customer and then what you do for them on a continuing
23 basis?
24 A With the company, we do a laboratory -- actually, it's
25 in conjunction with two different companies, Kleenwell

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Biohazard Waste pickup, and Kleenwell Medical Services, which does a consulting and laboratory type work within the doctors' offices.

Q Do you sell any medical supplies?

A And we sell supplies through the Medical Services.

Q But if they say we've got some medical waste we'd like to have you dispose of, what do you do?

A Then we do pick that up for them.

Q What kind of instructions do you give them?

A The types of wastes that they would have, and the physicians in the dental offices would be primarily sharps and contaminated materials, such as gauze and urine containers, and things like that.

Q Do you supply them with any containers for --

A Yes, cardboard containers.

Q -- placing those sharps in?

A Yes, and the sharps containers into hard, impermeable boxes or cartons.

Q And do you give any written instruction as to how they are to gather their waste?

A Yes, we have a procedure for that.

Q Do you sell them any rubber latex gloves?

A Through the Medical Services company we do, yes.

Q And how frequently do you pick up at the various customer sites?

1 A It depends on the generator. A dentist just may gener-
2 ate a --

3 Q What's typical?

4 A Once a week, once every ten days.

5 Q And who does the -- who makes the pick-up? I mean, is
6 it an employee, is it you?

7 A Either myself or my daughter.

8 Q And what training has she had in this matter?

9 A She goes through the same training that we now give our
10 laboratory technicians at Quantum Laboratories. It's
11 an eight hour -- or seven hours of training on the AIDS
12 and hepatitis B, and the blood borne pathogens; also,
13 she's instructed on how to carry a box; how to give a -
14 - or package the box, the types of containers, and how
15 to handle those different type of packaging materials,
16 safety, clothes, goggles, shields, and truck safety.

17 Q Now at one time you held temporary authority to tran-
18 sport medical waste from the Washington Utilities and
19 Transportation Commission, did you not?

20 A Yes, that's true.

21 Q And what was the difference between the service you
22 performed pursuant to that authority and since you're
23 now providing and have been providing?

24 A The service wouldn't be any different, except the regu-
25 lations have changed to some degree on what is now

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1 regulated. But as far as the -- we're operating exact-
2 ly the same with the exception of tariffs. We're not
3 operating under the same tariffs.

4 Q How about the location of the disposal facility; was
5 there any difference in that?

6 A Our location is no different, but we're not shipping to
7 Security Environmental Systems in Los Angeles, Cali-
8 fornia.

9 Q Now what do you do when you pick up a generator's
10 waste; what do you do with that waste?

11 A That goes in, it's sealed and marked accordingly with
12 the name and address, and number from the receipt
13 that's given, and the person that's the generator, the
14 responsible one for the material that was generated,
15 they have to sign the slip; and then that is attached
16 to the box and the box then is -- the same information
17 goes on the box. The box, of course, is sealed; it
18 goes in the truck, and then it goes to our warehouse
19 where it's held for shipment.

20 Q Where is your warehouse?

21 A It's a the same location as our office.

22 Q And is there any refrigeration at that location?

23 A Yes, it has to be kept at zero degree fahrenheit until
24 shipment.

25 Q And is anything done to the waste prior to its being

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1 picked up and transported to the disposal site?

2 A No, it's just -- everything is sealed up, of course.

3 Q And it remains there until you have a load to go to
4 California?

5 A That's true.

6 Q That time will vary depending on how much waste you
7 collect?

8 A Yes, that's up to 90 days.

9 Q And you have identified the first three exhibits.
10 Would you turn to Exhibit No. 4; is that what it pur-
11 ports to be, your corporate license that will expire at
12 the end of October -- end of August?

13 A Yes, that's true.

14 Q Would you turn to Exhibit No. 5 and tell me what that
15 is?

16 A That's our permit from the Seattle King County Health
17 Department.

18 Q And that is in effect until the end of June, is that
19 correct?

20 A That's true.

21 MR. WILEY: Your Honor, could I have Mr.
22 Johnson speak up? I'm having difficulty hearing Mr.
23 Johnson. I don't know if anybody else is, but I defin-
24 itely am.

25 MR. JOHNSON: What did he say?

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JUDGE ANDERL: Can you speak up, please?

He's having trouble hearing you.

MR. JOHNSON: Oh, I guess what's fair for one is fair for the other.

Q (By Mr. Johnson) What is Exhibit 5?

A Well, that's our permit from the Seattle King County Health Department.

Q And why have you identified Exhibit 6; tell us what that is.

A That's a letter from the Seattle King County Health Department approving our storage facility.

Q And No. 7, will you identify that?

A That's our U.S. D.O.T. number, transportation.

Q Showing that you are registered with the D.O.T.?

A That's true, yes.

Q And No. 8?

A That's Seattle King County's approval of the SES site as a backup site to Brown Ferris Industries when we were transporting to Ferndale during the time we had our temporary permit.

Q You're not using that now?

A No, we're using the SES site.

Q And Exhibit 9, is that self-explanatory?

A That's our insurance binder, yes.

Q And No. 10 is what?

1 A Well, that was the application, our approved applica-
2 tion in 1989 for the Washington Utilities and Transpor-
3 tation --

4 Q Keep your voice up.

5 A That was the WUTC's approval for an exemption.

6 MR. SMITH: Your Honor, I'm going to object
7 to the characterization of that exhibit to the extent
8 it claims the UTC granted an exemption.

9 JUDGE ANDERL: Could you clarify?

10 MR. SMITH: I would have no other objection
11 to the exhibit.

12 Q (By Mr. Johnson) This is not an approval by them,
13 simply it is a --

14 A A registration.

15 Q This is not an approval, but simply it is showing that
16 you filed for --

17 A A registration, right.

18 Q And will you look at Exhibit 11 --

19 A I don't know how that got in there, but --

20 Q What's that?

21 A I said I don't know how that got in there, but that
22 must have been something we used before, but I have no
23 comment on this. We're not using this now.

24 Q Well, it appears to show how various wastes are pack-
25 aged, does it not?

1 A Well, it did for Highline Community Hospital, but I'm
2 not sure what we would have to do with that.

3 Q I see. So you want to withdraw Exhibit 11?

4 A Yes, that one, I would.

5 MR. SELLS: I'm sorry, which one is with-
6 drawn?

7 THE WITNESS: No. 11.

8 JUDGE ANDERL: The last one.

9 [EXHIBIT NO. 1 FOR IDENTIFI-
10 CATION WITHDRAWN]

11 Q (By Mr. Johnson) Now when your customer gives you
12 medical waste, is an invoice or any documentation pre-
13 pared by you?

14 A Yes, we give them a receipt that has their address and
15 name on that receipt, and there's a number on the re-
16 ceipt and the amount of waste we pick up, whether it's
17 one, ten gallon box, one sharps container, one sharps
18 container, or whatever it may be.

19 Q When that waste is delivered to a disposal facility and
20 the disposal effected, is there any documentation that
21 goes back to the generator telling him what happened to
22 the waste?

23 A Yes, we have the certificate of destruction from SES
24 that's sent to each one of the people, or each client,
25 or each generator, I should say.

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1 Q And is there any other besides that document that docu-
2 ment that tells the generator that his waste is going
3 to be sent out of state for disposal?

4 A Each one of our forms are stamped with a stamp that
5 says where they're being shipped to. And on --

6 Q And how is this waste that's accumulated to load, how
7 is it transported to California?

8 A By truck.

9 Q Keep your voice up.

10 A By truck.

11 Q And is it your own truck, or a rented truck, or --

12 A It's a rented truck.

13 Q And your employee drives that truck?

14 A Yes.

15 Q And what is the basis -- do you have a tariff, or what
16 kind of a basis do you have for charging your cus-
17 tomers?

18 A We have a fee for small generators, and a fee for basi-
19 cally a larger generator.

20 Q And you don't have a tariff as such, I take it?

21 A No, we don't.

22 Q Are you familiar with some of the Washington Utilities
23 and Transportation's requirements which they apply to
24 companies they regulate, setting forth the requirement
25 of an operational plan?

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1 A Uh huh, yes.

2 Q Do you have an operational plan?

3 A Uh huh, we do.

4 Q What is it?

5 A We have methods set up for if there's a spillage within
6 the truck and how the truck's cleaned, or if there is
7 spillage on the ground and materials used to clean that
8 up; the personnel which would be dealing with that
9 material, if they spill something on themselves, they
10 would have information on how to clean up.

11 Q You train your drivers; that's what you're talking
12 about, I take it, is a part of that, is that -

13 A (Witness nods head affirmatively) Uh huh.

14 Q -- is that right?

15 A Yes, I am.

16 Q And who does the training?

17 A I do.

18 Q You teach them such matters as packaging requirements
19 and personal hygiene matters?

20 A Yes, that's right.

21 Q Is this in writing, or is it oral or what?

22 A Well, we have a --

23 MR. SELLS: Your Honor, I'm going to object
24 to the leading nature of these questions. This is an
25 enforcement proceeding. Normally, I don't object at

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1 all if it's an administrative hearing, but this is an
2 enforcement proceeding, and counsel -- we may as well
3 put Mr. Johnson up on the stand. He's feeding him the
4 answer as he goes along.

5 MR. JOHNSON: I said is it in writing or is
6 it oral. I don't see how that's leading.

7 JUDGE ANDERL: I'll have to agree that that
8 last question wasn't so leading; however, on the other
9 questions, they were quite leading, and if you could
10 not suggest the answer with the question.

11 MR. JOHNSON: I also disagree that it's an
12 enforcement proceeding. A classification is what they
13 call it in the title.

14 Q (By Mr. Johnson) Once the material -- I mean, when a
15 doctor's nurse, for instance, gets the material that is
16 medical waste, what does she do with it? She puts it
17 in a container, I take it. Does she touch it after
18 that?

19 A Well, they're not supposed to. I can't guarantee they
20 do. The materials that they put into the containers
21 are sub-divided into sharps, which would include
22 needles and syringes, and glass slides, and tubes, and
23 things like that that are sharp or breakable, and they
24 go into a hard -- either a bucket or hard sharps con-
25 tainers that are made specifically for that use.

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1 Gauze, and such things as that that are not sharp goes
2 into a box with a red liner, a specified type liner,
3 and that then is where they put their materials.

4 Q Would you describe the truck that you use to pick up
5 the waste at the doctor or dentist offices as to any-
6 thing that's particularly done to it because it's going
7 to be handling the hauling of medical waste?

8 A Well, it's just a van, a strip down model. It has the
9 capability of cleaning it out with bleach and sand, or
10 with capture; whatever needs to be done to it to clean
11 the material out if there is a spillage in there, or
12 something leaks. It's a one ton truck.

13 Q After the truck has been used to pick up for a day,
14 say, to pick up at various generators, is anything done
15 to clean it out at that time?

16 A If there's a spillage or leakage, yes; it's cleaned
17 out.

18 Q Would you describe the storage facility as to how large
19 it is and --

20 A We have a freezer in there that we're able to contain a
21 number of boxes and containers.

22 Q When your application for authority that was handled
23 in, I believe, GA-907, a garbage application and that
24 was denied, what adjustments or changes did you make in
25 your operation?

1 A Well, I talked to you about what we might do next, and
2 you wrote a letter to the Interstate Commerce inter-
3 preter, and he wrote you back saying that --
4 MR. WILEY: Objection, Your Honor --
5 MR. SELLS: Objection, Your Honor, unless the
6 document is available.
7 MR. JOHNSON: Well, we got a response, any-
8 way.
9 MR. SELLS: Wait a minute.
10 JUDGE ANDERL: No, wait a minute, Mr. John-
11 son. There's an objection pending and I haven't ruled
12 on it. I think at this point it's well taken. Are you
13 going to present that document as an exhibit?
14 MR. JOHNSON: I --
15 MR. HARTMAN: The "document" being the re-
16 quest or the response?
17 JUDGE ANDERL: Either or both.
18 MR. JOHNSON: I have them, but they're --
19 JUDGE ANDERL: Do you have copies of them for
20 distribution?
21 MR. JOHNSON: Yes, but I don't have extra
22 copies. Let me find it here.
23 (Pause)
24 It was in the exchange correspondence, and I
25 have one copy of it. I'd have to make extra copies of

1 the response by the Chief of Interpretations from the
2 Interstate Commerce Commission.

3 JUDGE ANDERL: Do you also have a copy of the
4 letter you sent?

5 MR. JOHNSON: My letter, I have one copy of
6 it. I'll withdraw the question.

7 JUDGE ANDERL: Okay.

8 Q (By Mr. Johnson) Anyway, how did you change the opera-
9 tion?

10 MR. WILEY: Well, Your Honor, I object to
11 that question. It is leading because we don't know
12 that he changed his operation at this point. I think
13 the question ought to be rephrased. It's leading.

14 JUDGE ANDERL: Mr. Johnson, can you rephrase
15 the question, please?

16 THE WITNESS: Maybe we could take -- Your
17 Honor, could we take maybe a break and then we can dis-
18 cuss it?

19 MR. WILEY: I would object to that, Your
20 Honor.

21 JUDGE ANDERL: Mr. Johnson, I know that there
22 is a copy facility here. I know that it's a common
23 practice for people to offer exhibits and then provide
24 copies in an hour or so.

25 MR. JOHNSON: Well, it isn't to prove the

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1 truth of it. If allowed to do so, I would say that the
2 witness would simply state that based on some inquiries
3 made to the Interstate Commerce Commission, we started
4 bringing the waste to a disposal site out of state, and
5 that's all we're trying to accomplish. I'm not trying
6 to prove the truth or the accuracy of any position.

7 MR. WILEY: Your Honor, my objection -- and I
8 would join Mr. Sells' objection at this point -- I have
9 reviewed that correspondence because Mr. Johnson pro-
10 vided it to some parties. I don't believe that's a
11 correct characterization of it. I would like it to
12 come in if there are any questions about its contents
13 whatsoever or conclusions because I don't think it is
14 helpful necessarily to the respondent's position. So I
15 don't want there to be any questions on it unless it
16 comes in.

17 JUDGE ANDERL: Mr. Johnson, I believe it
18 would be appropriate if the witness is going to testify
19 about actions he took as a result of inquiries and re-
20 sponses to know what those inquiries and responses
21 were.

22 MR. JOHNSON: Well, I'm not in a position to
23 supply seven copies of this correspondence at this
24 time, and it isn't an important part of my case, so I
25 will withdraw any question about it. I don't have to

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1 rely on that at all.

2 MR. SELLS: If that's the case, Your Honor, I
3 would move that the last comments of counsel be stricken
4 because they appear to me to be an offer of proof. If
5 it's an offer of proof and the document is not going to
6 be offered, then that should be stricken. It's up to
7 him whether he wants to offer the document or not, but
8 I'm not going to have an offer of proof and then have
9 no document to follow it up.

10 MR. WILEY: Your Honor, I would join that,
11 and also, I wouldn't have an objection if during the
12 break, as you alluded, we make copies, which is frequently
13 done in hearings at the copy center next door,
14 then I wouldn't have an objection.

15 JUDGE ANDERL: Yeah, I don't understand what
16 the problem is. If counsel wants to offer the document,
17 there are copy facilities nearby. If counsel
18 doesn't, then I believe that references to it --

19 MR. JOHNSON: Well, I'm not going to offer
20 it.

21 JUDGE ANDERL: -- will not be considered.

22 MR. HARTMAN: You're granting the motion to
23 strike his offer?

24 JUDGE ANDERL: I'm not sure how those motions
25 to strike actually work in terms of whether it gets

1 deleted from the record, or -- I will grant the motion
2 to the extent that it's not something I will consider.

3 MR. JOHNSON: There is a second letter of re-
4 sponse, and I don't have that here, and so I believe if
5 I put it in at this time, it would -- I'll just save it
6 for a later time.

7 I would request a brief recess. I'm dry and
8 need a glass of water.

9 JUDGE ANDERL: You're not done with your wit-
10 ness yet, are you?

11 MR. JOHNSON: No.

12 JUDGE ANDERL: It's 10:30 and we might as
13 well go ahead and take our morning break at this time.
14 Let's be back at quarter to 11:00. We're off the
15 record.

16 [BRIEF RECESS TAKEN]

17 JUDGE ANDERL: We're back on the record after
18 our morning break.

19 Mr. Johnson, you can continue with your wit-
20 ness.

21 MR. JOHNSON: I'd like this letter marked for
22 identification. It's my only copy.

23 JUDGE ANDERL: I have a two page document
24 which I'll mark for identification as Exhibit 12; the
25 first page is on the letterhead of Security

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1 Environmental Systems, and the second page at the top
2 is entitled "Certificate of Destruction."

3 [EXHIBIT NO. 12 MARKED FOR
4 IDENTIFICATION]

5 Do the parties want to take a look at this at
6 this time? Mr. Johnson has assured me he will provide
7 copies.

8 [DOCUMENT BRIEFED BY COUNSEL]

9 Q (By Mr. Johnson) Showing you what has been marked for
10 identification as Exhibit 12, on the second page of
11 that, can you examine it and tell me what it is?

12 A It's a Certificate of Destruction and a receipt for the
13 number of pounds that was delivered to the Security
14 Environmental Systems.

15 Q And you received that from whom?

16 A Security Environmental Systems.

17 Q And it shows what; it shows that they destroyed a
18 certain number --

19 A Number of pounds.

20 Q 4,740 pounds of biohazardous waste.

21 MR. FINNIGAN: I'm going to object again. He
22 just gave his client the answer, and nothing could be
23 more misleading -- or, excuse me -- leading than that
24 question. If he's going to have his client identify
25 the document, that's fine. If he wants his client to

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1 testify about the document; but, please, Mr. Johnson -
2 - I would instruct Mr. Johnson not to testify about the
3 document.

4 JUDGE ANDERL: I will sustain the objection,
5 Mr. Johnson. That was a leading question. Please try
6 to avoid them and --

7 Q (By Mr. Johnson) Is there a weight on that shipment as
8 to the amount that was tendered to them?

9 A Yes, there is.

10 Q What is that weight?

11 A 4,740 pounds.

12 Q What weight does the Certificate of Destruction show?

13 A 4,740 pounds.

14 Q What is the date of the --

15 A May, 1992.

16 MR. JOHNSON: I'll give this to the reporter
17 and get a copy afterwards.

18 JUDGE ANDERL: Actually, if I may have it.
19 May I have it, please?

20 MR. JOHNSON: All right.

21 JUDGE ANDERL: Thank you.

22 Q (By Mr. Johnson) Is this the only one of these
23 Certificates of Destruction that you have, or are there
24 others?

25 A No, there's one for every load that we take.

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1 Q Do you presently have medical waste in storage at your
2 facility?

3 A There's a little bit. As of May 5th, everything was
4 taken to Los Angeles.

5 MR. WILEY: I'm missing the latter part of
6 his statements, Your Honor. I guess I have a hearing
7 problem, but I just --

8 JUDGE ANDERL: The witness or Mr. Johnson?

9 MR. WILEY: The witness right now.

10 JUDGE ANDERL: Please try to keep your voice
11 up, and each of you try to wait until the other one is
12 finished speaking before you either ask a new question
13 or respond to the question that's asked.

14 MR. FINNIGAN: Your Honor, it might be
15 helpful if the witness understands that that microphone
16 is not an amplifier system. It's simply for the court
17 reporter's purposes.

18 JUDGE ANDERL: That probably is helpful.

19 Q (By Mr. Johnson) What was your answer; do you have
20 some of that?

21 A Yes, we have some now, yes.

22 Q And where will that be brought for destruction?

23 A To Security Environmental Systems in Los Angeles.

24 Q When?

25 A When we have a load.

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1 Q And how long have you been hauling your material there?

2 A Since we quit hauling it to Ferndale.

3 MR. SELLS: Could we have a date on that,
4 Your Honor?

5 THE WITNESS: I can't tell you a date. I
6 don't remember.

7 JUDGE ANDERL: Approximately what month, what
8 year?

9 Q (By Mr. Johnson) What was the event that caused you to
10 not haul it to --

11 A The denial of the Certificate of Public Convenience.

12 Q What was that?

13 A The denial of the Certificate of Public Convenience
14 from the --

15 Q In the application case you had, in GA-907, is that it?

16 A That's right.

17 MR. SELLS: I'm sorry, Your Honor, and I
18 don't mean to interrupt, but am I to understand that
19 the commodity started to go to California immediately
20 after the denial of the State authority, was that the
21 answer?

22 JUDGE ANDERL: I think that's what he said,
23 but maybe you can pursue that on cross.

24 MR. SELLS: All right, I'm sorry.

25 THE WITNESS: Yes.

48 Rowland - Direct (Johnson)

1 Q (By Mr. Johnson) And have you received any advice from
2 any lawyer to the effect that the interstate
3 transportation of medical waste is not subject to the
4 Washington Utilities and Transportation Commission's
5 regulations --

6 MR. WILEY: Your Honor, I'm going to object
7 to that question. I think it seeks to elicit a highly
8 self serving response, and it's total hearsay. If he's
9 trying to indicate that -- he said in his opening
10 statement, as I recall, that that was the issue that he
11 was pursuing here. If he's trying to elicit an answer
12 that yes, Mr. Johnson said that was interstate
13 commerce. I think it's self serving from the applicant
14 and the applicant's counsel's standpoint. That's the
15 issue that we're addressing here. Whether he so
16 advised is irrelevant.

17 JUDGE ANDERL: Mr. Johnson, if you want to
18 comment on that?

19 MR. JOHNSON: Well, it explains why he's --
20 the answer would explain why he has been engaged in
21 this transportation in spite of the statutory scheme.

22 MR. WILEY: Your Honor, whether it's under
23 advice of counsel or not, he's not trying to cloak
24 himself in the mantle of State law; I mean, counsel
25 isn't. So whether it's under the advice of counsel or

1 not doesn't have any bearing on the issues we're
2 addressing.

3 JUDGE ANDERL: Mr. Smith, any comments on
4 that?

5 MR. SMITH: I don't have any objection to the
6 question, Your Honor, if it's just going to whether he
7 received some advice from counsel and he changed his
8 operations for that reason. I don't want to get into
9 any legal argument with the witness, but if it's
10 limited to that extent, I don't have any problems with
11 it.

12 MR. JOHNSON: It doesn't suggest whether
13 counsel is right or not. It's just whether he received
14 that advice.

15 JUDGE ANDERL: Right, I kind of am a little
16 puzzled, I guess, by the question since I don't think -
17 - this isn't like an application proceeding where we're
18 concerned with an applicant's fitness and what he may
19 or may not have done under advice of counsel, but it is
20 somewhat self serving, but I don't really have a
21 problem with the question. I guess I'll overrule the
22 objection and allow the witness to answer the question.

23 Do you remember what it was?

24 A Yes, I continue to operate on Mr. Johnson's advice.

25 MR. JOHNSON: I think that's all I have, Mr.

50 Rowland - Direct (Johnson)

1 Rowland.

2 JUDGE ANDERL: And you've offered the
3 exhibits 1 through 12, with the exception of 11, which
4 is withdrawn?

5 MR. JOHNSON: Yes.

6 JUDGE ANDERL: Let's deal with the objections
7 to the exhibits, if any, at this time, Mr. Smith?

8 MR. SMITH: Your Honor, I have no objections
9 to 3, 4, 6, 8, 9, 10 and 12. I'd like to reserve my
10 objections to 1, 2, 5 and 7 until after cross.

11 MR. JOHNSON: I have no objection to
12 reserving a ruling.

13 JUDGE ANDERL: Mr. Hartman?

14 MR. HARTMAN: I have no objection to the
15 exhibits.

16 JUDGE ANDERL: Mr. Finnigan?

17 MR. FINNIGAN: I would like to reserve my
18 objections until after cross, although I will note at
19 this time that when the witness was asked about Exhibit
20 8, he indicated they're not using that anymore, so I
21 don't think Exhibit 8 would be appropriate.

22 JUDGE ANDERL: I think actually it was
23 Exhibit 11 that he was referring to, and that's been
24 withdrawn, although --

25 MR. FINNIGAN: I understand that, but I

1 believe he also made the same statement, or a similar
2 statement as to Exhibit 8 when he was identifying that,
3 and he's shaking his head yes, so --

4 JUDGE ANDERL: Exhibit 8 is a letter, is it
5 not?

6 MR. FINNIGAN: Yes, but he's indicated that -
7 - my memory is that he indicated that that reflected
8 circumstances that are not longer existent.

9 JUDGE ANDERL: Mr. Sells?

10 MR. SELLS: I would join with Mr. Smith. I
11 have no objections to the ones that he has no objection
12 to, but I would like to cross on the others.

13 JUDGE ANDERL: Mr. Wiley?

14 MR. WILEY: Yes, Your Honor, I would join
15 those objections, and pay particular focus on Exhibit
16 6, which I believe is not a complete exhibit to the
17 extent that previous correspondence regarding the
18 status has not yet been admitted, and I would like to
19 seek to admit that through my cross before we admit
20 Exhibit 6 and offer them all at the same time after
21 that.

22 JUDGE ANDERL: And Ms. Horenstein, any
23 objections?

24 MS. HORENSTEIN: No.

25 JUDGE ANDERL: Well, it looks like there are

1 no objections outstanding to Exhibits 3, 4, 9, 10 and
2 12 -- wait a minute -- Mr. Finnigan, you wanted me to
3 withhold --

4 MR. FINNIGAN: No, as to those which Mr.
5 Smith identified that he does not have an objection, I
6 also do not have objections.

7 JUDGE ANDERL: It looks as though we can
8 admit Exhibits 3, 4, 9, 10 and 12 at this time, and
9 I'll reserve ruling on the others.

10 [EXHIBIT NOS. 3, 4, 9, 10 AND
11 12 FOR IDENTIFICATION WERE
12 RECEIVED IN EVIDENCE]

13 Mr. Smith, cross?

14 MR. SMITH: Yes, thank you, Your Honor.

15
16 CROSS EXAMINATION

17 BY MR. SMITH:

18 Q Mr. Rowland, my name is Steve Smith. I'm with the
19 Attorney General's office, representing the Commission
20 in this matter.

21 If I refer to "Kleenwell" in my questions, I'm
22 always referring to Kleenwell Biohazard unless I
23 indicate your other company.

24 Now you indicated that Kleenwell Biohazard is a
25 corporation, is that correct?

1 A That's right.

2 MR. JOHNSON: Keep your voice up, Mr.
3 Rowland.

4 Q (By Mr. Smith) And from Exhibit 3, it indicates that
5 it is a Washington corporation, is that correct?

6 A That's right.

7 Q And who are the shareholders of Kleenwell Biohazard?

8 A My daughter and I.

9 Q And there are no other shareholders?

10 A No.

11 Q And do your daughter and you both reside in the state
12 of Washington?

13 A Yes, we do.

14 Q Now is Kleenwell Biohazard a separate legal entity from
15 the Kleenwell Medical Services?

16 A Yes, it is.

17 Q And is Kleenwell Medical Services also a corporation?

18 A Yes, it is.

19 Q And is that incorporated in the state of Washington?

20 A Yes.

21 Q And who are the shareholders of that entity?

22 A My daughter and I.

23 Q And the business address of Kleenwell is in Des Moines,
24 Washington, is that --

25 A That's right.

1 Q And are all of your customers of Kleenwell Biohazard
2 located within the state of Washington?
3 A Yes, they are.
4 Q And is that also true of the customers of the Medical
5 Services corporation?
6 A Yes.
7 Q Do you have any facilities outside the state of
8 Washington?
9 A No.
10 Q Does Kleenwell hold any permits or operating authority
11 from the Interstate Commerce Commission?
12 A Intra or inter?
13 Q Well, I'm referring to the federal agency, the
14 Interstate Commerce Commission.
15 A No.
16 Q Now you testified that you originally collected this
17 infectious waste under a temporary permit issued by the
18 Washington Commission, is that correct?
19 A That's correct.
20 Q And at that time, while operating under that temporary
21 authority, you were disposing in Ferndale, Washington?
22 A That's right.
23 Q And the facility there is called what?
24 A It's Recomp.
25 Q And you later changed disposal sites, is that correct?

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A That's right.

Q And that change in disposal sites was contemporaneous, or near in time to the denial of your permanent certificate by the Washington Commission, is that correct?

A That's true.

MR. JOHNSON: You've got to speak up a little more.

Q (By Mr. Smith) And is that the only reason you changed disposal sites?

A Yes.

Q And Recomp was still willing to accept the infectious waste you were collecting?

A Yes.

Q Other than Recomp and Security Environmental Systems, have you used any other disposal sites?

A No.

Q And so presently you are using Security Environmental Systems to dispose of the infectious waste you collect?

A Yes.

Q And what is your arrangement with that company; is it contractual?

A By contract, and it's by the pound.

Q And is that a long-term contract?

A Yes, it is. I don't have a copy with me to show you.

1 Q Does it have a termination date?
2 A I don't think it does.
3 Q When you changed disposal sites, did you inform your
4 customers that you were changing disposal sites?
5 A Yes, I did.
6 Q And how did you inform them?
7 A Actually, we supply a packet to each one of our
8 customers to update them on what's going on, but all
9 our customers are familiar with our hearing through the
10 WTC, and on our permanent certificate when it was
11 denied. Each one of our customers knew about that.
12 Q At the time you were operating under your temporary
13 certificate, did any of your customers have any
14 objections to your disposing of their waste at
15 Ferndale?
16 A No.
17 Q So it would be fair to say your customers were
18 indifferent as to whether their medical waste was
19 disposed out of state or within the state of
20 Washington?
21 A That's true.
22 Q Have you, through you or your daughter, always done the
23 transporting of the waste to California?
24 A Yes.
25 Q You've never used anybody else?

1 A No -- I take that back. My niece worked for me for a
2 while. She drove at one time.

3 Q But did you ever use another company for the interstate
4 leg?

5 A No.

6 MR. WILEY: Your Honor, I couldn't hear his
7 answer. Did he answer "no"?

8 THE WITNESS: Yes, I answered no.

9 Now to keep the record straight, I would, if
10 you don't mind --

11 MR. SMITH: Well, why don't you let me ask
12 the questions and you can talk to your counsel for
13 redirect.

14 MR. JOHNSON: I think that he maybe wanted to
15 change an answer. I don't know.

16 JUDGE ANDERL: Mr. Johnson, it seemed to me
17 he was done with his answer. Let's just move on.

18 Q (By Mr. Smith) Mr. Rowland, have any disposal sites
19 within the state of Washington sought you out as a
20 customer?

21 A No.

22 Q Do you know whether any disposal site in the state of
23 Washington is interested in your business?

24 A No, not that I know of.

25 Q None have indicated that interest to you in any event,

1 is that correct?

2 A No.

3 Q Did you compare the cost of disposing at Recomp with
4 the cost of disposing at Security Environmental
5 Systems?

6 A Yes, I did.

7 Q And how did those costs compare?

8 A They're about twice to three times as much.

9 Q Which is higher?

10 A At the facility in Los Angeles.

11 Q And is part of the reason they are so much more
12 expensive the transportation component of that haul?

13 A Yes.

14 Q Without the transportation component, how do the rates
15 compare, if you know?

16 A I don't know any longer. They were probably about ten
17 cents more a pound at the time I was doing business
18 with them.

19 Q Which was ten cents more a pound?

20 A In Los Angeles.

21 Q And how many miles is it from your storage facility in
22 Washington state to the disposal facility in Los
23 Angeles?

24 A About 1,300 miles.

25 MR. JOHNSON: I didn't hear your answer.

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THE WITNESS: 1,300 miles.

Q (By Mr. Smith) Now you applied to the UTC for permanent authority to operate as an infectious waste collector in the state, is that correct?

A Yes.

Q And as a result of that proceeding, you indicated you were denied permanent operating authority.

A That's right.

Q And the grounds for that denial was that you had shown yourself to be unfit to receive operating authority, and that you had not complied with the UTC's rules, is that correct?

A I don't remember the exact reasons.

MR. SMITH: Your Honor, I have an exhibit I'd like marked next in line.

MR. JOHNSON: I'm going to object to this line of questioning. I don't think the question here is whether this is an activity that's subject to the Commission's regulation, State regulation; and reasons for denying some prior application, I don't think are an issue.

JUDGE ANDERL: On the grounds of relevancy, then, Mr. Smith, do you have a response to that?

MR. SMITH: Well, Your Honor, one of the items they have to establish in a Commerce clause, it

1 depends to which jurisdiction, is that the matter
2 subject to regulation is a matter of legitimate local
3 interest within the state, and our position is that the
4 hauling of infectious waste is a matter of interest,
5 particularly if it's being hauled by some other company
6 unfit to handle what we consider to be a dangerous
7 commodity. And Mr. Rowland's position is that he is
8 not subject to our jurisdiction, and the fact that he
9 has been found unfit in a prior proceeding, which, by
10 the way, was opened up by Mr. Johnson by his testimony
11 about his operation, is relevant to show the State's
12 local interest in regulating Mr. Rowland's operation.

13 JUDGE ANDERL: But wouldn't that interest be
14 the same whether he had ever been determined to be fit
15 or not?

16 MR. SMITH: Yes, Your Honor, it would be the
17 same, but I think if the State's interest is even
18 keener if because of disposing out of state unfit
19 operators can operate on the highways in the state of
20 Washington hauling infectious medical waste.

21 MR. JOHNSON: Activities either subject to
22 the State's regulation or it's not. They can't pick a
23 particular individual and say this guy's not safe, and
24 zero in on him. It's not the way it works.

25 JUDGE ANDERL: I'll overrule the objection

1 and allow Mr. Smith to continue on that line of
2 questioning. The exhibit, of course, is just marked
3 for identification at this time as 13. It's identified
4 as Order No. M.V.G. No. 1480.

5 [EXHIBIT NO. 13 MARKED FOR
6 IDENTIFICATION]

7 The one you're distributing now will be 14.
8 What are you distributing now?

9 MR. SMITH: I'm distributing the same one.

10 JUDGE ANDERL: The initial one, I'm sorry.
11 That's 13. I thought he was already on another
12 exhibit, sorry.

13 Q (By Mr. Smith) Mr. Rowland, do you have before you
14 what has been marked for identification as Exhibit 13?

15 A Yes.

16 Q And do you recognize that as a proposed order of the
17 Administrative Law Judge in your application for
18 permanent authority?

19 A Yes, I do.

20 MR. SMITH: Your Honor, I will move for entry
21 of Exhibit 13, either on Mr. Rowland's identification,
22 or ask the Commission to take official notice of it as
23 a UTC Order.

24 MR. JOHNSON: I object on the grounds it has
25 no relevancy. It was a classification proceeding.

62 Rowland - Cross (Smith)

1 JUDGE ANDERL: I believe that it is relevant.
2 I will overrule the objection, and unless the
3 intervenors have any comment on Exhibit 13, I will
4 admit it as identified.

5 [NO RESPONSE]

6 [EXHIBIT NO. 13 FOR IDENTIFI-
7 CATION RECEIVED IN EVIDENCE]

8 Q (By Mr. Smith) And Mr. Rowland, did you appeal that
9 proposed order?

10 A No, we didn't.

11 Q Mr. Rowland, from your -- and I didn't get it all --
12 but from your credentials, it appears that you have a
13 background in the subject matter of infectious waste,
14 is that an accurate statement?

15 A Yes, that's right.

16 Q And are there health risks involved with exposure to
17 infectious waste?

18 A Yes, there are, certainly.

19 Q And in your view, should inadvertent exposure to
20 infectious waste be minimized or eliminated?

21 A Yes.

22 Q And why is that?

23 A So that you don't contact any of the problems, such as
24 hepatitis or AIDS.

25 Q Are there problems besides Hepatitis B and AIDS?

63 Rowland - Cross (Smith)

1 A Well, there's about five types of hepatitis, as well as
2 other bacterial type infections; also, there are other
3 -- yes, there are other problems.

4 Q Now you describe your service territory, I believe, as
5 King County, including the City of Seattle, is that
6 correct?

7 A Yes.

8 Q And how is that service territory established?

9 A Historically or -- well, I think it would probably be
10 better to give you a little history. It was
11 established because we were doing business with those
12 particular clients in other ways, such as laboratory
13 services or whatever.

14 Q And would that be through the Medical Services
15 Corporation?

16 A That's right.

17 Q So is it accurate to say that the customers you serve
18 for Kleenwell Biohazard were based on other business
19 considerations?

20 A That's right.

21 Q And those were the considerations of the Medical
22 Services Consulting Corporation?

23 A Yes.

24 Q Now have you considered serving other parts of the
25 State in the medical waste collection business?

1 A In our original application, we applied for State
2 authority. We're not -- we have enough business right
3 now to take care of the --

4 MR. WILEY: I can't hear him.

5 JUDGE ANDERL: Excuse me, you have to speak
6 up.

7 A We have enough business to take care of now without
8 going any further, so we haven't even looked at any
9 other areas.

10 Q (By Mr. Smith) Okay. And would you describe King
11 County as a densely populated area of the State of
12 Washington?

13 A I would say so, yes.

14 Q Within the county, do you collect medical waste for
15 everyone who requests it?

16 A Yes.

17 Q Even if they are not customers of your other
18 corporation?

19 A Most of them are, but yes, that's true.

20 Q How many of your medical waste customers are not
21 customers of the other corporation, the Medical
22 Services Corporation?

23 A Probably ten percent.

24 Q Let me ask you whether you ever terminated serving any
25 customer?

1 A Terminated?

2 Q Stop serving collecting infectious waste for one of
3 your customers?

4 A For what reason?

5 Q For any reason.

6 A Yes, if one of my competitors took the client away from
7 us, yes. That would be one reason. During the period
8 of time we were going through our original hearings, we
9 didn't pick up during that period.

10 Q Have you ever stopped serving collecting infectious
11 waste for a customer who is no longer ordering
12 pharmaceuticals or medical services from your other
13 corporation?

14 A No, no, I haven't. I would say no.

15 Q So when a customer stops buying medical services from
16 the Medical Services Corporation, you would continue to
17 serve them as Kleenwell Biohazard?

18 A Yes.

19 Q Now you testified, I believe, that you had a rate
20 structure that involved basically two rates, is that
21 correct?

22 A Yes.

23 Q And what are those rates again, please?

24 A Small generators, such as Dennis, we're charging \$12.00
25 a pick-up.

1 Q And large generators? I take it that's the other
2 group?
3 A Yes, they're charged \$20.00, and if they have \$20.00,
4 it's \$12.00 a box basically --
5 Q I'm sorry, I didn't understand.
6 A \$12.00 a box of a ten gallon box. We charge \$12.00
7 Q And what's the \$20.00 for?
8 A For the larger boxes.
9 Q And what factors went into setting those rates?
10 A It's figured on basically what it costs per pound at
11 that time to handle it. The rates haven't changed, so
12 basically we're about the same as we were.
13 MR. SELLS: Your Honor, I'm sorry, I can't
14 hear the witness.
15 MR. WILEY: He's mumbling a lot.
16 JUDGE ANDERL: I can hear him, but I guess I
17 have an advantage, I'm a little bit close. So you do
18 have to tell me whenever you can't hear him.
19 Mr. Rowland, I don't know what we're going to
20 do with you. You're going to have to keep your voice
21 up.
22 Q (By Mr. Smith) Does Kleenwell Biohazard standing alone
23 make a profit?
24 A Probably not.
25 Q So is it fair to say that the Medical Services

1 Corporation subsidizes the infectious waste collection
2 corporation?
3 A It has.
4 Q And has that always been the case?
5 A Probably.
6 Q And does the ICC regulate your rates in any way?
7 A No.
8 Q And your position is that the Utilities and
9 Transportation Commission has no jurisdiction to
10 regulate your rates, is that correct?
11 A Yes.
12 Q Now your competitors that you discussed a minute ago,
13 are they companies whose rates are regulated by the
14 Commission?
15 A Yes, as far as I know.
16 Q And you can underprice your competitors at will, is
17 that accurate?
18 A I suppose that would be accurate. I don't do it
19 automatically, but if my rates are lower than theirs, I
20 would say so, yes.
21 Q In fact, you testified that you were able to actually
22 operate at a loss; that was your testimony?
23 A Just now, you're talking?
24 Q Yes.
25 A Yes.

1 Q And do you know whether your competitors can operate at
2 a loss?
3 A I'm sure they can't.
4 Q Can you change your rates whenever you choose?
5 A I could, yes.
6 Q And can you charge customers different rates?
7 A I suppose I could. We try to stick to the same rates.
8 Q In your view, though, there's nothing to prevent you
9 from charging different customers different rates?
10 A That's true.
11 Q And you could give a preferred customer a better rate,
12 is that correct, if you wanted to?
13 A Yes.
14 Q And could you, or do you offer promotional rates to
15 attract new customers?
16 A No.
17 Q But you could do that if you elected to, is that
18 correct?
19 A Yes.
20 MR. FINNIGAN: Was his answer yes? I'm
21 sorry.
22 THE WITNESS: Yes.
23 Q (By Mr. Smith) From what you said, Mr. Rowland, is it
24 fair to say that you have a competitive advantage over
25 your competitors?

1 A Well, I suppose you could say that.

2 Q By "competitors," I mean those who are subject to the
3 Commission's regulation?

4 A Yes.

5 Q I'd like to ask you a couple of questions about Exhibit
6 No. 1. Do you have a copy of that?

7 A Yes, I do.

8 Q First of all, what's the national certification agency
9 for a medical laboratory personnel?

10 A It's the organization that regulates, certifies medical
11 laboratory technologists.

12 Q And is it a governmental agency or --

13 A No, no. It's a private agency.

14 Q And it says there that you have demonstrated competence
15 as a clinical laboratory scientist. How is that
16 competence demonstrated?

17 A There's an examination that you have to take, and then
18 there's continuing credits, medical education credits
19 you have to keep up with.

20 Q And what's a "clinical laboratory scientist"?

21 A It's a supervisor of the medical laboratory in a
22 hospital, or a clinical laboratory setting.

23 Q Are there some limitations on who can call himself or
24 herself a clinical laboratory scientist?

25 A Yes.

1 Q Exhibit No. 2, do you have that in front of you?
2 A Yes, I do.
3 Q Now this is from the American Society for Microbiology.
4 Is that a private organization?
5 A Yes, it is.
6 Q And what's the function of that organization?
7 A It's to certify microbiologists.
8 Q It says below that you were elected to membership in
9 1984. What does it mean when it says you "were
10 elected"?
11 A They have a process you have to go through. You fill
12 out an application and send in your credentials and so
13 forth, and then decide whether you belong to the
14 organization.
15 Q But is there some election taken by other members?
16 A Yes, by other members, uh huh.
17 Q So if enough members of the society are satisfied with
18 you, you will presumably be voted into this
19 organization?
20 A Yes.
21 Q Referring you to Exhibit No. 7, the one page document,
22 is there another page to that letter? It seems to end
23 mid letter.
24 A I'm sure there probably was, yes. This was just the
25 information I gave to Mr. Johnson.

1 MR. SELLS: I didn't hear the answer. Was it
2 "I'm sure there is"?

3 THE WITNESS: I think there is, I said.

4 MR. SELLS: Thank you.

5 Q (By Mr. Smith) Mr. Rowland, you referred to an
6 operational plan. Do you know whether that plan
7 complies with the Commission's rules for infectious
8 waste collection?

9 A In fact, yes, it does. We just revised it to the newer
10 -- I have a copy, so, anyway, yes. It does.

11 Q When did you revise it?

12 A About three months ago.

13 JUDGE ANDERL: Mr. Rowland, could you please
14 maybe taken your right hand down because I think that's
15 part of what's blocking your ability --

16 THE WITNESS: Yes, I revised it.

17 Q (By Mr. Smith) Your position is that --

18 A Also, I revised it based on the Commission and OSHA's
19 new regulations with blood borne pathogens.

20 Q And is your position that you're free to change that
21 plan so that it doesn't coincide with the Commission's
22 requirements?

23 A Well, no. I think the Commission's requirements are
24 very good. That's why I've gone with that particular
25 --

1 Q But my point is, are you free, in your mind, to change
2 your plan?
3 A Well, I suppose I could.
4 Q And why do you say the Commission's rules are good?
5 A Just in going through the care of the truck and
6 personnel requirements, and training and cleaning up,
7 and those kind of operation requirements and so forth,
8 I think, are very good.
9 Q In your opinion, if someone works in this field, do
10 those rules tend to promote public health and the
11 environment?
12 A Yes.
13 Q Does anybody approve your operation plan?
14 A No.
15 Q If I could direct your attention to Exhibit No. 5 --
16 A Yes.
17 Q -- could you tell us what that permit is, please?
18 A That's the Seattle/King County Health Department's
19 permit.
20 Q What does it permit it you to do?
21 A Pick up infectious waste.
22 Q Pick up infectious waste?
23 A Yes, within Seattle/King County.
24 Q And without this permit, could you pick up infectious
25 waste in Seattle/King County?

1 A No.

2 Q And do you intend to continue complying with the
3 Seattle/King County Public Health permit requirements?

4 A Yes.

5 Q If you're transporting your waste out of state, why do
6 you elect to comply with the Seattle/King County
7 permitting requirements but not the UTC's?

8 A The Seattle/King County is part of the area I work in,
9 and it's part of what's required by Seattle/King
10 County. The other part of my operation, I feel, is
11 interstate.

12 Q Would you explain that division for me again?

13 A Well, picking up in Seattle/King County is part of what
14 I do and where I work. If I picked up in Tacoma,
15 Pierce County, then I would have to have a permit
16 there, or Snohomish County, or wherever there are
17 permits required.

18 Q So you would distinguish, or, I guess, divide your
19 operation in two pieces: The first would be the
20 collection of infectious waste, and the second would be
21 transportation of that waste to California?

22 A Yes.

23 Q So you believe, apparently, that Seattle/King County
24 has jurisdiction to regulate the collection of
25 infectious waste in Seattle and King County?

1 A Yes.

2 Q Directing your attention to Exhibit No. 6, do you have
3 that in front of you?

4 A Yes.

5 Q The last paragraph reads -- and this is from the
6 Seattle/King County Department of Public Health -- the
7 last paragraph reads: "If you choose to change the
8 final treatment and/or disposal site, you must notify
9 the Health Department in advance and obtain approval
10 for that site prior to use of the new site."
11 Do you comply with that requirement?

12 A Yes.

13 Q So you believe that Seattle/King County Department of
14 Public Health can regulate not only your collection
15 within Seattle/King County, but also your selection of
16 disposal sites?

17 A That's right.

18 Q And you do not claim, I take it, that because you
19 dispose out of state that you're beyond the
20 jurisdiction of the Seattle/King County Department of
21 Public Health?

22 A That's right.

23 Q When you described your vehicle as a strip-down van,
24 what did you mean by that?

25 A Well, it doesn't have any fancy amenities in it; no

1 upholstering. It's just a metal floor and there's
2 nothing in there except for the materials that are used
3 to haul the waste with.

4 Q And what year was that vehicle?

5 A '74, although we've now purchased a new one we'll have
6 on line soon.

7 MR. WILEY: I missed that.

8 THE WITNESS: We've now purchased a new one
9 we'll have on line soon. That one is getting tired.

10 Q (By Mr. Smith) I think I just have one more question
11 about Exhibit 12, which I don't have, I guess. But
12 it's a Certificate of Destruction, apparently completed
13 by Security Environmental Systems.

14 A Yes.

15 Q And what do you do with those Certificates of
16 Destruction?

17 A We send a copy of each one to our clients.

18 Q And do you send a copy to any governmental agencies?

19 A No.

20 Q Did the Seattle/King County Department of Public Health
21 approve your change in disposal sites --

22 A Yes, they did.

23 Q -- from Ferndale to Los Angeles?

24 A Yes.

25 MR. SMITH: Thank you. Those are all my

1 questions.

2 JUDGE ANDERL: Mr. Hartman?

3 MR. HARTMAN: Yes. First I would like to
4 have a copy of Exhibit 12.

5 JUDGE ANDERL: Well, I have the only copy.
6 Mr. Johnson will provide copies, I think, after lunch,
7 so you can look at this one.

8 MR. HARTMAN: I take it this is intended to
9 be a two page --

10 MR. JOHNSON: Yes.

11 MR. HARTMAN: -- exhibit; the first page of
12 which is dated 5/5/92. It says "Generator, Kleenwell
13 Biohazardous Waste and Ecology Consultants.

14
15 CROSS EXAMINATION

16 BY MR. HARTMAN:

17 Q Is that a correct description of that document?

18 A Yes.

19 Q And is that intended to cover the total -- it was
20 intended, I take it, to cover the total shipment
21 consisting of product from a number of local
22 generators, is that correct?

23 A That's true.

24 Q As to the local generators, what type of documentation,
25 if any, is prepared for them when you make a pick-up?

77 Rowland - Cross (Hartman)

1 A They get a receipt with their name on it, and it says
2 on the receipt where the material is going to, and then
3 we write down if there's two boxes, three boxes; the
4 size of the boxes, sharps container and such. And then
5 they're given a copy of that, then they sign the copy,
6 we take one copy and they keep a copy.

7 Q Do you have a copy of that documentation with you?

8 A No, I don't.

9 MR. HARTMAN: Does counsel have a copy of it?

10 MR. JOHNSON: I don't think I have on today.

11 MR. HARTMAN: As far as the separate
12 documentation for the shippers, I would request that
13 that be made a part of the record.

14 JUDGE ANDERL: Mr. Johnson, would there be
15 any problem in providing that?

16 MR. JOHNSON: No, an illustrative one. I
17 certainly don't have them all.

18 Q (By Mr. Hartman) As far as the information on Exhibit
19 No. 12, you indicate that you send a copy of the
20 Certificate of Destruction. Would I be correct that
21 that is part of the second page, the top half, which
22 says, "SES Certificate of Destruction"?

23 A Yes.

24 Q And how would a generator know whether that is proof
25 that his particular shipment has been destroyed in

1 California?

2 A When our shipment goes, there's a copy of each one of
3 those, of their receipts that go with that shipment,
4 and it's given to the SES for destruction. When we get
5 the certificate back, we send them their copies, along
6 with a copy of their copies.

7 Q When that documentation then is returned to them, is
8 there any other correspondence or anything else that
9 goes with it?

10 A No.

11 Q When the pick-up is made and the signature of the
12 document, which we do not have in evidence that's made,
13 is there any regulations or information which you
14 submit that instructs them or your people as to how
15 that documentation is to be prepared?

16 A To our clients, you're saying that?

17 Q Yes, or any instructions that you submit to your
18 employees?

19 A My employees are trained on how to fill out the forms
20 and fill out the log book.

21 Q I'm asking if there's anything in writing as to how--

22 A Yeah, our procedural -- I have a procedural manual that
23 I put together for them.

24 Q And do you have a copy of that?

25 A Not here.

1 Q Is it any different -- is that manual any different
2 than the one that was in existence at the time that you
3 had your proceeding before this Commission?
4 A Yes.
5 Q And are the changes all in respect to any of the
6 documentation?
7 A There's changes that have been made by the new
8 regulations that has gone into effect from OSHA and --
9 of course, OSHA doesn't regulate this, but all to do
10 with blood borne pathogens, and also the new other
11 regulations that have been involved --
12 Q Would it be correct that those changes had nothing to
13 do with where the product would be disposed of?
14 A That's true.
15 Q When you have an account which you bring on-line for
16 the purpose of Kleenwell Biohazardous, do you enter
17 into any written agreement with that?
18 A No.
19 Q Would it be correct, then, that the only thing you
20 would have in the way of documentation between you and
21 the client is your pick-up slip and the return of the
22 documentation?
23 A We supply a little packet to them that tells them
24 something about us and what we charge, and what -- our
25 Seattle/King County permit, and where we take it to;

1 that type of thing.

2 Q Do you have a copy of that packet?

3 A No.

4 Q Is it an identical packet submitted to each account?

5 A Yes.

6 Q And what is that -- is there any reference in that
7 information in respect to the manner of shipment or
8 destination of the shipment?

9 A Yes, there is.

10 MR. HARTMAN: Your Honor, again, I would
11 think that would be something that could be produced.

12 JUDGE ANDERL: Mr. Johnson?

13 MR. JOHNSON: Well, sure we can, but I'll
14 have to go back to the office to get it.

15 JUDGE ANDERL: Well, yes. I think we already
16 had a second day scheduled. Mr. Hartman, what are you
17 proposing, just that you want to have an opportunity to
18 look at it, or did you --

19 MR. HARTMAN: Yes, I'm not requesting that it
20 be marked as an exhibit at this point, but only be made
21 available for examination.

22 MR. WILEY: Your Honor, I will be able to
23 provide Mr. Hartman with a copy of that at the lunch
24 break, so maybe that will answer his --

25 JUDGE ANDERL: All right.

81 Rowland - Cross (Hartman)

1 Q (By Mr. Hartman) You had indicated on questions that
2 when you were denied your application you had decided
3 at that time to engage in shipments to California. Did
4 you change your rate level at that time?

5 A I quit using the tariff, yes; the published tariff that
6 I had.

7 Q Are the rates you charged any different, or had you
8 charged the same basic -- it's probably not correct to
9 call them rates at this time, but had the charges per
10 box changed from the time you had made application and
11 the present time?

12 A I suppose they have. Without looking at the old rates,
13 I don't recall exactly what those were.

14 Q What were the major differences in the charges?

15 A We were just basically going by what it really actually
16 costs us to break even on it. That's what we're doing
17 now.

18 Q And when you were making that determination, what
19 specific cost did you have reference to?

20 A You mean now or then, because then, I didn't have
21 anything to do with --

22 Q Let's talk about then.

23 MR. WILEY: I can't hear him. He's doing his
24 hand again.

25 A That was handled by Mr. Grady and Duenfelter, or

1 whatever his name was, and I don't -- they are the ones
2 that established those rates, and that was approved by
3 the Commission, so --

4 Q (By Mr. Hartman) I believe, for the record, you're
5 speaking of Mr. Duppenthaler?

6 A Duppenthaler.

7 Q And you say you have no idea what specific ingredients
8 they had factored in as a cost of service?

9 A No, no.

10 Q Apparently, you've indicated you do not know whether
11 the rates that they had established at that time are
12 any different than your present rates.

13 A Well, the only thing was during that time, we were
14 offering a box of gloves and a sharps container, and it
15 was for \$20.00, I think, per pick-up for small
16 generators. And now we don't give a box of gloves and
17 we don't give a sharps container. We're only making a
18 pick-up, so it doesn't go with part of the service. So
19 I suppose if you figure that out, I don't know if it
20 would come out the same or not.

21 Q I guess that gets down to my next question, then. As
22 far as the charges that you do assess to the
23 generators, is it essentially, or is it a total
24 consideration, the cost of pick-up and transportation?

25 A Yes, we figured it out, and, again, things change; gas

1 goes up and down.

2 Q But all your costs that underlie your \$12.00 and \$20.00
3 cost relate to the pick-up and the transportation of
4 the product?

5 A Yes.

6 Q Have you ever had the occasion when one of your
7 accounts did designate a point where they wanted the
8 product disposed of?

9 A I don't remember if there's anyone.

10 Q Was the determination to go to California exclusively
11 yours and you merely advised the generators?

12 A Yes.

13 Q If they chose to have it taken to Ferndale, for
14 instance, would you take it there?

15 A No, I couldn't do that.

16 Q Why couldn't you?

17 A Because that's regulated under the State WUTC.

18 Q Likewise, if they chose to have some of the product
19 landfilled, which I guess is still permissible in some
20 areas, would you do so?

21 A No.

22 Q Is your determination to go to California predicated at
23 all on the type of service in the handling and disposal
24 of the product that you received from the California
25 organization that would be, say, any different than you

1 would receive at Ferndale?
2 A No.
3 Q And we're talking about basically incineration, is that
4 what they do?
5 A That's right.
6 Q When you first had your involvement with the Utilities
7 and Transportation Commission, and going back to when
8 you started operations, had you not filed a request
9 with the Commission at that time to make a
10 determination whether your operation was subject to
11 regulation?
12 A Yes, I did.
13 Q Did you receive a response from the Commission in that
14 regard?
15 A Yes, I did.
16 Q And do you recall what that response was?
17 A At that time, they said I needed to file for a
18 Certificate of Convenience.
19 Q And you did so file, and that action was evidenced by
20 Exhibit No. 13 in this proceeding?
21 A That's right.
22 Q You had also, I believe, requested that your operations
23 be considered exempt from Chapter 8177 and be
24 considered subject to Chapter 8180 because you are a
25 recycle at that time, is that correct?

1 A I don't remember exactly why we filed for that.
2 Q But you did make such a filing?
3 A Yes.
4 Q Do you recall what the result of that filing was?
5 A We received a stamped copy and that was all.
6 Q Of what?
7 A The copy that we have here. There was a copy here.
8 MR. JOHNSON: I don't know what you're
9 referring to.
10 A You're referring to the ICC exempt, is that what --
11 Q (By Mr. Hartman) No, no, no.
12 A Oh, I'm sorry. Then I don't know what you're talking
13 about, I'm sorry. That's what I thought you were
14 talking about.
15 Q Well, let me ask it in a little more detail then, and
16 maybe it will help your recollection.
17 Were you, at one time, considering recycling this
18 product?
19 A No, I wasn't.
20 Q Had you ever contacted for disposal sites, say, in the
21 state of Oregon?
22 A Oh, I did talk to Biowaste, I think, Management, or
23 somebody down there, yes.
24 Q And was that again at the time that you had been denied
25 your Washington --

1 A Actually, it was before that, prior to that time.

2 Q Prior to that time?

3 A Yeah.

4 Q I believe you may have answered that, but perhaps we
5 could cover a little bit of redundancy. Is it correct
6 that you could -- other than the fact that you do not
7 have authority in the Washington Commission, you could
8 still use the Ferndale facility?

9 A As far as I know.

10 MR. HARTMAN: That's all the questions I
11 have. Thank you.

12 JUDGE ANDERL: Mr. Finnigan?

13 MR. FINNIGAN: Thank you.

14

15 CROSS EXAMINATION

16 BY MR. FINNIGAN:

17 Q Mr. Rowland, my name is Rick Finnigan and I represent
18 the Rabanco Companies, which do business as Sure-Way
19 Medical Services, just so you know the direction of my
20 questions.

21 The first thing I'd like you to do is to look at
22 Exhibit 6, if you would, please. Do you have that
23 exhibit?

24 A Yes.

25 Q Could you tell me the purpose for which you are

1 offering it here today?

2 A It was Seattle/King County's approval on the storage of
3 the waste or holding the waste over the eight day
4 period.

5 Q And it's offered to show that your facilities have been
6 approved by the Seattle/King County Department of
7 Health?

8 A Yes.

9 Q And the conditions under which they're approved?

10 A Yes.

11 Q Switching gears for just a moment, you indicated that
12 you rent a truck to do the interstate hauling of the
13 waste to Los Angeles.

14 A Yes.

15 Q Can you tell me what type of truck you rent?

16 A It's from Budget Rental.

17 Q And describe for me which of the types of trucks from
18 Budget Rental, and by the way, I'm a little
19 disappointed that it's not Ryder.

20 A It's a 14 foot.

21 Q A 14 foot trailer?

22 A Not a trailer, but a standard box truck.

23 Q A standard box truck.

24 You provided as Exhibit 13 a Destruction
25 Certificate that indicated that there were some 4,700

1 odd gallons that were disposed of.

2 A (Witness nods head affirmatively) Uh huh.

3 MR. JOHNSON: Not gallons, pounds.

4 Q (By Mr. Finnigan) I'm sorry, pounds.

5 A Yes.

6 Q Did that load fill up this 14 foot truck?

7 A Normally, we rent a 14 foot. It might have been a
8 little bigger than that, I don't remember. It may have
9 been a 16, but, anyway, it was a box truck. Normally,
10 we only haul about a 14 foot. No, it doesn't quite
11 fill up a truck.

12 Q Give me a percentage of capacity that your loads --

13 A Probably three-quarters of the truck; not all the way
14 to the top either. There's some --

15 Q In your experience, how many pounds per gallon is there
16 for infectious waste; and you use, I believe you said,
17 a ten gallon container?

18 A Well, yeah, I suppose, probably. Well, I mean, that's
19 what we use. I don't know how many gallons that would
20 be --

21 Q Would you accept that --

22 A -- because a lot of the boxes are not full. You're
23 only looking sometimes at a half full box or partially
24 full.

25 Q Would you accept then that upon average, medical waste

1 has a pound per gallon ratio of about point eight
2 pounds per gallon of waste; in other words, a full ten
3 gallon container would weigh eight pounds?

4 A Probably. Without doing some calculations, I wouldn't
5 be able to --

6 Q Does that sound reasonable?

7 A I suppose that's reasonable.

8 Q So if we did that calculation of the number of pounds
9 that you took to Los Angeles, that would translate to
10 some greater number of gallons, is that correct?

11 A Well, I suppose, yeah.

12 Q If you use a ratio of point eight pounds per gallon--

13 A Per gallon.

14 Q -- it wouldn't necessarily require that there be more
15 gallons than pounds?

16 A I suppose, yeah.

17 MR. JOHNSON: Your Honor, I don't think that
18 basis is there. It would be more pounds than gallons.

19 MR. FINNIGAN: No, more gallons than pounds.

20 JUDGE ANDERL: Well, I think the witness can
21 answer the question if he knows.

22 A I don't know.

23 Q (By Mr. Finnigan) You don't know, okay.

24 MR. JOHNSON: When the question includes the
25 answer, it doesn't work --

1 Q (By Mr. Finnigan) How many trips to Los Angeles have
2 you made for disposal purposes since March of 1991?
3 A We go every three months, every 90 days or before that.
4 Q You go every 90 days or before that.
5 A Right.
6 Q Again, how many trips have you made since March of
7 1991?
8 A I don't know. I'd have to look back through my records
9 to figure that out.
10 Q Would you produce for us the Destruction Certificates
11 that you have received from SES since March of 1991?
12 A Sure.
13 Q If you'll look back at Exhibit No. 6 -- do you see
14 that?
15 A Yes.
16 Q Exhibit No. 6, in the first paragraph near the bottom
17 of that paragraph, it says that "There is a eight day
18 maximum storage time which commences immediately when
19 boxes are stored at room temperature."
20 A Right, uh huh.
21 Q How do you manage to take a trip to Los Angeles every
22 90 days and still comply with the requirements
23 contained in Exhibit 6?
24 A In our freezer, we have enough room to hold the amount
25 that we would need to hold to accumulate our load.

1 Q Mr. Rowland, I'm directing you to the eight day maximum
2 storage time.

3 A That's at room temperature. We're freezing everything.
4 Under the freezer, if you read a little further, it
5 says I inspect the freezer facility. In the freezer,
6 you can hold it up to 90 days.

7 Q And how big is the capacity of your freezer?

8 A It will hold about 500 boxes.

9 Q If you'll look up in --

10 A Small boxes.

11 Q If you'll look up at the letter of July 11, 1990, which
12 is Exhibit No. 6, it indicates from the Seattle/King
13 County Department of Health, they inspected a freezer
14 that has the capacity to store approximately 40 boxes.

15 A That was the original freezer I had.

16 Q Do you have any indication from Seattle/King County
17 Department of Health that they have inspected and
18 approved of your current facilities?

19 A I don't have a letter, but they were out and inspected
20 six months ago, I guess.

21 Q You don't have any written approval of your current
22 facilities?

23 A The only thing I have is the new permit that each year
24 they issue. They come out before that and you have to
25 put out a plan of action and so forth before they will

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give you a new permit.

Q And what permit are you talking about?

A My Seattle/King County --

MR. JOHNSON: Exhibit 5.

A Exhibit 5.

Q (By Mr. Finnigan) Would you now turn to Exhibit 9, please?

A Yes.

Q Do you have that exhibit?

A Yes.

Q There appears to be a portion of Exhibit 9 that has been marked out in the copying process.

A Yes.

Q There's a black box in the middle.

A (Witness nods head affirmatively) Uh huh.

Q Can you tell me what appeared there that is no longer on the exhibit?

A Glendale Highline Insurance Company. It's their stamp.

Q And is that just a stamp that didn't copy?

A It just didn't copy, yes.

Q Would you look at the section that is entitled "Conditions or Exclusions," do you see that, which is just above that black box?

A We have to get a -- to answer your question --

JUDGE ANDERL: Well, I don't believe there's

1 been a question yet.

2 Q (By Mr. Finnigan) Are you there?

3 A I'm here, yes.

4 Q Do you see the language "SIR/Deductible not applicable
5 50 mile radius"?

6 A Right, uh huh.

7 Q Can you tell me what that means?

8 A We have to apply for a binder each time. They give us
9 an additional for the miles to Los Angeles.

10 Q Would you --

11 A But I will tell you yes, this is first based on
12 Seattle/King County. We travel 50 miles each way
13 basically on our routes.

14 Q So this insurance binder would not cover your trips to
15 Los Angeles?

16 A That's right. We have to apply for a separate binder
17 for that.

18 Q And this is a binder, not the policy, is that correct?

19 A Yes.

20 Q You indicated that your rates were \$12.00 for a ten
21 gallon box, and \$20.00 for a larger box. Can you tell
22 me the size of the larger box that you provide?

23 A I think --

24 MR. JOHNSON: Your Honor, I object to the
25 question. I don't think that in his answers he said 20

1 gallon or 12 gallon. It's a large and a small is all
2 the identification that I saw.

3 MR. FINNIGAN: In a response to a question by
4 Mr. Smith, Mr. Rowland indicated that his rates for a
5 ten gallon box was \$12.00, and his rate for a larger
6 box is \$20.00, and I'm simply trying to find out the
7 size of the larger box.

8 MR. JOHNSON: I withdraw the objection.

9 JUDGE ANDERL: There being no objection,
10 then, go ahead and answer the question.

11 A I think it holds about 18 gallons or something.

12 Q (By Mr. Finnigan) Approximately 18 gallons?

13 A I think so, yes.

14 Q How many of your customers use this larger box?

15 A Not an awful lot. Most of my customers are using the
16 small. I would say maybe ten percent.

17 MR. FINNIGAN: May I have this marked as the
18 next exhibit?

19 JUDGE ANDERL: Exhibit 14 for identification
20 is a single sheet entitled "Kleenwell Biohazard Waste
21 and General Ecology Consultants."

22 [EXHIBIT NO. 14 MARKED FOR
23 IDENTIFICATION]

24 MR. FINNIGAN: Your Honor, since questions
25 have come up about the packet of information that is

95 Rowland - Cross (Finnigan)

1 handed to customers, and I have what I believe is a
2 copy of that packet -- but it may be appropriate to
3 take the noon recess and I could confirm that with Mr.
4 Rowland and his counsel because that would be my next
5 line of questioning.

6 JUDGE ANDERL: I was actually kind of hoping
7 to get through cross on this witness anyway before
8 lunch. Maybe not. I just saw the looks on your faces.

9 MR. JOHNSON: Why wait?

10 JUDGE ANDERL: Then does anyone have any
11 objection to breaking for lunch at this time?

12 MR. WILEY: No.

13 JUDGE ANDERL: Let's do that, then, and we'll
14 be back at 1:15. We're off the record.

15 [HEARING RECESSED FOR LUNCH AT
16 12:05 P.M., TO RECONVENE AT
17 1:15 P.M.]

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AFTERNOON RECESS

1:20 p.m.

JUDGE ANDERL: We're back on the record.

Mr. Finnigan?

MR. FINNIGAN: Thank you. It was profitable to take a break at that time because we were able to determine that the packet I had was no longer in use, and so I just have one question.

CONTINUED CROSS EXAMINATION

BY MR. FINNIGAN:

Q Would you please look at Exhibit 14, the exhibit I distributed to you just before lunch?

MR. JOHNSON: Which one was that?

A Can you show me?

JUDGE ANDERL: Here you go, here's my copy.

Q (By Mr. Finnigan) Based upon our discussions that we had just after the break for lunch, is it true that Exhibit 14 was a flier that has, in the past, been used by you but is no longer in use?

A That's right.

Q And you modified the flier somewhat related to some of the information that's at the bottom of that?

A Yes.

Q But otherwise, the information that's on the top half

1 of this flier is still information that you distribute?

2 A Yes.

3 MR. FINNIGAN: Thank you.

4 JUDGE ANDERL: Is that it?

5 MR. FINNIGAN: That's it.

6 JUDGE ANDERL: Mr. Sells?

7 MR. SELLS: Thank you, Your Honor.

8
9 CROSS EXAMINATION

10 BY MR. SELLS:

11 Q Mr. Rowland, I have one question, and that is is it my
12 understanding that the sole purpose that you are
13 carrying medical waste to the state of California is to
14 avoid regulation by the Washington Utilities and
15 Transportation Commission?

16 A I can only answer that yes or no, right?

17 Q Yes.

18 A No, that's not the case.

19 Q What other reason is there for carrying these materials
20 to California rather than to Bellingham, for example?

21 A Because I believe I'm interstate and not intrastate.

22 Q But the reason you're interstate is because you're
23 going to California, is that not correct?

24 A That's true.

25 Q And the only reason you're going to California is so

1 that you will not be subject to the regulations of the
2 state of Washington, is that not correct?

3 A Well, I -- all right, yes.

4 MR. SELLS: I have no further questions.

5 JUDGE ANDERL: Mr. Wiley?

6 MR. WILEY: Yes, I just have a very few
7 questions, Mr. Rowland, believe it or not.

8
9 CROSS EXAMINATION

10 BY MR. WILEY:

11 Q Looking at Exhibit 6, please, which is a letter from
12 Shelley Kniep to yourself, can you tell me why, since
13 you've held a permit from approximately 1989 to the
14 present, that letter was issued as you understand it?

15 A The letter was issued because of the fact that I was
16 holding things longer than eight days.

17 Q Longer than a day, did you say?

18 A Eight days, eight days.

19 Q And could you tell us for the record, in terms of your
20 storage practices, whether you had previously been
21 found to have violated King County Board of Health
22 regulations regarding storage of medical waste that you
23 collected?

24 A That's true.

25 Q And as a matter of fact, is it not correct that your

1 permit with King County was revoked because of
2 violations found by the King County Board of Health on
3 your storage practices?

4 A That's on record, yes.

5 Q And by "on record," are you referring to correspondence
6 from the Seattle/King County Department of Public
7 Health that was transmitted to you in the winter of
8 1990?

9 A That's true, yeah.

10 MR. JOHNSON: Your Honor, I object to
11 testimony concerning this ancient history. It's long
12 since been reinstated and I don't see where it has any
13 bearing on any issue in this proceeding.

14 MR. WILEY: Well, first, I guess I better
15 have it identified by you.

16 JUDGE ANDERL: Well, yes, I would imagine the
17 objection is both to any questions that you are about
18 to pose, and to the documents themselves which are
19 being handed out. I will identify for the record --
20 did you want --

21 MR. WILEY: The January 5th letter first,
22 please, Your Honor.

23 JUDGE ANDERL: The January 5th letter will be
24 Exhibit 15.

25 * * * * *

100 Rowland - Cross (Wiley)

1 [EXHIBIT NO. 15 MARKED FOR
2 IDENTIFICATION]

3 And the February 15th letter will be Exhibit
4 16, both from the Seattle/King County Department of
5 Public Health.

6 [EXHIBIT NO. 16 MARKED FOR
7 IDENTIFICATION]

8 MR. WILEY: Your Honor, the objection has now
9 come before I have attempted to lay any foundation, so
10 I guess I'm at a loss. I would like to lay some
11 foundation then argue for admissibility.

12 MR. JOHNSON: I'll withhold my objection.

13 JUDGE ANDERL: Go ahead, Mr. Wiley.

14 Q (By Mr. Wiley) Mr. Rowland, would you please -- do you
15 have copies of those exhibits in front of you?

16 A Yes.

17 Q You referred to communication from the Seattle/King
18 County Department of Public Health regarding your
19 storage practices.

20 I would ask you first of all to look at the
21 exhibit that has been identified as 15 for admission.
22 It's not yet been admitted. And tell us who Mr. Bob
23 Sanders is, please.

24 A He was a gentleman that was working for me back in
25 January of 1990.

101 Rowland - Cross (Wiley)

1 Q And he was the authorized general manager of Kleenwell
2 Biohazard, was he not?

3 A That's true.

4 Q And you have seen this letter at the time it was
5 received, did you not, from King County?

6 A Yes.

7 Q And calling your attention to Exhibit 16, identified as
8 Exhibit 16, you are the addressee on this letter. Do
9 you recognize this correspondence?

10 A Yes.

11 Q And is it correct that these are the communications
12 from the Seattle/King County Department of Public
13 Health that addressed your storage and handling
14 operations at the time the letters were issued?

15 A Yes.

16 Q And calling your attention to the exhibit that's been
17 identified as 16, was that, in fact, the formal letter
18 of revocation denying your waiver for storage and
19 revoking your King County permit?

20 MR. JOHNSON: Your Honor, I --

21 Q (By Mr. Wiley) Calling your attention to pages 2 and
22 3.

23 MR. JOHNSON: I object on the grounds the
24 letter speaks for itself. I don't think the witness
25 needs to go over the thing and relate what it says. It

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1 itself is the best evidence.

2 MR. WILEY: Your Honor, I'm trying to lay
3 foundation based on the objection that I understood
4 would come to these exhibits. If they are not being
5 objected to and will be admitted into the record, I
6 don't know that we need to go into anymore foundation
7 questions.

8 JUDGE ANDERL: Right, yes. They are not a
9 part of the record yet, Mr. Johnson. Would you object
10 to their admission and there probably would not be any
11 testimony required about them, about what they say,
12 anyway.

13 MR. JOHNSON: Well, I don't know why my
14 objection should require Mr. Rowland to analyze and
15 tell us what the exhibit says. It speaks for itself.

16 MR. WILEY: I'm not trying to do that, Your
17 Honor. I'm trying to lay foundation and to
18 characterize the communication and correspondence, and
19 the response thereto. I'm not trying to get into the
20 contents to any degree.

21 JUDGE ANDERL: The objection is overruled.

22 Q (By Mr. Wiley) Mr. Rowland --

23 MR. WILEY: Your Honor, I don't know if I've
24 formally offered these, but I would do so at this time,
25 and I assume your objection overruling would allow

1 their admission, is that correct?

2 JUDGE ANDERL: Well, if Mr. Johnson wants to
3 make a formal objection to their admission, he can do
4 so. Mr. Johnson?

5 MR. JOHNSON: Well, I have no objections for
6 what it's worth.

7 JUDGE ANDERL: Exhibits 15 and 16 will be
8 admitted as identified.

9 [EXHIBIT NOS. 15 AND 16 FOR
10 IDENTIFICATION RECEIVED IN
11 EVIDENCE]

12 Q (By Mr. Wiley) And Mr. Rowland, calling your attention
13 back to Exhibit 6, this letter was issued after lengthy
14 or hearings at the King County Board of Health that
15 sought to review your storage and handling practices
16 and the revocation of your King County Health
17 Department permit for infectious waste hauling, is that
18 correct?

19 A That's true.

20 Q Now you indicated that you had expanded your storage
21 facilities for the holding of infectious waste. I
22 didn't understand the date at which that occurred.

23 A I'm not sure exactly. Within the last six months.

24 Q Within the last six months?

25 A Yes.

104 Rowland - Cross (Wiley)

1 Q And is it correct that your storage capacity increased
2 from 40 boxes to approximately 500 boxes, as you
3 testified?
4 A We've never had that many, but I'm sure we could
5 probably store that.
6 Q Do you have any document that has been sent to you that
7 shows the King County Department of Public Health's
8 review of the new storage facilities and the capacity
9 that would be handled at that facility?
10 A No, the inspector came, but there was no -- we didn't
11 receive a letter.
12 Q At this time, then, Exhibit 6 is the only document
13 issued by Seattle/King County Department of Public
14 Health that refers to the capacity of your storage
15 facility and what would allow you to be in compliance
16 in those regulations, is that correct?
17 A Right.
18 Q You indicated that you had a rented truck that came
19 from Budget Rent-a-Car. Who drives that truck?
20 A Myself.
21 Q And do you do all the local collection?
22 A No, my daughter does, but the Budget truck was only
23 used as a long distance hauler.
24 Q I understand that. So Mr. Johnson had referred to
25 drivers, plural, in some questions to you about your

1 operational practices, and I wanted to understand who
2 those drivers were. Those are you and your daughter
3 solely?

4 A My daughter, yes.

5 Q Do you hold a commercial drivers license?

6 A No, just a standard drivers license.

7 Q And does your daughter hold a commercial drivers
8 license?

9 A No.

10 Q And do you know whether you would be required to hold
11 one of those licenses to transport the material from
12 the Seattle area to Garden Grove, or the Los Angeles
13 area where SES is?

14 A We're in compliance, yes, with the DOT, federal DOT.

15 Q You then -- what do you mean by that answer, sir?

16 A I have had to fill out a packet, and as long as I'm
17 under 23,000 gross, we're in compliance.

18 Q And do you also comply with all DOT testing regulations
19 regarding drivers?

20 A Yes, we do, drugs and the rest of them.

21 Q And as far as your equipment is concerned, is that done
22 on a per trip basis; do you rent the truck on a per
23 trip basis, did I understand your testimony?

24 A Yes, but DOT accepts the safety of the truck and so
25 forth.

1 Q That's not what I'm asking, sir. I'm saying do you
2 rent the equipment on a per trip basis?
3 A Yes.
4 Q Could you tell us how long that rental takes in terms
5 of your trip down and back; how long do you rent the
6 truck for?
7 A It's about a week that we have the truck.
8 Q Excuse me?
9 A A week. We rent the truck by the week.
10 Q And would the description of that truck be similar to
11 the type of equipment you use for local collection?
12 A No, it's a bigger truck.
13 Q Other than that, the description is similar, is that
14 correct?
15 A I --
16 Q It's larger than these?
17 A Larger, yeah.
18 Q I didn't get -- you were asked by Mr. Johnson on direct
19 examination about the use of SES. I was just wondering
20 what the disposal cost per pound was; did you give that
21 information?
22 A Thirty-eight cents.
23 Q Calling your attention to Exhibit 5, is it your
24 understanding -- and that's the King County Department
25 of Public Health permit -- your understanding as to the

1 language on the face of Exhibit 5, that that permit is
2 issued subject to state law regulating the
3 transportation and collection of medical waste?

4 MR. JOHNSON: Well, Your Honor, the exhibit
5 speaks for itself. It says subject to all state laws.

6 MR. WILEY: I'm asking his understanding of
7 what the permit allows or doesn't allow.

8 JUDGE ANDERL: I'll allow the question.

9 A I've read that, yes.

10 Q (By Mr. Wiley) And is that your understanding?

11 A Yes.

12 MR. WILEY: No further questions, Your Honor.

13 JUDGE ANDERL: Ms. Horenstein?

14 MS. HORENSTEIN: Just a few more questions,
15 Mr. Rowland.

16
17 CROSS EXAMINATION

18 BY MS. HORENSTEIN:

19 Q My understanding from your previous testimony is that
20 your services are primarily provided to the Medical
21 Services Corporation customers?

22 A Yes, the majority, except for about ten percent.

23 Q Where are those other ten percent located?

24 A Well, they're in the same areas generally, in Burien or
25 Seattle, or Bellevue.

108 Rowland-Cross (Horenstein)

1 Q The kind of urbanized areas, then?

2 A Yeah.

3 Q I also recall that you testified that you've got plenty
4 of business right now; you've guys have got enough to
5 keep you busy. Do you have some type of internal
6 policy that you decide if you were contacted by
7 somebody else whether or not you could handle those
8 additional customers?

9 A We've never turned any away, but we're not out actively
10 promoting new business right now.

11 Q If perhaps you were contacted by somebody outside of
12 that urbanized area, would you be able to service them,
13 or would you need to -- would you be able to service
14 them?

15 A As long as it was Seattle, King County, we could, yes.

16 Q If, for instance, you were contacted by somebody that
17 was outside of that area, how would you handle that?

18 A We would just tell them we're not equipped and ready to
19 do that.

20 Q And I have clarification on your rates; the way that
21 they were set and how they were calculated. You talked
22 about -- apparently, it was just the transportation
23 costs and -- the pick-up and transportation costs that
24 the factors of those rates. Does the distance for
25 picking up for those customers have any bearing on

1 that, or do you charge all your customers the same
2 amount for small boxes, large boxes?

3 A About the same.

4 Q About the same?

5 A I should say the same, yes.

6 Q They are the same?

7 A (Witness nods head affirmatively) Uh huh.

8 MS. HORENSTEIN: No further questions.

9 JUDGE ANDERL: Mr. Rowland, I have a few
10 questions.

11

12

EXAMINATION

13 BY THE COURT:

14 Q In the beginning of your testimony when you talked
15 about training, you mentioned something about Quantum
16 Laboratories training?

17 A I'm on the staff there and we utilize their training
18 facilities for -- we train all our technicians through
19 the WISHA and the OSHA, and the KLEA regulations, and
20 they get the same basically that I've given -- my
21 daughter and myself have gone through the same
22 training.

23 Q And what is Quantum Laboratories?

24 A It's a large medical laboratory.

25 Q And what is your position on the staff there?

1 A I'm a clinical microbiologist and one of the directors.
2 Q Where exactly is the warehouse facility located where
3 the medical waste is stored before it's transported to
4 California?
5 A It's on Des Moines Memorial Drive?
6 Q At the address you gave?
7 A Yes.
8 Q That's the address you gave earlier?
9 A Yes.
10 Q Now when you were talking about the destruction of the
11 medical waste, I thought I understood you to say that
12 SES created a Certificate of Destruction and then sent
13 it to the generator, is that correct?
14 A No.
15 Q They give it to you?
16 A Yes, and we have to do that.
17 Q And then you forward a copy to the generator?
18 A Yes.
19 Q And that Certificate of Destruction is -- an example of
20 one of those is identified as Exhibit 12?
21 A That's right.
22 Q So that certificate doesn't, on its face, identify who
23 the generator was, does it?
24 A No, when we --
25 Q Explain to me again how that's identified in any way,

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if it is?

A When we ship, we ship with a packet that has all of the -- each box is identified and each receipt is copied and goes with that packet, so SES does have a packet when they receive that.

Q Do they keep those receipts?

A They keep those, yes, and then we receive the certificate. And then we -- actually what we do is make two copies and one copy goes with each one of the certificate or whatever; how many copies there are, how many times we picked up for them. We send a receipt along with their certificate back to them.

Q And the accounts for which you collect medical waste at this time, is that on a -- do you pick-up on a prearranged basis or on an on-call basis from them?

A Both.

Q Just depending on what the account prefers?

A Yes.

JUDGE ANDERL: Okay, thank you.

Mr. Johnson, redirect?

MR. JOHNSON: Yes.

JUDGE ANDERL: Well, actually, probably before you do that, it might be appropriate to address the exhibits then.

Mr. Finnigan, I believe you offered Exhibit

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14, is that correct?

MR. FINNIGAN: That is correct.

JUDGE ANDERL: Mr. Johnson, any objection to that Exhibit 14?

MR. JOHNSON: Exhibit 14 is --

JUDGE ANDERL: Yes, you're looking at it.

MR. JOHNSON: No, I have no objection to that.

JUDGE ANDERL: Exhibit 14 will be admitted.

[EXHIBIT NO. 14 FOR IDENTIFICATION RECEIVED IN EVIDENCE]

And I'd like to know if any of the intervenors will renew any of their objections to the previously identified exhibits before the Commission does, Mr. Smith?

MR. SMITH: I have no objections to any of the exhibits.

JUDGE ANDERL: Mr. Hartman?

MR. HARTMAN: No objection.

JUDGE ANDERL: Mr. Finnigan?

MR. FINNIGAN: The only one that I object to is Exhibit 8, which was identified by Mr. Rowland as describing what was true in 1990 but it does not describe what is true today.

JUDGE ANDERL: Mr. Sells?

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MR. SELLS: Just Exhibit 8, Your Honor.

JUDGE ANDERL: Mr. Wiley?

MR. WILEY: I join in the objection to Exhibit 8, Your Honor.

JUDGE ANDERL: Ms. Horenstein?

MS. HORENSTEIN: No objection.

JUDGE ANDERL: The objections to 8 will be overruled and the previously identified exhibits which have not yet been admitted will be admitted at this time, noting that Exhibit 11 has been withdrawn.

[EXHIBIT NOS. 1, 2, 5, 6, 7
AND 8 FOR IDENTIFICATION
RECEIVED IN EVIDENCE]

Now Mr. Johnson, we'll proceed with redirect.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Smith asked you whether you can charge different customers different rates for the same service. If you were to do that, would that be something you would do?

A No, I haven't done that yet, no.

Q Would you consider it good business practice to charge different customers different rates?

A No.

Q Do the various regulations -- strike that.

1 And will you be able to supply the destruction
2 certificates for all the shipments you've made since
3 March 1991 as requested by Mr. Finnigan?

4 A Yes.

5 Q And you've indicated that you attempt to abide by the
6 Seattle/King County Health Department regulations, is
7 that correct?

8 A Yes.

9 Q Do any of those regulations regulate your operations
10 from an economic standpoint?

11 A No.

12 Q They don't require a Certificate of Public Convenience
13 and Necessity to be issued by them?

14 A No.

15 MR. JOHNSON: That's all I have.

16 JUDGE ANDERL: Any recross?

17 MR. SMITH: I have no questions.

18 MR. HARTMAN: I have just a few for
19 clarification if I may.

20
21 RE CROSS EXAMINATION

22 BY MR. HARTMAN:

23 Q On Exhibit No. 14, I didn't understand which portions
24 of it would not presently apply, and that's that
25 brochure.

115 Rowland - Recross (Hartman)

1 MR. JOHNSON: If you need one, here's my
2 copy.

3 A The Washington Utilities and Transportation exemption,
4 that's been removed. And I think that some of the
5 sharps containers and prices have changed a little bit.

6 Q (By Mr. Hartman) You have in the middle there a
7 phrase, "Consulting services." Under which entity is
8 that provided, General Ecology Consultants, or --

9 A Well, it would be more along the -- such as the new
10 regulations that have gone in through OSHA, and things
11 like that.

12 Q Do you charge for that or what?

13 A Yes, we would.

14 Q Under what entity?

15 A It would come under our laboratory, or under our
16 medical services.

17 Q Is that the General Ecology Consultants?

18 A I suppose that would be considered it, yes.

19 Q I had asked you a question, and I wonder if we
20 shouldn't revisit it. I believe the question I had
21 asked you previously is whether or not transportation
22 was the only consideration in your charges. I believe
23 I neglected to ask you also about incineration, whether
24 that was not also included in that charge to the
25 customer?

116 Rowland - Recross (Hartman)

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A It's all --

Q So the cost of transportation and incineration is what you charge them?

A Yes.

MR. HARTMAN: That's all. Thank you.

JUDGE ANDERL: I guess I have one or two other questions that have just recently come to mind.

FURTHER EXAMINATION

BY THE COURT:

Q I want to be perfectly clear on this entity which is identified in Exhibit No. 3, Kleenwell Biohazard Waste and General Ecology Consultants, Incorporated. Of all of the services that you or your corporate entities provide today that we've discussed, which services -- what is the total picture of the services that this Kleenwell Biohazard Waste and General Ecology Consultants, Incorporated provide?

A Primarily, picking up of waste.

Q And then the only other question I had is are you required to have any permits or special authorization to dispose of the waste in California at SES; does California require you to have any permit?

A We stop at the truck stops and so forth, so there -- but we haven't had --

1 MR. HARTMAN: I'm sorry, I can't hear.

2 A I say we do stop and go through the process of
3 California, but the truck stops, the weigh stations and
4 so forth.

5 Q (By the Court) But that's all?

6 A Yes.

7 JUDGE ANDERL: Anything further for this
8 witness?

9 MR. FINNIGAN: No.

10 MR. JOHNSON: No, not for me.

11 MR. WILEY: Your Honor, I have one question
12 following up to yours.

13 JUDGE ANDERL: Go ahead, Mr. Wiley.

14
15 RECROSS EXAMINATION

16 BY MR. WILEY:

17 Q Mr. Rowland, are you aware of any permitting
18 requirement for infectious waste imposed by the State
19 of California Department of Health regarding the
20 transportation of infectious waste through the State of
21 California, or any stickering requirement for
22 transportation related thereto?

23 A No, in Oregon we have to stop and check, but there's
24 nothing in Oregon, and California, I've forgotten. We
25 did have to buy -- I think we had to buy a permit or

1 something. I'm not sure.

2 Q Have you inquired of California regulators regarding
3 their requirements for the transportation of infectious
4 waste within California?

5 A Yes, we have, actually. We have talked with them.

6 Q And you understand they do have a permitting or trailer
7 stickering requirement when you bring infectious waste
8 into California?

9 A Yes, right.

10 Q And you do abide by those regulations imposed by the
11 State of California?

12 A We stop at the border, yes.

13 Q And I asked you, do you abide by those regulations
14 proposed by the State of California?

15 A Yes, yes.

16 MR. WILEY: No further questions.

17 JUDGE ANDERL: Okay.

18 MR. SELLS: May I ask one based upon that,
19 Your Honor, just one.

20 JUDGE ANDERL: Okay, and then I want to call
21 an end to it.

22
23 RECROSS EXAMINATION

24 BY MR. SELLS:

25 Q Do you put a State of California Health Department

1 sticker on your Budget rent-a-truck?

2 A No, I do not.

3 MR. SELLS: That's all.

4 JUDGE ANDERL: Thank you. You may step down.

5 [WITNESS EXCUSED]

6 Mr. Smith, during the break, you discussed
7 presenting a witness out of order?

8 MR. SMITH: Yes, Your Honor. It may be in
9 order. I don't know whether Mr. Johnson is done or
10 not, but I do have a witness who, for scheduling
11 purposes, I would like to put on now.

12 JUDGE ANDERL: Mr. Johnson?

13 MR. JOHNSON: I have no objection to --

14 JUDGE ANDERL: Do you have other witnesses?

15 MR. JOHNSON: No, I'm not contemplating any.

16 JUDGE ANDERL: Mr. Smith?

17 MR. SMITH: Your Honor, I call Mr. Wayne
18 Turnberg, please.

19
20 WAYNE TURNBERG having been first duly sworn on
21 oath, was called as a witness on
22 behalf of the Commission and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SMITH:

Q Would you please state and spell your name for the

120 Turnberg - Direct (Smith)

1 record?

2 A My name is Wayne Turnberg, T-u-r-n-b-e-r-g.

3 Q And Mr. Turnberg, what is your business address?

4 A It's the Washington State Department of Ecology, P.O.
5 Box 47600, Olympia, Washington, 98504.

6 Q Could you briefly describe your educational background?

7 A Yes, I earned a bachelor of science degree from the
8 University of Massachusetts in 1975; a Master of
9 science and public health degree from the University of
10 Washington in 1980.

11 Q And in what capacity are you employed by the Department
12 of Ecology?

13 A I am an environmental planner in the solid waste
14 support section with the Department, working with solid
15 waste issues.

16 Q Could you briefly describe your duties as an
17 environmental planner?

18 A Yes, I am responsible for -- well, my primary
19 responsibility is advising the State of Washington
20 Solid Waste Regulations. I also have a major component
21 of my work involved with medical waste issues.

22 Q Other than your present position, do you have any other
23 work experience in the field of medical waste or
24 infectious waste?

25 A Yes, I do. I began working with medical waste in 1987

121 Turnberg - Direct (Smith)

1 with the Seattle/King County Health Department. At the
2 time, the issue was just concerned with the issue. It
3 was just arising in the King County area. So I
4 conducted a -- served as a project manager for an
5 examination, a risk evaluation of infectious waste in
6 King County, Washington. The reason for the study was
7 to determine whether the risks to human populations
8 were presented from medical waste, and to develop
9 recommendations on how to regulate that waste stream,
10 if it needed regulation at all.

11 Based on the study, we worked on regulations for
12 biomedical waste or infectious waste. In King County,
13 I was the primary author of the regulations that were
14 passed by the King County Board of Health in the fall
15 of 1988.

16 Following that, the Washington State Legislature,
17 under a substitute Senate Bill 6264 --

18 MR. JOHNSON: Senate Bill what?

19 THE WITNESS: 6264. That was the 1988
20 legislature.

21 A Mandated the Department of Ecology to conduct an
22 examination of infectious waste as well on a state-wide
23 level, so I was obtained to manage the particular
24 project. That study was conducted over the latter part
25 of 1988 and 1989. We developed our reports, our

122 Turnberg - Direct (Smith)

1 findings and presented our recommendations to the 1990
2 legislature, so that was the purpose of that project.

3 Q (By Mr. Smith) Do you have any experience on the
4 federal or national level?

5 A Yes, I do. Just having worked with the State, I became
6 involved with federal activities as a state
7 representation, and as an individual in the country who
8 had -- because of the time I had spent with the issue -
9 - had developed expertise with the issue.

10 I served as a panel member and advisor to the U.S.
11 Congress Office of Technology Assessment for their
12 report to Congress, as well as an advisor and panel
13 member to the Council of State Governments for their
14 report to the state governments of the country.

15 Q Turning to the 1988 legislature Substitute Senate Bill
16 6264, was a report prepared as a result of that
17 legislative directive?

18 A Yes, it was. The legislature had a number of questions
19 based on the medical waste stream in the state.
20 Washington state had never addressed the medical waste
21 stream as a special waste stream, and had little
22 information at the time. When the legislature passed
23 this bill, this was back in 1988 when medical waste
24 wash-ups were occurring on the east coast and there was
25 a wave of concern across the country as to the health

1 effects resulting from improperly disposed medical
2 waste. So what they did was outline about 20 issues
3 that they wanted addressed, and they wanted presented
4 in a report back to them. So this report focused on
5 those points that the legislature wanted addressed and
6 provided recommendations to the legislature based on
7 our findings.

8 Q And what was your role in that report?

9 A I was the project manager and the senior author, the
10 primary author of the report.

11 Q And as a result of the study, you indicated you made
12 some recommendations to the legislature?

13 A We did. The three primary recommendations, first of
14 all, was that we recommended that the state develop a
15 medical waste regulation.

16 MR. JOHNSON: A medical waste what?

17 THE WITNESS: Regulation.

18 A We felt that the waste stream should be defined and
19 regulated in a specific way. We also wanted to address
20 the need to provide information to medical waste
21 generated from homes, and we also wanted to provide
22 information and education to the waste industry workers
23 regarding medical waste handling; what to do when
24 medical waste is encountered. And I'm using the term
25 "medical waste" very loosely here. This is a term that

1 has taken on many different terms. I believe the
2 current word that is used that was just passed by the
3 1992 legislature is biomedical waste. The term that we
4 are using in 1989 was infectious waste, but this refers
5 to a specific, clearly defined part of the waste
6 stream.

7 Q (By Mr. Smith) In your report and your studies, did
8 you identify any dangers to waste industry personnel
9 from exposure to infectious waste or medical waste?

10 A We did. This we viewed as a -- well, the waste workers
11 as the group, or that part of our population that is
12 facing the major exposure if there is an exposure. We
13 conducted a survey, which we sent out to 940 waste
14 workers, including collectors, landfill operators,
15 transfer station operators, et cetera, asking them in
16 the survey what kind of exposures they were facing. We
17 had a number of multiple choice questions. What we
18 found is that there is exposure occurring, particularly
19 with regard to the waste collectors. Of 240 waste
20 collectors that responded to the survey, ten percent
21 over the course of the year preceding the survey
22 reported having been stuck by a needle, and we felt
23 that that was a significant exposure.

24 We didn't identify disease transmission resulting
25 from these exposures, or any transmission resulting

1 from any exposure in the country. So the actual
2 transmission has not been identified, but we have
3 certainly have identified an exposure problem,
4 particularly with regard to hypodermic needles.

5 Q And I take it from your recommendation, notwithstanding
6 the fact that you could not identify any actual
7 infections, you still believe that this segment of the
8 waste stream should be regulated?

9 MR. JOHNSON: I object to the question as
10 being highly leading and suggestive.

11 JUDGE ANDERL: Mr. Smith?

12 MR. SMITH: Well, Your Honor, I don't believe
13 it is leading. I haven't suggested the answer other
14 than to state what he stated previously, which is
15 already on the record as his testimony. I can rephrase
16 it if you like. I really don't see the need.

17 JUDGE ANDERL: I'll overrule the objection.
18 I think it is just a restatement of what he's already
19 testified to, so you can answer the question if you
20 remember.

21 A I think just a brief explanation of the findings: We
22 looked at the world's literature identifying studies
23 that have examined the presence of organisms in the
24 waste stream. We concluded that the entire waste
25 stream contains organisms that are capable of causing

1 infection in humans in the right circumstances. Humans
2 shed human pathogens, and they find their way into the
3 waste streams from a number of sources. So the entire
4 waste stream, from the strict term of infectious, it
5 could be considered to be infectious. But we did
6 identify particular components of the waste stream that
7 appeared, based on our findings, to present a greater
8 risk to human population than that would normally be
9 found in the waste stream.

10 A greater risk was based on the ability to
11 puncture the skin, for instance, or the concentration.
12 Hypodermic needles, for instance, when loose in the
13 waste stream, these are devices that have been in
14 contact with human blood, and if not handled properly,
15 they can puncture the skin inadvertently of a waste
16 worker or an individual, and cause a potential for
17 disease transmission.

18 Laboratory wastes, stocks and cultures of grown,
19 pure infectious agents present concentrations that are
20 just not normally found in the waste stream, and if
21 contact with that component of the waste stream occurs,
22 again, the risk would be increased for potential
23 transmission.

24 Looking at studies that have examined infections
25 occurring within medical institutions, particularly

1 within hospitals, the waste stream of hospitals has not
2 been implicated into these transmissions, so the use of
3 hypodermic needles, needle sticks within hospitals has,
4 there's a great deal of information showing that the
5 number of needle sticks that inadvertently occur in
6 hospitals in the course of health care, some of these
7 do result in disease transmission incidents.

8 Laboratories have a long list of reported
9 documented cases of disease transmission resulting from
10 improperly handled cultures or stocks. So though it
11 has not been identified in the environment, we felt
12 that it was still potentially -- well, it was possible
13 for disease transmission to occur based on exposures to
14 this particular component of the waste stream after it
15 leaves the medical institution and enters the
16 environment.

17 Q (By Mr. Smith) When you talk about risk of exposure to
18 infectious waste, what are the major concerns, or major
19 diseases that are possible.

20 A Well, the focus has been -- the issue has arisen
21 because of the HIV, the AIDS virus. This certainly has
22 brought the issue to the front of the public's concern.
23 In fact, the studies of HIV in the environment show
24 that the virus itself is very fragile, and that contact
25 with waste is not really a way that this organism is

1 going to be transmitted, but there are other organisms,
2 particularly with regard to the Hepatitis B virus.
3 Hepatitis B can survive in the environment for periods
4 of time, and can remain infective, and can potentially
5 be transmitted from a needle stick injury or contact
6 with waste blood down the stream. So for blood borne
7 pathogens, that is the primary pathogen of concern.

8 Q In your report to the legislature, did you draw any
9 conclusions as to whether the regulation of infectious
10 waste was a matter with which the State should be
11 concerned?

12 MR. JOHNSON: Your Honor, I'm going to
13 object. Obviously, this report has been reduced to
14 writing. We haven't been favored with a copy, and if
15 the witness is going to testify concerning the contents
16 of this report, it seems to me only appropriate that
17 copies be supplied.

18 MR. SMITH: Well, Your Honor, I can ask the
19 questions without regard to the report, and I'll be
20 happy to drop that reference if that will help.

21 JUDGE ANDERL: Okay.

22 MR. JOHNSON: Well, we'll see.

23 JUDGE ANDERL: Okay, go ahead and rephrase
24 the question.

25 Q (By Mr. Smith) Mr. Turnberg, in your view, is the

1 regulation of infectious waste a matter with which the
2 State should be concerned?

3 A I believe that the components of the waste stream that
4 have been identified as biomedical waste by the State
5 legislature, it would be prudent for that waste stream
6 to be properly managed. I believe that it ought to be
7 regulated.

8 Q And are you aware that the Utilities and Transportation
9 Commission has adopted some rules regarding the
10 collection of infectious waste by infectious waste
11 carriers?

12 A Yes, I am.

13 Q And did you have a chance to review those rules prior
14 to their adoption?

15 A Yes, I did.

16 Q And did you comment at the hearing during which those
17 rules were discussed before the Commission?

18 A I did. I had the opportunity to comment when the rules
19 were in draft form early in the process, and just prior
20 to adoption at that hearing.

21 Q I just want to ask you a couple of questions about
22 those rules. In the rules, the Commission adopted a
23 definition of biohazardous or biomedical waste that
24 includes six categories, which are animal waste, liquid
25 human body fluids, cultures and stocks, bio-safety

1 level for disease waste, pathological waste and sharps
2 waste.

3 Are you generally familiar with those categories?

4 A Yes, I am.

5 Q And the Commission's rules impose certain requirements
6 on collectors of those categories of waste. In your
7 opinion, is there a basis for the Commission to
8 categorize these types of waste in terms of protection
9 of the public health?

10 A Yes, I do. There is a rationale for finding these
11 wastes separately from the rest of the waste stream.
12 The definition itself came from an analysis of
13 potential health risk.

14 Q In your opinion, do those rules on infectious waste
15 promote the safe management of the waste stream to the
16 extent it consists of biomedical or biohazardous waste?

17 A Yes, I believe they do.

18 MR. SMITH: Those are all my questions.

19 Thank you, Mr. Turnberg.

20 JUDGE ANDERL: Mr. Johnson?

21
22 CROSS EXAMINATION

23 BY MR. JOHNSON:

24 Q Mr. Turnberg, in your study of recommendations, you
25 didn't address the question of whether or not a

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1 Certificate of Public Convenience and Necessity should
2 be assessed by a transporter of these types of
3 commodities, did you?

4 A We looked at impacting regulations and statutes, and we
5 had one chapter, or one attachment of the report
6 addressing that, and we did identify the requirement,
7 the UTC requirement for that.

8 Q Can you suggest to us in what way safety is promoted by
9 the imposition of a economic regulation requiring a
10 certificate?

11 MR. SELLS: Your Honor, I'm going to object
12 to that question as beyond the scope of direct
13 examination. Mr. Turnberg testified regarding the
14 risks associated with exposure to infectious waste.
15 Mr. Johnson is getting into the area of economic
16 regulation, entry into the market, and we will
17 sponsoring another witness who will testify on that
18 subject.

19 MR. JOHNSON: We have no objection to --
20 we're in perfect agreement that infectious medical
21 waste is a hazardous commodity and needs to be treated
22 carefully. What we object to and believe there is no
23 basis, no scientific or other basis for is a
24 requirement that transporters obtain Certificates of
25 Public Convenience and Necessity. So if this testimony

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1 is directed solely to the issue of safety, we have no
2 objection.

3 JUDGE ANDERL: Okay, and then will you
4 withdraw that question?

5 MR. JOHNSON: What's that?

6 JUDGE ANDERL: Would you withdraw the
7 question?

8 MR. JOHNSON: Yes, and I'll go to another.

9 Q (By Mr. Johnson) You referred to a number of people
10 involved in disposing medical waste or transporting it
11 as having suffered injuries from sharps. Can you
12 identify any other specific problem that has developed
13 with personnel, other than these punctures from sharps?

14 A There was a percentage -- I don't remember the
15 statistic, so -- I do have a copy of the report with me
16 that includes exposures to blood on the job -- so there
17 was that reported as well.

18 Q A reported incident?

19 A Well, this is based on the study, based on the survey.
20 They reported on the survey that they had --

21 Q That these are possible?

22 A That this had occurred to them. But the question
23 focused on whether or not this had ever happened to
24 them, and what the most recent occurrence was, so they
25 had to put a yes or a no, had it happened; and then, if

1 they put a "yes," they had to put down a date when it
2 last happened, a month and a year.

3 Q But by far, the most frequently reported type of injury
4 was from the sharps?

5 A Well, that was the one we were most concerned about,
6 and it was the most frequently reported.

7 Q And what kind of measures did you recommend to reduce
8 the incidence of injuries?

9 A Well, that came on two levels: The first was --
10 actually three levels: We felt that a state-wide
11 regulation would help with medical facilities. We
12 thought that getting the -- hospitals, for the most
13 part, had been focusing more on proper management of
14 medical waste, but there are just hundreds of smaller
15 facilities, the dentists and the doctors offices that
16 have not been as in tune to proper management as the
17 larger facilities. So we felt that that regulation
18 would help. We wanted to address the public -- the
19 sharps coming from homes; for instance, in the state of
20 Washington, there are about 30,000 insulin using
21 diabetics, and we applied to the EPA for a grant
22 funding, which we got. We just completed a study --
23 actually, it goes beyond a study. It was specifically
24 designed for developing and providing recommendations
25 to home users of sharps on their proper disposal,

1 circulating 60,000 brochures around the state.

2 Q How long have your recommendations be implemented in
3 the form of changes in the law?

4 A They, with the Department of Ecology, took the
5 recommendations and went to the legislature to request
6 legislation attempting to establish a statute that
7 would have given the Department authority to write
8 rules, biomedical or infectious waste rules. That was
9 in 1990, and the attempt was to feed it in the House,
10 and the agency did not go back; did not seek that
11 legislation the following year.

12 Q So there's been no change in the law as a result of
13 your report?

14 A Well, the Hospital Association was feeling that they
15 were being impacted by -- what has happened is that the
16 State doesn't have a uniform program for medical waste
17 management. A number of local governments have picked
18 up their own, or adopted their own programs, such as
19 Seattle/King County, or Tacoma/Pierce County, for
20 instance. But the definitions between counties have
21 differed. So the Hospital Association wanted to get an
22 even playing field in terms of definition, and got
23 backing for a bill that was just adopted by the
24 legislature, passed by the legislature during this last
25 session that defined medical waste state-wide, pre-

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1 emptying local definitions -- pre-empting all
2 definitions in the state, so it established that.

3 Q So your recommendations have generated some activity
4 within the health care industry and have promoted
5 changes in the way these items are handled?

6 A Yes.

7 Q Were your recommendations directed at all toward
8 specific things that the transporter could do to reduce
9 risk, or is that directed at other -- the health care
10 industry and other groups?

11 A The original recommendation for the state-wide
12 regulation would have included some element of
13 transportation.

14 Q Would have?

15 A Yeah, but it didn't. So that was not --

16 MR. JOHNSON: That's all I have.

17 JUDGE ANDERL: Mr. Hartman?

18
19 CROSS EXAMINATION

20 BY MR. HARTMAN:

21 Q As I understand, you're saying that the legislature did
22 about --

23 JUDGE ANDERL: Mr. Johnson?

24 MR. JOHNSON: Is it appropriate for other
25 counsel not presenting this witness to have -- I would

1 think this is the witness of the Attorney General, and
2 I'm the only one who is able to cross-examine him.

3 JUDGE ANDERL: My experience is rather
4 limited in these things, but it was my understanding
5 that intervenors could participate fully in cross-
6 examination. Does the Assistant Attorney General have
7 any objection?

8 MR. SMITH: I have no objection so far,
9 anyway. But it has been typical for all parties to
10 cross all witnesses, and at some point, I guess the
11 line is drawn, but that has been the typical practice
12 in general.

13 JUDGE ANDERL: I'll allow the intervenors to
14 cross this witness. Go ahead, Mr. Hartman.

15 Q (By Mr. Hartman) I just wanted clarification. As I
16 understand, the legislature has only adopted a
17 definition of biohazardous waste?

18 A Yes, what the bill did was establish that definition,
19 and it gave the Department of Health, in consultation
20 with the Department of Ecology and local health
21 departments, the authority to review new biomedical
22 waste treatment technologies, or any biomedical waste
23 treatment technology; and it also gave the Department
24 of Health the authority to write rules for how they go
25 about doing that assessment. It's not an approval, but

1 it's just an evaluation.

2 Q Other than the specific counties that have been
3 enumerated, by giving consideration to the rules
4 adopted by the Utilities and Transportation Commission,
5 are there any other state-wide rules that apply to this
6 transportation?

7 A Not to the transportation, no; not that I'm aware of.

8 Q Or I should say the handling in transportation.

9 A The handling internally, the state -- the federal OSHA,
10 Occupational Safety and Health Administration, has
11 regulations for how -- well, it's blood borne pathogen
12 protection regulations. And those regulations which
13 were just recently published in December, I believe it
14 was, have a component for how medical wastes are
15 handled internally within medical facilities. They
16 have certain packaging requirements, labeling
17 requirements. But once it reaches the back door
18 facility, that's where those regulations end. Once it
19 enters the environment, we'll call it, that's either
20 the local regulations in our state have to apply, or
21 the UTC regs.

22 Q I guess that gets to my question -- at that point -- or
23 it leaves a door -- are there any other state-wide
24 regulations, other than those published the Washington
25 Utilities and Transportation Commission that regulate

1 the transportation of this waste?

2 A Not that I'm aware of.

3 MR. HARTMAN: That's all I have.

4 JUDGE ANDERL: Mr. Finnigan?

5 MR. FINNIGAN: No questions.

6 JUDGE ANDERL: Mr. Sells?

7 MR. SELLS: No questions, Your Honor.

8 JUDGE ANDERL: Mr. Wiley?

9 MR. WILEY: I just have one, Your Honor.

10
11 CROSS EXAMINATION

12 BY MR. WILEY:

13 Q Nice to see you again, Mr. Turnberg.

14 I missed what you're doing currently at the
15 Department of Ecology involving solid waste. Are you
16 still involved in infectious or medical waste, as we
17 call it?

18 A Yes, my primary function right now is the project
19 manager for revising the State's solid waste
20 regulations. This is Chapter 173.304 WAC. The
21 Department of Ecology doesn't have any direct authority
22 over the biomedical waste stream, other than providing
23 guidance because I have done the work in the past, I'm
24 the one answering the questions, primarily for the
25 public.

1 Q So you're involvement in medical waste is a part of
2 this process of reclassifying the DOE regulations on
3 solid waste of WAC 173, is that correct; that you're
4 involved as a part of that whole process?

5 A Well, I guess to answer that, I represent the
6 Department of Ecology on medical waste issues as they
7 come up. The revision that we're involved with right
8 now is not going to be addressing regulations for
9 biomedical waste, at least as our current thinking is.

10 Q But on a day-to-day basis, you're the medical waste
11 guru at DOE, is that correct?

12 A Yes, by default, I guess.

13 MR. WILEY: No further questions.

14 JUDGE ANDERL: Ms. Horenstein?

15 MS. HORENSTEIN: No questions, Your Honor.

16 JUDGE ANDERL: Anything on redirect?

17 MR. SMITH: No, Your Honor.

18 JUDGE ANDERL: If there's nothing further for
19 this witness, then, you may be excused.

20 [WITNESS EXCUSED]

21 Mr. Johnson, did I understand from you that
22 your presentation was complete with Mr. Rowlands'
23 testimony?

24 MR. JOHNSON: Yes.

25 JUDGE ANDERL: Mr. Smith, do you have another

1 witness?

2 MR. SMITH: Your Honor, some of the
3 intervenors are going to have witnesses testifying
4 today. By agreement with counsel, their own counsel
5 will do the direct with them, and I don't know who is
6 going to go first, though.

7 JUDGE ANDERL: But you have no other
8 witnesses today?

9 MR. SMITH: That's correct.

10 JUDGE ANDERL: Have you arranged that amongst
11 yourselves, or do we need to go off the record for a
12 minute to discuss that?

13 MR. WILEY: We'll go off the record.

14 MR. FINNIGAN: Just a few minutes, Your
15 Honor.

16 JUDGE ANDERL: We'll go off the record.

17 [BRIEF RECESS TAKEN]

18 [EXHIBIT NOS. 17 AND 18 MARKED
19 FOR IDENTIFICATION]

20 We're back on the record.

21 Mr. Smith, I understand that you have one
22 other witness who will be presented the next time we
23 convene.

24 MR. SMITH: Yes, Your Honor. I've arranged
25 for him to come June 11th, and we wouldn't finish with

1 A Rabanco is the parent company.
2 Q Handing you what's been marked as --
3 JUDGE ANDERL: Exhibit 17.
4 Q (By Mr. Finnigan) 17, would you identify that, please?
5 A This is the G-12 permit that operate under.
6 MR. JOHNSON: Your Honor, I didn't hear the
7 witness' name.
8 JUDGE ANDERL: Could you state your name for
9 the record, please?
10 THE WITNESS: Stan Robinson.
11 JUDGE ANDERL: Thank you.
12 Q (By Mr. Finnigan) And Exhibit 17, then, is the
13 operating authority for Rabanco Companies and Sure-Way
14 Medical Services, Inc. issued by this Commission?
15 A Yes.
16 Q Would you please briefly describe for us the services
17 offered by Sure-Way Medical Services, Inc.?
18 A We provide biohazardous waste pick-up for the entire
19 area that we service under the "G" permit.
20 Q And the "G" permit is largely in the King County area?
21 A Yes.
22 Q And your services include the collection and disposal
23 of biohazardous and medical waste?
24 A That's correct.
25 Q Showing you what has been marked as Exhibit 18, would

143 Robinson-Direct (Finnigan)

1 you please identify that exhibit for us?

2 A It's basically an equipment list that we presently own.

3 MR. HARTMAN: I didn't get the identification
4 number on the permit.

5 JUDGE ANDERL: Exhibit 17.

6 Q (By Mr. Finnigan) Is all of this equipment that you
7 have listed on Exhibit 18 being used to its full
8 capacity today?

9 A I'm sorry to say, no.

10 Q Are you ready, willing and able to provide service to
11 all accounts for medical and infectious waste within
12 your service area if you are allowed to serve them?

13 A Yes.

14 MR. JOHNSON: I'm going to object to this
15 type of testimony. We're not here on an application
16 for authority. We're performing certain services which
17 we contend are exempt from regulation because of their
18 interstate nature. To take the time for all these
19 parties to put in their authority, their equipment and
20 their usual consistency to handle a lot more traffic is
21 not, to me, any issue in this case. This is not an
22 application for Convenience and Necessity. It's an
23 opportunity for us to describe our services and to
24 buttress our contention that it's not subject to state
25 regulation. And I think this type of testimony is

144 Robinson-Direct (Finnigan)

1 beyond the issues in the case.

2 JUDGE ANDERL: Mr. Finnigan, would you like
3 to respond to that?

4 MR. FINNIGAN: Sure. First of all, the
5 question was asked and answered. Secondly, I have but
6 one more question along these lines, and that is -- and
7 the purpose for which this testimony is offered to show
8 the effect on the regulated carriers that the
9 unregulated activity has had, and I think that is
10 something that should be considered.

11 JUDGE ANDERL: Okay, I'll allow the line of
12 questioning and the objection is overruled.

13 MR. FINNIGAN: May I have the next exhibit
14 marked for identification?

15 JUDGE ANDERL: Did you give me one?

16 MR. FINNIGAN: I will give you one.

17 JUDGE ANDERL: The next document then for
18 identification will be Exhibit 19.

19 [EXHIBIT NO. 19 MARKED FOR
20 IDENTIFICATION]

21 Q (By Mr. Finnigan) And Mr. Robinson, will you identify
22 what Exhibit 19 is?

23 A I don't have one.

24 [DOCUMENT PROFFERED TO WITNESS]

25 This is basically a list of accounts that we've

145 Robinson-Direct (Finnigan)

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lost to Kleenwell.

Q And would you describe how the exhibit is put together and what is depicted on that exhibit?

A It's basically the name and address of the generator or the customer, their phone number, and when they terminated, and the average loss of revenue for each account.

Q When they terminated is when they terminated your service and began service with Kleenwell?

A Yes.

Q And the average lost revenue, that's on a per month figure?

A Yes.

MR. FINNIGAN: Thank you. I'll offer Exhibits 17, 18 and 19 at this time.

JUDGE ANDERL: Any objection?

MR. JOHNSON: Well, I renew my objection.

JUDGE ANDERL: Mr. Smith, any objections?

MR. SMITH: No objection.

MR. HARTMAN: No objection.

JUDGE ANDERL: Any objections from any other parties?

MR. SELLS: No.

MR. WILEY: No.

MS. HORENSTEIN: No.

1 JUDGE ANDERL: I believe that the documents
2 are relevant to the issues here today, and I will
3 overrule the objection and admit Exhibits 17, 18 and
4 19.

5 [EXHIBIT NOS. 17, 18 AND 19
6 FOR IDENTIFICATION RECEIVED IN
7 EVIDENCE]

8
9 CROSS EXAMINATION

10 BY MR. JOHNSON:

11 Q Calling your attention to --

12 JUDGE ANDERL: Is --

13 MR. FINNIGAN: Yes, Mr. Robinson is available
14 for cross-examination.

15 Q (By Mr. Johnson) Mr. Robinson, calling your attention
16 to Exhibit 19, the last exhibit, the abbreviation
17 there, "PM," I take it, means "per month"?

18 A Yes.

19 Q And it's your representation that all of these, to the
20 best of your knowledge, are currently customers of
21 Kleenwell who were formerly customers of your company,
22 is that correct?

23 A Yes.

24 Q Do you have a similar list of customers that were
25 formerly customers of Kleenwell that you have taken

1 from them and Rabanco is now serving?
2 A No.
3 Q There are a number of entries which -- in fact most of
4 them -- the revenue is shown as \$20.00, except for two
5 instances where it's \$22.71. Is that the charge that
6 you make for a medical clinic pick-up for a small --
7 A For our small container on a once minimum monthly
8 service, yes.
9 Q Well, your charges appear to be the same as
10 Kleenwell's, isn't that true?
11 A No.
12 Q What's the difference?
13 A Well, as Mr. Rowland stated earlier, a small box is a
14 ten gallon box, which is the same as our ten gallon box
15 and he charges \$12.00.
16 Q I see. Are your boxes the same size; your small one is
17 the same as his small ones?
18 A The small box is the ten size.
19 Q Your Exhibit 17 is rather difficult for a layman to
20 interpret in that it's all legal descriptions and so
21 on. Could you tell us basically what parts of the King
22 and Pierce Counties that are embraced in your
23 territory?
24 A It's basically a large portion of King County and a
25 very small portion of Snohomish County.

1 Q And some of Pierce apparently, looking at the very
2 first --
3 A Well, even a smaller portion of Pierce County.
4 Q But if an area is served by, say -- you're familiar
5 with Nick Raffos, are you not?
6 A Yes.
7 Q Does he not serve a large portion of King County?
8 A No.
9 Q He does serve some of King County, is that right?
10 A I believe so, yes.
11 Q And the portions he serves, you don't, and visa versa,
12 isn't that correct?
13 A No, I think there's overlapping territories in some
14 areas there.
15 Q Oh, I see.
16 MR. JOHNSON: That's all I have of Mr.
17 Robinson.
18 JUDGE ANDERL: Mr. Smith?
19 MR. SMITH: I have no questions.
20 JUDGE ANDERL: Mr. Hartman?
21 MR. HARTMAN: No questions.
22 JUDGE ANDERL: Mr. Sells?
23 MR. SELLS: None, Your Honor.
24 JUDGE ANDERL: Mr. Wiley?
25 MR. WILEY: None.

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JUDGE ANDERL: Ms. Horenstein?

MS. HORENSTEIN: None.

JUDGE ANDERL: Anything further for this witness?

MR. FINNIGAN: No, Your Honor.

JUDGE ANDERL: Thank you, Mr. Robinson. You may step down.

[WITNESS EXCUSED]

I'm sorry, I have a question. You're going to have to come back up here, just so you're by the microphone, and this is a question on Exhibit 19.

EXAMINATION

BY THE COURT:

Q Some of the accounts don't indicate a termination date. Could you just explain that briefly?

A I don't know why she didn't put that. I can't explain that.

Q But is your testimony that whether there's a termination date there or not, that these are all people who were previously customers of yours who are no longer taking service from you?

A Yes.

JUDGE ANDERL: Anything else? That's all I have.

1 MR. JOHNSON: I would like one other
2 question.

3 JUDGE ANDERL: Go ahead.

4
5 RECROSS EXAMINATION

6 BY MR. JOHNSON:

7 Q You show here on Exhibit 19 some 14 different accounts.
8 How many active accounts does your company have at this
9 time in this aspect of your operation of Sure-Way?

10 A In our certificated area?

11 Q Yes -- no, your -- well, whatever Sure-Way is doing.

12 A Well, that would be in our certificated area.
13 Approximately 480.

14 MR. JOHNSON: Thank you.

15 JUDGE ANDERL: Thank you --

16 Q (By Mr. Johnson) Well, those do include large
17 generators, like hospitals and so on. They're not all
18 small like these are?

19 A Very few hospitals.

20 JUDGE ANDERL: Is there anything further for
21 this witness?

22 [NO RESPONSE]

23 That's it, then. Thank you, Mr. Robinson.

24 [WITNESS EXCUSED]

25 Mr. Finnigan, did you have other witnesses?

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MR. FINNIGAN: No, I do not.

JUDGE ANDERL: And the next intervenor to call a witness?

MR. WILEY: By mutual agreement, I think that's myself, Your Honor. I'd call Jeff Daub to the stand.

JUDGE ANDERL: Would you step up to the witness chair, please.

JEFF DAUB having been first duly sworn on oath, was called as a witness on behalf of the Intervenor and testified as follows:

DIRECT EXAMINATION

BY MR. WILEY:

Q Good afternoon, Mr. Daub. Could you please state and spell your last name for the record, and provide your business address?

A Yes, Daub, D-a-u-b, and the business address is 14102 N.E. 189th Street, Woodinville, Washington, 98072.

Q And by what company are you employed, please?

A American Environmental Management Corporation.

Q And what is your position with that company?

A I'm a sales representative and the Eastern Washington Sales Manager.

Q And how long have you occupied that current position?

1 A I've been sales representative for over three-and-a-
2 half years, and have managed the Eastern Washington
3 office for the last year-and-a-half.

4 Q Would you just generally and very briefly describe what
5 your duties as salesman and sales manager entail,
6 please?

7 A Essentially, solicit biohazard waste generating
8 accounts to go in and contain, transport and dispose of
9 biohazardous waste.

10 Q And do you provide what's known as in-service training
11 or training for generators on how to separate and
12 segregate their waste?

13 A Yeah, we do quite a bit of consulting work where we are
14 in-servicing, and also communicating new regulations,
15 the new blood borne pathogen standards, the recently
16 passed state-wide definitions, and then we also --
17 right now, most of the state has been left up to a
18 county to county regulation base, and so we need to
19 understand and communicate different regulations in
20 King County, then Pierce County, then Spokane County or
21 Kitsap County.

22 Q Do you also, for American Environmental Management, or
23 does American Environmental Management Corporation sell
24 sharps containers and latex gloves?

25 A Yeah, we provide a full line of barrier protection

1 products that go from gowns to eye protection, latex
2 gloves, sharps containers, et cetera.

3 Q In your job duties at American Environmental Management
4 Corporation, have you also been involved in hearings,
5 such as Washington Utilities and Transportation
6 Commission hearings?

7 A Yes, I have.

8 Q Have you testified in previous hearings on, for
9 instance, the Kleenwell application?

10 A Yes, I have.

11 Q And are you authorized to appear today on behalf of
12 American Environmental Management Corporation?

13 A Yes, I am.

14 Q Would you please describe, just briefly again for the
15 record, some of the background of American's operations
16 in the state of Washington as they pertain to the
17 issues in this proceeding; when did American commence
18 operation?

19 A American opened here in spring of '87, and at that
20 point, it was our understanding that we were not
21 required to obtain any type of authorization from the
22 WUTC.

23 Q Did you subsequently learn that you did require
24 authority?

25 A Yes, there were other competitors in the market place

1 at that time, and we found out, and applied for
2 authority in February of '88.

3 Q And prior to that time, did you operate under an
4 emergency temporary authority?

5 A Yes, we did.

6 Q And in spring of '88, or February of 1988, or spring
7 rather, did you obtain a temporary permit from this
8 Commission?

9 A Yes, we did.

10 Q And did that permit at that time authorize you to
11 transport collected materials to incineration points in
12 Whatcom County?

13 A Yes, we were authorized to transport to the Ferndale
14 incineration facility.

15 Q And during the fall of 1988, was there any change in
16 your operation that affected your operations and your
17 operating authority?

18 A Yeah, we in for a change to sites outside of
19 Sacramento, California, in Rancho Cordova.

20 Q Why was that change made?

21 A We own the site in Rancho Cordova, California, and we
22 felt that made good business sense to utilize a
23 disposal facility that we owned at that time.

24 Q And at that time, did you also amend your permanent
25 application for authority to allow for transportation

1 to that site?

2 A Yes, we did.

3 Q Did you also amend your temporary permanent similarly?

4 A Yes, we did.

5 Q And at the time that you shifted disposal to
6 California, did you have any discussions with the
7 Commission staff regarding whether your operations
8 continued to be regulated by the Washington Utilities
9 and Transportation Commission?

10 MR. JOHNSON: Objected to as immaterial and
11 irrelevant. This carrier is not an applicant here and
12 we're not an applicant. To give all the details of
13 what's happened with respect to their operating
14 authority is wasting time.

15 MR. WILEY: Your Honor, I do want to back up
16 and ask one question prior to that, but in response to
17 Mr. Johnson's objection, I think the nature of the
18 operations of this company is probably more relevant
19 than almost any other factual issue in this proceeding.
20 This is a company that is headquartered outside the
21 state of Washington and has subjected itself to
22 regulation by the Washington Utilities and
23 Transportation Commission, whether or not it disposed
24 of the material in the state of Washington. And its
25 experience and background, and compliance pattern is

1 very relevant, I believe, to your addressing of the
2 legal issues in this proceeding.

3 JUDGE ANDERL: Well, I don't know if I'm
4 convinced of that. Clearly, based on what Mr.
5 Johnson's position is --

6 MR. JOHNSON: Well, my position is to go into
7 all the details of what this carrier has done in order
8 to maintain its monopoly status is of no consequence in
9 this classification to determine whether --

10 JUDGE ANDERL: Well, see, that's what I was
11 getting at, is my understanding of whether AEMC
12 considers itself to be subject to Commission regulation
13 or not doesn't really affect Mr. Johnson's position --

14 MR. WILEY: Your Honor, I think it's--

15 JUDGE ANDERL: -- in this proceeding, so
16 maybe you could explain to me a little bit more why we
17 need to go into this.

18 MR. WILEY: Okay. Again, I think we need to
19 adduce some facts here as to whether -- I don't know
20 what the legal argument is going to be made in brief by
21 the Respondent here, if there's any protection argument
22 that might be offered in terms of Constitutionality in
23 addition to burden on interstate commerce. I think we
24 have a relevant position on that to adduce facts on. I
25 think also the treatment, the uniform treatment of all

1 companies collecting and transporting waste in the
2 state of Washington by this Commission is relevant, and
3 the experience of this company as to how it was to be
4 treated when it shifted disposal sites out of the state
5 and what the regulatory issues were with regard to that
6 are pertinent to whether, at least factually, we're
7 going to get into any kind of equal protection argument
8 by law, as far as whether this is unconstitutional, et
9 cetera. I think we should be allowed to show what we
10 were led to understand by the staff and whether we
11 complied with that, and whether we were burdened as an
12 out of state corporation districtly than some other
13 entity would be.

14 So I agree that as to the classification
15 proceeding per se, the legal issue as to their
16 operations is all that you're looking at. But I do
17 think that the operations of competitors, regulated
18 competitors, in their particular circumstance is
19 relevant, at least as to some weight to your ultimate
20 decision.

21 MR. JOHNSON: Well, I would stipulate that
22 American Environmental is transporting their medical
23 waste that they pick up to an out of state destination;
24 and that they also happen to have authority from the
25 WUTC, but to into all the details, we have no way of

1 checking what they did and what they represented.

2 JUDGE ANDERL: Mr. Smith, any comments on--

3 MR. SMITH: Your Honor, I have no objection
4 to the question, the impact on the regulatory scheme,
5 and on regulated carriers of Kleenwell's operation is
6 relevant. I'm not sure how far Mr. Wiley is going to
7 go by way of background.

8 JUDGE ANDERL: I think that to the extent
9 that it might be helpful in terms of having this
10 background on the record and not knowing what kinds of
11 legal issues or constitutional arguments are going to
12 be raised on brief, it might be beneficial to have some
13 of this background. But let's not go into too much
14 detail or take too much time with it.

15 MR. WILEY: I agree, Your Honor, and I'll try
16 to keep it very short.

17 Q (By Mr. Wiley) Mr. Daub, based on your -- what is your
18 understanding of the shift in disposal sites in late
19 1988 and the regulatory treatment by this treatment of
20 your company's operations when you move disposal of in-
21 state material out of state?

22 A Well, at the time, we had questioned whether or not
23 where the authority lie, so there was a meeting between
24 an individual at the Attorney General's office and Mr.
25 Joe Keefe, and we were informed that we would still

1 fall under the WUTC regulatory requirements.
2 Q And based on that meeting, did you continue in your
3 permanent licensing procedure?
4 A Yeah, we went ahead with our --
5 Q And were those rather extensive and protracted?
6 A Very extensive.
7 Q Where is your company domiciled, please, or what state
8 are you incorporated in?
9 A The State of California.
10 Q And you do have a Northwest regional office, is that
11 correct?
12 A Yeah, we have an office in Woodinville, and another
13 satellite office in Spokane, Washington.
14 Q And during the entirety of the time you have been
15 operating under authorities issued by the Washington
16 Utilities and Transportation Commission, have your
17 rates been subject to regulation by this Commission?
18 A Yes, they have.
19 Q And your company ultimately was issued permanent
20 authority, is that correct?
21 A Yes, it was, in January.
22 MR. JOHNSON: Of what year?
23 THE WITNESS: Of '92.
24 Q (By Mr. Wiley) January 1991, would that be correct?
25 A Or, excuse me, yeah, '91.

1 MR. WILEY: Your Honor, if I could have that
2 marked.

3 JUDGE ANDERL: I'm being handed a document.
4 The next exhibit in line is No. 20.

5 [EXHIBIT NO. 20 MARKED FOR
6 IDENTIFICATION]

7 Are these two different things?

8 MR. WILEY: Yes, they're two different
9 things.

10 JUDGE ANDERL: And No. 20 is identified as
11 Permit G-231 with a date on it of November 30, 1990.
12 And I'll identify as Exhibit No. 21, a document that's
13 also identified as Permit G-231, and that has a date on
14 it of April 17, 1992.

15 [EXHIBIT NO. 21 MARKED FOR
16 IDENTIFICATION]

17 Q (By Mr. Wiley) And we'll shortcut through some of the
18 litany of authority developments, but at least until
19 April of 1992, were you limited to disposal at the
20 facility you operated at Rancho Cordova, California?

21 A Yes, we were.

22 Q And in April 1992, that restriction was removed, was it
23 not?

24 A Yes, it was.

25 Q Calling your attention to Exhibits 20 and 21, do those

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reflect those developments?

A Yes.

Q And since you have been operating, have you been aware of Kleenwell Biohazard?

A Yes, I have. I learned of Kleenwell, I believe, in the -- it would have been spring of '89, I believe.

Q And during that time, was that in your capacity of sales person out in the field where you became aware of Kleenwell Biohazard?

A Yes, it was.

Q And since approximately 1990, have you been aware that accounts of American Environmental have been lost to Kleenwell?

A Yes, we have.

Q Have you also been aware in your capacity as salesman as to where you solicit an account that that account is being served by someone else?

A Yes, on a number of occasions.

Q And is that someone else in those occasions Kleenwell?

A Yes, it is.

Q And have you reviewed your records to generally approximate how much revenue and the names of the accounts that have been lost to Kleenwell?

A Yes, I have.

MR. JOHNSON: Objected to as being

1 immaterial. I don't care if they lost all their
2 business to Kleenwell. That has no bearing on whether
3 or not Kleenwell's activities are subject to the
4 Commission regulations.

5 MR. WILEY: We've had this objection, Your
6 Honor, before, and it relates to Mr. Robinson's
7 testimony. This will be brief, but it is making a
8 record about economic deprivation caused by the
9 respondent on my client's regulated operations.

10 MR. JOHNSON: I should have objected to that,
11 but I didn't, but I am objecting to this.

12 JUDGE ANDERL: I'll overrule the objection
13 and allow the line of questioning. Keep it fairly
14 brief, Mr. Wiley, please.

15 Q (By Mr. Wiley) Mr. Daub, my question is have you
16 reviewed your records to determine some identities of
17 generators lost to Kleenwell?

18 A Yes, we have. On a monthly basis, it looks like we've
19 lost about \$300 a month on an account base, and as we
20 see it, it looks like there's probably been about five
21 to six accounts that we've lost in the last month-and-
22 a-half to two months, and there have been a number of
23 accounts that we have solicited, approximately 17, 18
24 which we've gone in and Kleenwell has already been
25 taking care of.

1 Q And have you noticed any trend in the loss of accounts
2 to Kleenwell in recent months?

3 A A trend in regards to more --

4 Q Whether that has been a stable increase?

5 A Increase, definitely.

6 Q And would you just briefly, for the record, tell us
7 about where you have terminals; how many employees you
8 have, and the type of equipment you have?

9 A Yeah, our two terminals again would be in Woodinville
10 and Spokane, Washington. We are running with seven
11 drivers out of the Woodinville facility, and we're
12 running with one driver out of Spokane. Do you want me
13 to go through the equipment list, or have you already
14 handed that out?

15 JUDGE ANDERL: I've been handed a document
16 which I'll identify --

17 MR. WILEY: Could we have that identified,
18 Your Honor?

19 JUDGE ANDERL: -- as Exhibit No. 22. It is
20 entitled "Washington Equipment List."

21 [EXHIBIT NO. 22 MARKED FOR
22 IDENTIFICATION]

23 Q (By Mr. Wiley) And Mr. Daub, would you identify
24 Exhibit 22, please?

25 A Yeah, Exhibit 22 shows our current equipment list,

1 which shows a number of cube truck vehicles that we use
2 for pick-up at generators; additionally, it shows semi-
3 truck trailers, and a number of different trailers that
4 we use to transport the waste on long-hauls. It shows
5 pallet jack and forklift, and miscellaneous office
6 equipment.

7 Q And have you brought a sales brochure that demonstrates
8 some of your equipment for admission into the record in
9 this proceeding?

10 A Yes, I have.

11 MR. WILEY: Would you please, Your Honor,
12 mark as the exhibit next in line.

13 JUDGE ANDERL: I do have a copy of that.
14 It's an advertising brochure, and I'll mark that as
15 Exhibit No. 23.

16 [EXHIBIT NO. 23 MARKED FOR
17 IDENTIFICATION]

18 Q (By Mr. Wiley) Mr. Daub, would you identify an exhibit
19 for identification 23, please?

20 A Yeah, this is just a brochure that states what American
21 Environmental does; what we're authorized to do, how we
22 do it. It explains our containers, lockers that we can
23 provide; it states something about our insurance and
24 our Certificate of Destruction that's provided to our
25 customers.

1 Q Does American Environmental also hold a local permit,
2 such as has been referred to in the Respondent's
3 testimony from the Seattle/King County Department of
4 Health and/or other counties?

5 A Yeah, right now, I believe, we're holding individual
6 county permits in five or six different counties:
7 Kitsap, Snohomish, Pierce, King, Spokane. I believe
8 there's another one, it might Yakima.

9 Q And do these counties that you have permits from
10 require particularized operations as far as infectious
11 waste transporter vehicles, et cetera?

12 A Yeah, on an annual basis, many of those permits require
13 that we take our vehicles down, and that they're
14 inspected by the individual county inspector officer.

15 Q Does American Environmental Management Corporation
16 provide service throughout its geographic permit area,
17 which is the State of Washington?

18 MR. JOHNSON: Objected to as leading.

19 MR. WILEY: Well, I'll withdraw the question
20 and ask again, Your Honor.

21 JUDGE ANDERL: Okay.

22 Q (By Mr. Wiley) Where does American Environmental
23 Management Corporation provide service?

24 A Our authority requires that we provide service to all
25 points in the state of Washington, so if I get a call

1 from someone in Neah Bay, or up in Twisp, Washington,
2 even though it may be a single small box, that company
3 is still required, under the same tariff that I pick up
4 inside King County, to go to those outlying areas and
5 pick it up.

6 Q Do you, in fact, provide that service state-wide?

7 A Yes, we do.

8 Q Could you give us an example, other than Neah Bay, of
9 an outlying area that you serve in Eastern Washington?

10 A Yeah, we serve points in the Colville Indian
11 Reservation. We have served accounts in Omak,
12 Washington. There are a number of small areas that we
13 go to that will be a single account, and it will be two
14 to three hours away from anywhere else that we service.

15 Q Do you service these outlying areas at the same rate
16 levels under your tariff regulated by the Commission as
17 you serve more densely populated areas, such as Seattle
18 and Tacoma?

19 A Yes, we do.

20 Q Have you ever refused service to a generator because of
21 its location or its modest price that would be
22 generated?

23 A No, we have not.

24 Q Has your company invested resources in the state of
25 Washington?

1 A Yes, we have. In fact, we're participating in a
2 project right now where we'll be in several million
3 dollars deciding an in-state plant in Richland,
4 Washington that will utilize the vitrification
5 technology for the biohazard waste stream.

6 Q What would be the result, please, of American
7 Environmental's regulated Washington operations if
8 operations like Kleenwell are undeterred, in your view,
9 please?

10 A We'd probably try to reduce the territory in which we
11 serve. It makes it tough for our company that does
12 have to go to an area like Twisp and pick up one box
13 under the same rate, and where you see some of these
14 new companies entering the market place that, so to
15 speak, cream-skim highly, densely populated areas like
16 Seattle and Tacoma. So definitely, if companies like
17 that were able to stay, we would probably have to cut
18 out service to those generators in outlying areas. We
19 would question whether or not we would continue with
20 our plant in Richland, Washington. We'd probably have
21 to let go of some staff and try to reduce equipment.

22 Q Could you tell us, in conclusion, Mr. Daub, why you are
23 here today providing testimony in opposition to the
24 operations of Kleenwell Biohazard, Inc.?

25 A Yeah, I'm here testifying on the fact that we've

1 entered this market place. We're a California
2 corporation. We've utilized our incinerated in Rancho
3 Cordova, California. Our own company has looked into
4 the interstate commerce and not being regulated by the
5 State Utilities and Transportation Commission. We've
6 adhered to their requirements. We've adhered to their
7 tariffs, and have serviced the whole state, and to see
8 companies entering the market place unregulated
9 essentially infests like a company like ours; does not
10 allow us to do business, making reasonable profits.
11 And so basically, it destroys the backbone of the
12 business.

13 MR. WILEY: No further questions, Your Honor.
14 I'll tender the witness.

15 JUDGE ANDERL: And offer the exhibits?

16 MR. WILEY: Yes, I'm sorry, Your Honor, yes.

17 JUDGE ANDERL: That's all right. I'm just
18 trying to keep track.

19 Mr. Johnson, any objection to Exhibits 20,
20 21, 22 or 23?

21 MR. JOHNSON: Yes, I object to all of them as
22 not relevant to any issue.

23 JUDGE ANDERL: Mr. Smith?

24 MR. SMITH: I have no objection.

25 JUDGE ANDERL: Any of the other intervenors

1 have an objection?

2 [NO RESPONSE]

3 Those objections will be overruled, and those
4 four identified exhibits will be admitted.

5 [EXHIBIT NOS. 20, 21, 22 AND
6 23 FOR IDENTIFICATION RECEIVED
7 IN EVIDENCE]

8 Do you have any cross-examination for this
9 witness?

10 MR. JOHNSON: Yes.

11
12 CROSS EXAMINATION

13 BY MR. JOHNSON:

14 Q First of all, I don't believe you gave your first name.

15 A Jeff.

16 Q Jeff?

17 A Yeah.

18 Q And I think you indicated how long you've been with the
19 company, but I didn't hear.

20 A Yes, since October 1, of 1988.

21 Q And so your first employment with the company was when
22 you came to the state of Washington and your company
23 started operations in this state?

24 A Yeah, I went to work with them soon after they had
25 opened up the office in --

170 Daub - Cross (Johnson)

1 Q But you didn't work for them in California or
2 elsewhere?
3 A No, I did not.
4 Q This six million dollar plant you're proposing in the
5 Richland area, is that -- what is the six million
6 dollars being spent for; is that construction or what?
7 A I didn't say six million. I said several million.
8 Right now, we don't have an accurate hard cost on that
9 plant, but it will exceed probably several million
10 dollars.
11 Q But you don't have your contracts let yet for the
12 construction, is that it?
13 A We're in the process right now talking with different
14 subcontractors. We have optioned the land there. We
15 are through the permitting process, so we are in the
16 works. We have not started constructing yet.
17 Q You indicate you have seven trucks, or seven drivers, I
18 believe it was, in Woodinville, and one in Spokane.
19 A Correct.
20 Q Looking at your equipment list, out of this equipment
21 is office furniture, and forklifts and trailers, and
22 you appear to have seven trucks, is that correct?
23 A Seven trucks, and then a semi-tractor/trailer, so eight
24 transportation vehicles.
25 Q Where is the semi-tractor; is that used for the

1 movement to the destination down in California?

2 A It's used between the Spokane area, and then also
3 destinations within the state of Washington.

4 Q But you don't pick up at a medical clinic with the
5 semi-tractor, I take it?

6 A Large hospitals, we do.

7 Q Speaking of large hospitals, how many hospitals do you
8 have as accounts?

9 A I'll take a stab at it right now and say approximately
10 13.

11 Q 13. And taking another stab at it, what percentage of
12 your total volume of waste is picked up at one or the
13 other of the hospitals as opposed to the clinics and
14 smaller generators?

15 A A small percentage. I would say less than 15 percent.
16 The bulk of our business is the single doctors, dentist
17 type offices. In fact, I think at last count, we had
18 exceeded 1,100 individual facilities that we service.

19 Q Is the picture of the truck pictured on Exhibit 23, is
20 that one of your 1991 model trucks?

21 A I believe so, yes.

22 Q And the 1989 models are similar?

23 A Yeah, same --

24 Q Same size?

25 A -- size, just a couple of years older, right.

1 Q How many total accounts do you have?

2 A Total accounts, we are probably in excess of 1,200.
3 It's changing rapidly.

4 Q Increasing, I take it?

5 A Yeah, it's still increasing, despite new entries into
6 the market place.

7 Q Are you planning on adding additional equipment in the
8 near future?

9 A No, we're not. Right now, we're more concerned with
10 what's occurring in the market place, and so we're
11 looking at this very cautiously and have back-up plans
12 in case we actually have to reduce personnel and
13 equipment.

14 Q You gave the names of the counties but very rapidly and
15 I didn't get them down, the six or seven counties, I
16 believe it is, where you have county approval.

17 A I believe it's Snohomish, King, Pierce, Kitsap,
18 Spokane, and I'm failing to recall what the last county
19 is.

20 Q Of those five that you mentioned, they account for what
21 percentage of your total volume?

22 A I would say they probably account for 75 to 80 percent
23 of total volume.

24 Q And the trucks that you have stationed at Woodinville,
25 they concentrate on Snohomish, King, Pierce and Kitsap

1 Counties, I take it?

2 A Actually, we do service Yakima and Wenatchee with those
3 trucks, as well as from Bellingham down to Vancouver,
4 Washington with those same trucks.

5 Q Your Spokane truck, then, what does it cover?

6 A Spokane will go to the north tip of state, down into
7 Clarkston, Washington; it will head east and go --

8 Q The Northwest tip, I take it?

9 A That's the Southeast part. So it will go from
10 Northeast up into the Colville Indian reservation, on
11 down south past Pullman into Clarkston, and he will
12 also service Walla Walla, Tri-Cities, Moses Lake, and
13 the Omak area.

14 Q Now all that he gathers with that truck, he brings back
15 to Spokane to be ultimately transported to Seattle, is
16 that right?

17 A Correct.

18 Q And you now have the authority reflected in Exhibit 20.
19 Do you know of any other carrier that has state-wide
20 authority?

21 A No other carrier has state-wide authority.

22 Q And so that makes this Exhibit 20 a very valuable
23 commodity to you, doesn't it?

24 A It sure does.

25 Q You understand, do you not, that if the analysis of the

1 situation, which by analyzing the situation the
2 Commission concludes that it has no authority to
3 regulate operations such as those conducted by
4 Kleenwell, that no amount of crying on your part is
5 going to enable the Commission to regulate an activity
6 that the law says is beyond its regulation?

7 MR. WILEY: Objection to the form of the
8 question. It's unduly argumentative, Your Honor, and I
9 don't believe it even poses a question. It is really
10 is --

11 MR. JOHNSON: Well, I asked him if he
12 understood that.

13 MR. WILEY: Well, apparently, at the end, but
14 it included a lot of objectionable, argumentative,
15 provisions; "an undue amount of crying," et cetera. I
16 don't need to characterize it, Your Honor. I'd ask it
17 to be rephrased.

18 JUDGE ANDERL: Mr. Johnson, do you suppose
19 you could simplify that question a little bit; do you
20 want to pair it down to its essentials?

21 MR. JOHNSON: Well, I'll withdraw the
22 question.

23 JUDGE ANDERL: Anything further?

24 MR. JOHNSON: I have no further questions.

25 JUDGE ANDERL: Mr. Smith?

1 MR. SMITH: Just one question, Mr. Daub.

2
3 CROSS EXAMINATION

4 BY MR. SMITH:

5 Q If the Commission does not have jurisdiction over
6 Kleenwell or American Environmental -- let me start
7 over.

8 If, because of the crossing of state lines the
9 Commission does not have jurisdiction over your company
10 or Kleenwell, will you continue to serve Neah Bay and
11 the Makah Indian Reservation, or the Omak area and
12 other and more areas of the state?

13 A Most likely not. It wouldn't be economical for us to
14 do that, and I would imagine we would have to reduce
15 our annual operating budget and prepare ourselves for
16 other firms entering the market place at reduced rates,
17 and hope that we can withstand entry of new companies
18 into the market place.

19 Q And based on your experience in this industry and the
20 market in Washington state, if you left those remote
21 markets, do you think someone else would be coming in
22 to fill that void?

23 A Absolutely not.

24 Q And why is that?

25 A It's uneconomical. Eastern Washington and over in the

1 island counties, there is no way -- I shouldn't say "no
2 way," but it's not very possible that you can provide
3 service to those customers and expect to make any form
4 of profit. It's just transportation is going to kill
5 you. Accounts are too few and far between.

6 MR. SMITH: Those are all my questions.

7 JUDGE ANDERL: Mr. Johnson, we wanted to go a
8 whole round on cross if there was any.

9 Mr. Hartman?

10 MR. HARTMAN: It's tempting but I'll pass.

11 JUDGE ANDERL: Mr. Finnigan?

12 MR. FINNIGAN: No.

13 JUDGE ANDERL: Mr. Sells?

14 MR. SELLS: No.

15 JUDGE ANDERL: Ms. Horenstein?

16 MS. HORENSTEIN: No questions.

17 MR. WILEY: Did you have some questions
18 before?

19 JUDGE ANDERL: Let me see. I don't believe
20 that I did, actually. Do you have redirect?

21 MR. WILEY: Yes, just on one question that
22 Mr. Johnson asked.

23 JUDGE ANDERL: Okay. Why don't we let Mr.
24 Johnson get his question in, then, and then maybe you
25 can cover everything else on redirect. Go ahead, Mr.

1 Johnson.

2
3 RECROSS EXAMINATION

4 BY MR. JOHNSON:

5 Q You mentioned Neah Bay, was that an isolated, or
6 relatively isolated example, or do you keep going back
7 to Neah Bay every week?

8 A We go there, and it's not on a weekly basis, but it's a
9 regular account. They expect service on a regular
10 basis. I believe there are a number of outlying areas
11 that we service on an every other week basis.

12 Q Who is that regular account in Neah Bay, is it a
13 hospital, or a clinic or what?

14 A It's an individual doctor's office, I believe.

15 Q And how about the Indian reservation At Colville?

16 A There's a clinic up there that we service.

17 Q Did you solicit these accounts, or did they come to
18 you?

19 A The one on Colville Indian reservation, they called us
20 up. The one in Neah Bay, I don't recall. That was
21 quite a while ago.

22 Q You haven't served it for quite a while, I take it?

23 A Excuse me?

24 Q You haven't served it for quite a while, I take it?

25 A Oh, yes, we have served it. I just don't recall --

1 personally, I don't get in the trucks and drive up
2 there.

3 MR. JOHNSON: Nothing else.

4 JUDGE ANDERL: Mr. Wiley?

5
6 REDIRECT EXAMINATION

7 BY MR. WILEY:

8 Q Mr. Daub, you indicated in answer to Mr. Johnson's
9 question that the market was changing rapidly. And
10 without mentioning specific competitors names, would
11 you just characterize what you meant by that, please?

12 A Yeah, we've, in the last year, seen two other firms
13 enter the market place, and because they are calling
14 themselves recyclers, they are apparently not following
15 tariff, or believe they're exempt from tariffs, and so
16 we have lost an account base from that.

17 Q With respect to the statement that the market is
18 changing rapidly, is that causing you to rely more on
19 small generator accounts; and if so, why?

20 A Yes, it is. Again, I think earlier I had mentioned
21 that in higher populated, or more densely populated
22 areas where the larger hospitals are, that that seems
23 to be target of these companies entering into the
24 market place, and so, you know, we're attempting to
25 cover ourselves by obtaining as many small accounts as

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we can in the event that we lose these large generating hospitals.

Q Have you found that the acquisition of the quantity of generators has any relationship to the dollar volume that you generate on a monthly basis if you are to lose large accounts, for instance?

A I don't understand your question.

Q My question is does your reference to adding new generators and small generators, does that have any bearing on the -- if you lose a big account, do you have to have a lot more smaller accounts to make up for the loss?

A Oh, yeah, yeah, absolutely. If you lose a hospital account, it's going to take, in some instances, 50 to 100, 150 small accounts to make up lost revenue.

Q And in the last, say, since the first of the year, how many large accounts would you estimate you've lost?

A Well, I would say we've lost approximately 12.

MR. WILEY: No further questions, Your Honor.

JUDGE ANDERL: Anything on recross for this witness, Mr. Johnson?

MR. JOHNSON: I do have one in response to Mr. Wiley.

* * * * *

FURTHER RECROSS EXAMINATION

1
2 BY MR. JOHNSON:

3 Q The decision in the Medigen case relates that 80
4 percent of the medical waste that's generated is
5 generated at hospitals. You apparently don't
6 experience that in your operation.

7 A Absolutely not. Our environment is an unregulated
8 state. We still have quite a few hospitals throughout
9 the state of Washington that are landfilling materials.
10 You have a number of hospitals, I believe, even in
11 regulated counties that are not tendering completely
12 what those individual regulations are requesting them
13 to do so; and additionally, enforcement is weak. There
14 are many hospitals that realize that it's cheaper to
15 obtain a fine from a county health official than to
16 tender what's required --

17 Q Well, in this area, don't a lot of the medical -- don't
18 a lot of the hospitals have their own disposal
19 facilities and don't utilize carriers?

20 A No, that's not accurate. There are very, very few. In
21 fact, I can only think of two in King County that are
22 still utilizing their own disposal sites.

23 Q Is that Swedish, for one?

24 A No, that would not be. The VA in Seattle is the one
25 that comes to mind, and then there's an out-patient

1 facility that had an incinerator up in Seattle, and I
2 don't even know if they're still running that one or
3 not. It may be closed down.

4 Q So your problems don't all center around Kleenwell's
5 and the hospitals. You don't like what they're doing
6 either?

7 A Oh, yeah. I mean, if some of these facilities were
8 following their regulations to a tee, I'm sure there
9 would be additional business there.

10 MR. JOHNSON: That's all.

11 JUDGE ANDERL: Anything else.

12 MR. WILEY: No further questions.

13 JUDGE ANDERL: Thank you, Mr. Daub. You may
14 step down.

15 [WITNESS EXCUSED]

16 Mr. Smith, I'm sorry, I didn't look at you to
17 give you a chance to --

18 MR. SMITH: No, I have no further questions.

19 JUDGE ANDERL: Is there anything further
20 today?

21 MR. SMITH: Yes, Your Honor, I'm going to
22 distribute a little packet. The packet contains six
23 "G" certificates. I'm not positive everything's in the
24 same order.

25 JUDGE ANDERL: Let's go off the record to

1 make sure that we have the documents straight.

2 [DISCUSSION OFF THE RECORD]

3 [EXHIBIT NOS. 24, 25, 26, 27,
4 28 AND 29 MARKED FOR
5 IDENTIFICATION]

6 JUDGE ANDERL: Back on the record.

7 We've identified Exhibits 24 through 29, and
8 maybe I should go through those individually now.

9 Exhibit 24 is Certificate G-25. Exhibit 25
10 is Certificate G-107. Exhibit 26 is Certificate G-37.
11 Exhibit 27 is Certificate G-173. Exhibit 28 is
12 Certificate G-178, and Exhibit 29 for identification is
13 Certificate G-206.

14 Mr. Smith?

15 MR. SMITH: Your Honor, each of those
16 exhibits bear the certificate of Paul Curl, the
17 Secretary of the Commission and the custodian of the
18 Commission's records. Under the Commission's
19 procedural rules, among the things the Commission can
20 take official notice of are the contents of
21 certificates, and I would ask the Bench to take
22 official notice of Exhibits 24 through 29 and move for
23 their admission into the record.

24 MR. JOHNSON: Your Honor, I object. I think
25 that without some testimony as to operations being

1 conducted pursuant to these certificates that this will
2 only clutter the record; and, for instance, the first
3 one authorizes only the transportation of dry sludge
4 from a Longview plant. That has no bearing on any
5 issue in this case. And these others, unless they are
6 engaged in hauling medical waste do not either. And so
7 I'm going to object to the admission of those exhibits.

8 JUDGE ANDERL: Mr. Smith, would you like to
9 respond to that, and perhaps explain for the record
10 what purpose you'd like these admitted.

11 MR. SMITH: Yes, Your Honor. At the outset,
12 in his opening argument, Mr. Johnson claimed that
13 Chapter 8177 was at least applied to an out of state
14 carrier, was an example of economic protectionism
15 forbidden by the Commerce Clause of the Federal
16 Constitution.

17 As you are aware, there is a number of
18 economic factors these dealings that we can examine:
19 one if the out of state disposal site; one is the out
20 of state carrier. The purpose of these exhibits is to
21 show that the Commission has, in the past, granted
22 these certificates to out of state companies, and in
23 some cases, as you will see from reading these permits,
24 they are for service territories, which would be, for
25 the most part, exclusive service territories to the

1 exclusion of other people, including Washington
2 companies.

3 One of the arguments involving economic
4 protectionism is that the state regulation favors in-
5 state interests at the expense of out of state
6 interests. These documents show that the Commission
7 has granted under the existing regulatory scheme
8 operating authority in the state of Washington to out
9 of state companies.

10 MR. JOHNSON: We don't claim economic
11 protectionism. We claim that the transportation we're
12 engaged in is interstate in nature, and therefore not
13 subject to regulation. It does no great harm, but it's
14 certainly cluttering the record.

15 MR. SMITH: Well, Your Honor, the opening
16 argument said that 8177 is a case of economic
17 protectionism and that it was directed -- the purpose
18 of the statute was directed at interstate commerce.

19 JUDGE ANDERL: Does anyone have any comments
20 on these exhibits?

21 MR. WILEY: If you don't mind, I am
22 concerned, if Mr. Johnson is waiving arguments by his
23 responses, that he is not going to claim that -- I had
24 understood in his opening statement that that's exactly
25 one of his premises, and I don't think we should be

1 foreclosed in our legal argument from addressing all of
2 these issues. I think these exhibits go directly to
3 that issue. That's why I also wanted the testimony
4 from my client on the burden issue, the economic
5 protectionism allegation.

6 So I think these exhibits are absolutely
7 indispensable to a complete record on that issue.

8 JUDGE ANDERL: Mr. Smith, I've just been
9 looking these over very quickly. Do any of them
10 purport to authorized transportation outside of the
11 state of Washington, these certificates, such as what -
12 - I guess what AEMC had in their originals, which is to
13 disposal sites outside of the state. I don't know if
14 any of these do, and I thought if you knew off-hand,
15 you could --

16 MR. SMITH: I don't know.

17 JUDGE ANDERL: That's okay, I can read them.

18 MR. SMITH: I don't know, and I don't believe
19 they do, Your Honor.

20 MR. WILEY: Your Honor, in response to your
21 question to Mr. Smith, I just don't want there to be a
22 misconstruction on Exhibit 20 to the extent that it was
23 restricted to our facility. It did not say where those
24 facilities were, so that in the future --

25 JUDGE ANDERL: Okay, thank you for clarifying

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that.

MR. WILEY: -- the PC&N future issue, we would be covered if we had put a facility in the state.

JUDGE ANDERL: I guess I was thinking of the way it was in fact. It was out of state. Thank you for clarifying that.

I think I'm reading to make a ruling, and I will admit those exhibits and overrule the objection, and that's 24 through 29.

[EXHIBIT NOS 24 THRU 29 FOR IDENTIFICATION RECEIVED IN EVIDENCE]

Anything further?

MR. SMITH: Not today, Your Honor.

JUDGE ANDERL: Then I believe that the parties have agreed to the next scheduled hearing date in this matter as June 11th, is that correct?

MR. SMITH: That's correct, Your Honor.

JUDGE ANDERL: And that will be here at 9:30 in the morning, and do we anticipate being able to finish at that time?

MR. SMITH: Yes.

MR. JOHNSON: You did say 9:30?

JUDGE ANDERL: Yes.

MR. FINNIGAN: We didn't hear from Mr.

1 Johnson if he anticipates being able to finish. Do you
2 think we'll be able to finish on June 11th?

3 MR. JOHNSON: I see no reason why we
4 shouldn't.

5 MR. WILEY: Your Honor, I don't think it's
6 premature also to talk about briefing schedules so that
7 we can get transcripts ordered from today on, and we
8 talked about that. So could we maybe address that, if
9 you want, off the record?

10 JUDGE ANDERL: Yes, let's go off the record
11 and talk about that, and then come back on the record.

12 [DISCUSSION OFF THE RECORD]

13 JUDGE ANDERL: Back on the record.

14 I'll just briefly state that we've had some
15 discussions about the next hearing date, which was
16 scheduled and briefing dates, which has been agreed
17 that Mr. Johnson will file an opening brief on -- and
18 this is a tentative schedule which we'll confirm at the
19 next hearing -- but on July 10th, that would be a
20 filing date with the Commission, but it would also, as
21 a courtesy to the other parties, attempt to be served,
22 that they would receive it on the 10th so they could
23 then file response briefs by the 17th, and then Mr.
24 Johnson, since you would have a lot of them to read
25 probably, to file his answer two weeks from them by the

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31st of July.

Anything else?

[NO RESPONSE]

Well, actually, should we reconvene at 9:00?

Would that be better?

MR. JOHNSON: No, no.

JUDGE ANDERL: June 11th, 9:30, right here.

We're off the record.

[HEARING ADJOURNED AT 3:45 P.M.]

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C E R T I F I C A T E

This is to certify that the attached proceeding be-
fore the WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining)
the Proper Carrier Classifi-)
cation of:)
ENoch Rowland d/b/a Kleenwell)
Biohazard and General Ecology)
Consultants)

DOCKET NO. TG-920304

Date: May 13, 1992
Place: Kent, Washington

were had as herein appears, and that this is the original
transcript thereof for the files of the Commission.

Rebecca S. Cain
Official Reporter