

1           BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2                                           COMMISSION

3       In Re Application of                 )   Docket No. TG-040248  
                                                                   )   Volume XIV  
4       KLEEN ENVIRONMENTAL             )   Pages 1860 - 1990  
      TECHNOLOGIES, INC.                     )                     )

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7                                    A hearing in the above matter was held on  
8       October 26, 2004, at 9:29 a.m., at 1300 South Evergreen  
9       Park Drive Southwest, Olympia, Washington, before  
10      Administrative Law Judge ANN E. RENDAHL.

11  
12                                  The parties were present as follows:

13                                  KLEEN ENVIRONMENTAL TECHNOLOGIES, INC., by  
14       GREGORY W. HAFFNER, Attorney at Law, Curran Mendoza,  
15       555 West Smith Street, Post Office Box 140, Kent,  
          Washington 98035; telephone, (253) 852-2345.

16                                  STERICYCLE OF WASHINGTON, INC., by STEPHEN B.  
17       JOHNSON, Attorney at Law, Garvey, Schubart, Barer, 1181  
          Second Avenue, Suite 1800, Seattle, Washington 98101;  
          telephone, (206) 464-3939.

18                                  HAROLD LEMAY ENTERPRISES, INC.; WASHINGTON  
19       REFUSE AND RECYCLING ASSOCIATION; RUBATINO REFUSE  
20       REMOVAL, INC.; CONSOLIDATED DISPOSAL SERVICES, INC, by  
21       JAMES K. SELLS, Attorney at Law, Ryan, Sells,  
          Uptegraft, 9657 Levin Road Northwest, Suite 240,  
          Silverdale, Washington 98383; telephone, (360)  
          307-8860.

22                                  WASHINGTON UTILITIES AND TRANSPORTATION  
23       COMMISSION, by GREGORY J. TRAUTMAN, Assistant Attorney  
24       General, 1400 South Evergreen Park Drive Southwest,  
          Post Office Box 40128, Olympia, Washington 98504;  
          telephone, (360) 664-1187.

25       Kathryn T. Wilson, CCR  
          Court Reporter

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

2 JUDGE RENDAHL: We are back for hopefully our  
3 final day of hearing in Docket No. TG-040248,  
4 captioned, In the matter of the Application  
5 No. GA-79254 of Kleen Environmental Technologies,  
6 Incorporated, for a certificate of public convenience  
7 and necessity.

8 We are here before the Washington Utilities  
9 and Transportation Commission on Tuesday, October the  
10 26th, 2004. I'm Ann Rendahl, the administrative law  
11 judge presiding over the proceeding, and we will take  
12 appearances very briefly beginning with the Applicant.

13 MR. HAFFNER: Thank you, Your Honor. Greg  
14 Haffner for the Applicant, Kleen Environmental  
15 Technologies, Inc.

16 JUDGE RENDAHL: For Protestant Stericycle?

17 MR. JOHNSON: Thank you. Steve Johnson  
18 representing Stericycle of Washington, Inc.

19 JUDGE RENDAHL: For the Protestants,  
20 Mr. Sells?

21 MR. SELLS: If Your Honor please, James Sells  
22 representing Protestants Washington Refuse and  
23 Recycling Association; Rubatino Refuse, Inc.,  
24 Consolidated Disposal Refuse, Inc., and Harold LeMay  
25 Enterprises, Inc.

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1 JUDGE RENDAHL: For Staff?

2 MR. TRAUTMAN: Greg Trautman, representing  
3 Commission staff.

4 JUDGE RENDAHL: The purposes of our hearing  
5 today are to address a letter that was filed with the  
6 Commission in early October, purportedly by the  
7 National Indian Health Board or a representative  
8 thereof, and we will be hearing from Mr. Olson and  
9 Mr. McCloskey today.

10 Before we get to that point, we have a few  
11 administrative matters to address. The first being  
12 that we have marked as Exhibit 210 and 211, which are  
13 responses to Record Requisition No. 5. Marked as 210  
14 are responses to an e-mail from Mr. Bill Knight,  
15 K-n-i-g-h-t, from Stevens Hospital, Highline Community  
16 Hospital, and Overlake Hospital, and as 211, we've  
17 marked the e-mail from Mr. Knight to six HSSA member  
18 facilities, and is there any objection to admitting  
19 those into the record?

20 MR. HAFFNER: No, Your Honor.

21 MR. JOHNSON: No objection, Your Honor.

22 JUDGE RENDAHL: They will be admitted. The  
23 next issue we need to take up is Mr. Johnson has  
24 provided a replacement of what was admitted as Exhibit  
25 218, which was presented as the plant visitor log for

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1 the Morton, Washington, facility. Mr. Johnson  
2 indicates that he had omitted in error a few pages that  
3 were titled "office log" instead of "plant log," and we  
4 have a new Exhibit 218. Are there any objections to  
5 that replacement?

6 MR. HAFFNER: No objection, but can we have  
7 Mr. Johnson verify that the pages that are being added  
8 don't add any new substantive evidence to the record?

9 MR. JOHNSON: They are what they are. If you  
10 look at the fax transmittal data on one end of the  
11 page, you can see that these are sequentially numbered  
12 from Page 2. Originally, there was a cover sheet on  
13 this exhibit. That was transmitted from the Stericycle  
14 plant to the Stericycle office in Kent, and the pages  
15 that were omitted from the exhibit that we dealt with  
16 on October 22nd are the pages that are marked 6 of 12,  
17 7 of 12.

18 JUDGE RENDAHL: What these indicate are those  
19 persons who visited the Morton facility; correct?

20 MR. JOHNSON: Correct. So we are adding  
21 information about people who visited that are omitted  
22 from the prior exhibit, and for example, one of them is  
23 Donald Wong. If you look on Page 7 of 12 towards the  
24 bottom, second one from the bottom, had conducted an  
25 audit, apparently, on October 17th, 2000.

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1 JUDGE RENDAHL: But this doesn't change any  
2 testimony that's already in the record.

3 MR. JOHNSON: No.

4 JUDGE RENDAHL: Mr. Haffner?

5 MR. HAFFNER: No objection.

6 JUDGE RENDAHL: So the replacement exhibit is  
7 admitted into the record. Mr. Johnson has also  
8 proposed to include something we haven't marked that we  
9 were going to discuss on the record, which is a Web  
10 site printout out from the MIRT, Medical Industry Waste  
11 Prevention Roundtable, a two-page document describing  
12 what the roundtable, or MIRT, is. It's been referred  
13 to a fair amount in the record. Mr. Haffner, any  
14 thoughts?

15 MR. HAFFNER: I would like to know why the  
16 exhibit is being offered.

17 MR. JOHNSON: It's only being offered to  
18 identify the organization that we've referred to as  
19 MIRT a few times. It has the full name of the  
20 organization and provides a little bit of discussion  
21 about what the organization does. It's just to clarify  
22 the record as to what that organization is.

23 MR. HAFFNER: Given the size of this record  
24 already, I don't see the relevance or the need to  
25 burden it any further. I'm going to continue to object

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1 to it.

2 JUDGE RENDAHL: I'll sustain the objection  
3 because I think we have what we need in the record. We  
4 have some descriptions of what MIRT is on the record.  
5 I'm not sure it helps significantly, so at this point,  
6 I'm going to deny the exhibit or not include it as an  
7 exhibit. I don't think it's entirely necessary.

8 The next issue is on October 12th, the  
9 Commission received the National Indian Health Board  
10 letter offered by Kleen, and at our hearing on the  
11 22nd, I thought that Mr. Haffner had withdrawn formally  
12 the exhibit, so I have noted it as withdrawn on the  
13 exhibit list. Mr. Haffner is planning to reoffer the  
14 exhibit through Mr. Olson, and I have marked it as  
15 Exhibit 23, and I don't know that we need to get to  
16 admission at this point.

17 MR. HAFFNER: You said that I was intending  
18 to reoffer it. I think Mr. Johnson is intending to  
19 reoffer it.

20 JUDGE RENDAHL: Thank you. So we won't take  
21 up admission at this point. I've also marked as  
22 Exhibit 37 the October 25th, 2004, declaration of  
23 Darin, D-a-r-i-n, Perrollaz, P-e-r-r-o-l-l-a-z, and  
24 have marked as Exhibit 54 the October 25th, 2004,  
25 declaration of Kenneth Lee.



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1           Further, we have marked as Exhibit 212, a  
2 letter dated October 19th from J.T. Petherick,  
3 P-e-t-h-e-r-i-c-k of the National Indian Health Board.  
4 I've marked as Exhibit 213 a letter from M. Brian  
5 Claboosby, and that's C-l-a-b-o-o-s-b-y, dated October  
6 19th, 2004 to the Commission from the Swinomish Tribal  
7 Community, S-w-i-n-o-m-i-s-h, and then marked as  
8 Exhibit 214, is a similar letter from Brenda Nielson,  
9 N-i-e-l-s-o-n, from the Quileute, Q-u-i-l-e-u-t-e,  
10 Health and Human Services, to the Commission dated  
11 October 19th, 2004. And finally, we marked as Exhibit  
12 225 a document identified as pages from the Web site of  
13 the National Indian Health Board.

14           So I've marked all of those, and we now have  
15 an issue -- and Mr. Johnson had sent an e-mail along  
16 with the copy of Mr. Petherick's letter, and the e-mail  
17 will be treated as a pleading, and I will check at our  
18 next break as to whether the Petherick letter and the  
19 e-mail have been received by the Commission formally in  
20 its docketing system. I believe they have, but I will  
21 double check that.

22           Before we go on to the issue of whether  
23 witnesses should be present in the hearing room when  
24 others are testifying, is there any other  
25 administrative matter we need to address.

1           MR. HAFFNER: With respect to Exhibits 212,  
2 213 and 214, I don't know if there has been an offer of  
3 admission yet, but I would ask that the Commission  
4 treat those as illustrative exhibits. They are not  
5 submitted under sworn statements. They are submitted  
6 in the same format as the other shipper statements that  
7 were submitted to the Commission directly.

8           JUDGE RENDAHL: We will address that, because  
9 it's my understanding they haven't been offered at this  
10 point. Unless, Mr. Johnson, you would like to make  
11 that offer at this point.

12           MR. JOHNSON: I would offer those letters for  
13 admission, but in the short time between the date of  
14 the fraudulent NIHB letter and today's date, it's not  
15 possible to obtain sworn statements from these folks.  
16 If the Commission thinks sworn statements are  
17 appropriate, then perhaps we can leave the record open  
18 and give us a chance to provide them.

19           JUDGE RENDAHL: At this point, let's hear  
20 from Mr. Sells first.

21           MR. SELLS: I don't think it makes much  
22 difference one way or the other, Your Honor, as long as  
23 they get in the record.

24           JUDGE RENDAHL: Mr. Trautman?

25           MR. TRAUTMAN: If Your Honor thinks that

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1 affidavits are necessary, then I would support that,  
2 but I do think the letters should be in the record.

3 JUDGE RENDAHL: I think the letters should be  
4 in the record as well, so they will be admitted. I  
5 don't know that affidavits are necessary. I'll  
6 determine that based on the testimony we hear this  
7 morning. If they simply corroborate testimony that's  
8 given this morning, then I don't see a need for an  
9 affidavit, and they will be given the weight  
10 appropriate to a sworn letter, so they will be admitted  
11 for what they are.

12 So I guess let's also address the Web site  
13 at this point. Mr. Johnson, are you planning on  
14 offering that exhibit?

15 MR. JOHNSON: Yes, Your Honor. I would like  
16 to offer the exhibit that's been marked as Exhibit 225.  
17 It provides basic background information of what the  
18 National Indian Health Board is and how it's organized,  
19 and I believe it's important for the Commission to be  
20 able to refer to it in evaluating any testimony given  
21 today and the whole issue of the letter we are dealing  
22 with here today.

23 JUDGE RENDAHL: Mr. Haffner?

24 MR. HAFFNER: No objection if it's used for  
25 those purposes.

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1           JUDGE RENDAHL: Merely as background purpose,  
2 that's what I intend to use it for, so for that  
3 purpose, it will be admitted.

4           Let's address the affidavits of Mr. Perrollaz  
5 and Mr. Lee. Mr. Haffner, you are offering those for  
6 admission?

7           MR. HAFFNER: Yes, Your Honor.

8           JUDGE RENDAHL: Mr. Johnson?

9           MR. JOHNSON: We object to the admission of  
10 the affidavits of Mr. Perrollaz and Mr. Lee marked as  
11 Exhibits 37 and 54. As Your Honor will recall, we had  
12 requested that Mr. Perrollaz and Mr. Lee be here today  
13 to provide testimony in person so they could be  
14 cross-examined. In the absence of the ability to  
15 cross-examine these witnesses, we do not believe their  
16 declarations should be admitted. These individuals are  
17 shareholders and officers of the Applicant here and  
18 should be here testifying in person.

19           JUDGE RENDAHL: Well, at the hearing on  
20 Friday, I indicated that I didn't believe it was  
21 necessary to have Mr. Perrollaz and Mr. Lee here given  
22 the statements made in the letter and that I thought  
23 that a declaration would be appropriate, so I  
24 understand your objection is still made, Mr. Johnson,  
25 but let's first hear from Mr. Sells and Mr. Trautman on

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1 Exhibits 37 and 54.

2 MR. SELLS: If Your Honor please, if this  
3 were my company, I would be here, but that's neither  
4 here nor there. You asked for affidavits; you got  
5 them. There is not much to them, but this should be in  
6 the record, I believe.

7 MR. TRAUTMAN: I believe the affidavits are  
8 sufficient and should be in the record, and they  
9 indicate the declarant's lack of knowledge of the  
10 matters at hand, and so I think they are proper  
11 affidavits.

12 JUDGE RENDAHL: I will be admitting what's  
13 been marked as Exhibits 37 and 54, which are the  
14 Perrollaz and Lee affidavits.

15 Which leads us to the remaining exhibits,  
16 which I think should be addressed through the witness,  
17 and so the next issue we have before us is an issue  
18 Mr. Johnson raised off the record. So, Mr. Johnson,  
19 why don't you state your concern at this point.

20 MR. JOHNSON: Yes, Your Honor. We are here  
21 today to inquire of the Applicant's representatives  
22 with respect to a letter that I think the Applicant has  
23 also agreed is fraudulent. The question becomes who is  
24 responsible for an effort, an apparent effort to  
25 perpetrate a fraud on the Commission. That's what the

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1 purpose of the hearing is today.

2           In order to get testimony from the  
3 Applicant's witnesses that is not cross-contaminated by  
4 knowledge of what the other witness has testified to in  
5 this proceeding, we need to set up a procedure, I  
6 believe, where witnesses who are not testifying are  
7 excluded from the hearing during the testimony of the  
8 Applicant's representative that's being examined. This  
9 is not a matter that's usual in this kind of  
10 proceeding, but we have an unusual situation here.  
11 Someone has committed a dishonest act. Now, the  
12 question is, who and what its implications are.

13           In this rather unusual situation, we have the  
14 potential for witnesses cuing one another with respect  
15 to matters of fact that we don't want them to cue one  
16 another about. We want to get the pure, unvarnished  
17 testimony of each witness with respect to that  
18 witness's knowledge unaffected by testimony provided by  
19 the other witness, and the only way to do that is to  
20 exclude the witness who is not testifying from the room  
21 during the examination and cross-examination of the  
22 other witness.

23           So we would request, Your Honor, that  
24 witnesses not testifying be excluded from the hearing  
25 room. For example, Mr. McCloskey would be excluded

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1 from the hearing room during Mr. Olson's testimony and  
2 that Mr. Olson be excluded from the hearing room during  
3 Mr. McCloskey's testimony.

4 We have also indicated, Your Honor, that we  
5 would like to have the ability to recall Mr. Olson. I  
6 believe the agreement or the plan would be to have  
7 Mr. Olson testify first followed by Mr. McCloskey. We  
8 would like to have Mr. Olson available after  
9 Mr. McCloskey's testimony if there are any  
10 inconsistencies between what Mr. Olson has testified to  
11 in the first round and what Mr. McCloskey has testified  
12 to.

13 So based on that request and the desire to  
14 reach the truth of this matter without having the  
15 witnesses cue one another with respect to these factual  
16 questions, we would request that the nontestifying  
17 witness be excluded from the hearing room during the  
18 testimony of the other witness.

19 JUDGE RENDAHL: Mr. Haffner?

20 MR. HAFFNER: We would object or disagree  
21 with this motion to separate the witnesses. Both of  
22 these individuals, the record is clear, are essentially  
23 parties to this case. Mr. Olson is obviously one of  
24 the owners of the company and has a right to be present  
25 at all of the proceedings in this matter.

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1           Mr. McCloskey has been identified as the  
2 speaking agent for the Company and the person  
3 responsible solely for paying the permit for the  
4 Company. So I would ask that the Commission allow both  
5 of these people to be present at the time of their  
6 testimony.

7           If there becomes a problem with cuing, as  
8 Mr. Johnson alleges, and it looks like the witnesses  
9 are looking to one another for information, then I  
10 would ask that we have them sit behind one another or  
11 something, but they both have a right to be present.

12           JUDGE RENDAHL: Mr. Sells?

13           MR. SELLS: As I recall the Superior Court  
14 rule on this, I think Mr. Olson as an owner and a party  
15 to this action, it would take some extraordinary orders  
16 by Your Honor to exclude him. However, Mr. McCloskey  
17 is not a principle in this company. That's been made  
18 clear time and time again in the first half of this  
19 hearing, and I think clearly, he is a witness and he  
20 can be excluded during Mr. Olson's testimony.

21           Having said that, I have a tendency to agree  
22 with Mr. Johnson that even Mr. Olson should be excluded  
23 during that brief testimony to which Mr. Johnson  
24 referred, and I say that because both Mr. McCloskey and  
25 Mr. Olson have been in and out during these entire



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1 hearings and they haven't been here for the entire  
2 hearing. They've missed testimony here, missed  
3 testimony there, which is fine. That's neither here  
4 nor there, but at this point, I think it's a little bit  
5 late to say they need to be here all the time when they  
6 don't, and I think Your Honor has the authority to  
7 exclude them both.

8 JUDGE RENDAHL: Mr. Trautman?

9 MR. TRAUTMAN: For Staff, I don't think that  
10 excluding the witnesses is necessary. I agree that if  
11 there were problems or if Your Honor perceived problems  
12 of one witness cuing another witness that appropriate  
13 steps could be taken to prevent that from happening,  
14 but both of these witnesses are testifying under oath  
15 as to what they know, and that's what the questions  
16 will be directed to.

17 I'm not aware of any case in which I've been  
18 involved in the past ten years in which witnesses have  
19 been excluded from the room other than cases involving  
20 confidential information, which is an entirely  
21 different matter, so I don't believe it's necessary to  
22 exclude the witnesses.

23 MR. JOHNSON: If I could just respond  
24 briefly.

25 JUDGE RENDAHL: Very briefly.

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1                   MR. JOHNSON: First of all, I'm not sure  
2 Mr. Trautman has experienced in the past ten years a  
3 case where someone has tried to commit a fraud on the  
4 Commission. If he has, I would like to hear about it.  
5 Secondly, my point about the witnesses cuing is not a  
6 matter of them standing up and waving their arms in the  
7 middle of the testimony. It's a matter of one witness  
8 hearing the testimony of the other and therefore  
9 potentially modifying their testimony to make the  
10 testimony consistent. It's not a matter of pulling on  
11 your ear lobe or holding up a sign in the back of the  
12 room.

13                   MR. TRAUTMAN: It appears that the letter  
14 that was submitted by Mr. Birdinground was apparently a  
15 fraudulent letter, and whether or not there has been  
16 any fraud on the part of Kleen is an entirely different  
17 matter, and I don't believe at this point, one should  
18 assume that that is the case, and again, I don't  
19 believe it is necessary if the witnesses are testifying  
20 under oath to exclude the witnesses from the hearing.

21                   JUDGE RENDAHL: Well, I agree with  
22 Mr. Trautman that that's what the purpose of this  
23 hearing is is to determine, in fact, that there is  
24 fraud. I think everyone would agree that the letter  
25 itself was fraudulent, but whether, in fact, there was

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1 fraud upon behalf of Kleen is the issue in this hearing  
2 today.

3 I think that the request that you are making,  
4 Mr. Johnson, is quite unprecedented for the Commission,  
5 and although I may have the right to exclude the  
6 witnesses, they are under oath. If there is anything  
7 inappropriate, I can observe it very easily and an  
8 objection can be made by you or Mr. Johnson or  
9 Mr. Sells or Mr. Trautman if the issue comes up.

10 This isn't something that has come as a  
11 surprise to anyone here. It's been going on and has  
12 been an issue for at least the last ten days, so to the  
13 extent that there have been discussions going on  
14 between Mr. McCloskey and Mr. Olson between that time,  
15 I don't see any issue arising, and I think we can  
16 inquire into the witnesses' knowledge and activities in  
17 this regard, and if there is something untoward that's  
18 appearing, we will address it at the time, but I'm  
19 going to deny the motion, and I think we need to get  
20 going with the hearing at this time.

21 So with that, I think we need to bring  
22 Mr. Olson back. Mr. Olson, would you come sit here,  
23 please?

24 THE WITNESS: (Witness complies.)

25 JUDGE RENDAHL: If you would state your full

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1 name for the record.

2 THE WITNESS: Robert Lee Olson.

3 JUDGE RENDAHL: And you remain under oath  
4 from your testimony from the first day of this hearing,  
5 September the 27th, and, Mr. Haffner, if you would go  
6 ahead and ask a few preliminary questions, then we will  
7 turn to Mr. Johnson.

8

9

10 DIRECT EXAMINATION

11 BY MR. HAFFNER:

12 Q. Mr. Olson, I want to hand you a document  
13 that's been marked for this proceeding as Exhibit 23.

14 Can you tell us if you've seen that document before?

15 A. I saw it just a moment ago. Before today,  
16 I've never seen this document.

17 Q. Let me address that. You didn't review that  
18 document prior to this hearing at all or any version of  
19 that document?

20 A. No.

21 Q. Were you made aware that there was a letter  
22 submitted by Mr. Birdinground in this hearing?

23 A. No. Only with respect to that I was asked to  
24 come here to address this letter.

25 Q. You weren't given a copy of the letter to

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1 review at all before today?

2 A. No.

3 Q. So when did you first become aware that this  
4 letter existed?

5 A. I think last Thursday, perhaps.

6 Q. What was your reaction when you found out  
7 about the letter?

8 A. I really don't understand it.

9 Q. Do you have any personal relationship with  
10 the National Indian Health Board?

11 A. Never heard of them before.

12 Q. So your company, as far as you know, doesn't  
13 have any relationship with the National Indian Health  
14 Board?

15 A. No.

16 Q. Do you know who Mr. Lancing Birdinground is?

17 A. Never heard of him.

18 Q. Has your company performed any work on any  
19 Indian facilities in the state of Washington?

20 A. Yes.

21 Q. Can you describe what that work is?

22 A. In the environmental business, we are a labor  
23 specialty contractor, and we bid on jobs through  
24 perhaps the Corps of Engineers or other agencies to do  
25 remediation services, demolition work, like oil storage

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1 facilities, underground storage tank work, testing,  
2 soil testing, and reporting to the Department of  
3 Ecology when we move underground storage tanks.

4 Q. Do you know how long your company has been  
5 providing services to facilities on Indian property?

6 A. I would say roughly nine years, perhaps.

7 Q. If I could have you look at a document marked  
8 as Exhibit 22, if you will look at that and tell us if  
9 you are familiar with it.

10 A. Yes, I've read this.

11 Q. Is that your signature on Page 2?

12 A. Yes.

13 Q. Are the statements in that letter still true  
14 today?

15 A. Yes.

16 Q. Let me ask you, why did you assign  
17 Mr. McCloskey the duty of seeking the authority that's  
18 sought in this application before the WUTC?

19 A. I think Mr. McCloskey is qualified to do such  
20 by his educational standards. He's qualified to do  
21 such in his way to presenting to people what we wanted  
22 to accomplish by getting this permit, and those are the  
23 major reasons.

24 We thought Mr. McCloskey was qualified in  
25 terms of his educational background. I've had the

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1 opportunity to work with him on a project and like his  
2 attention to detail, which I found to be highly  
3 professional for the major reasons, and what I've seen  
4 him doing I found to be very in-depth and  
5 detail-oriented.

6 Q. How do you feel about the job he's done for  
7 you so far in this application?

8 A. I think it's been excellent.

9 Q. If I could have you look at a document marked  
10 as Exhibit 34. After you found out about the letter  
11 from the National Indian Health Board from  
12 Mr. Birdinground, did you personally take any action on  
13 behalf of your company?

14 A. Yes.

15 Q. What did you do?

16 A. I originally took a phone call from an  
17 individual, I believe it was a woman, who reflected  
18 that Mr. --

19 Q. Birdinground?

20 A. That gentleman, did not speak for the tribes  
21 and that he was not authorized to do this, and I really  
22 absolutely have no idea what she was talking about. So  
23 I said that Mr. McCloskey was handling this and that I  
24 would refer her to him. Subsequently, I asked  
25 Mr. McCloskey to talk to her and find out what the

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1 difficulty was because I didn't understand the nature  
2 of the phone call because I had not seen the original  
3 letter.

4 I think at that point, I told Mr. McCloskey  
5 to try to find out how this thing had generated itself,  
6 whether there is any association or -- we have no idea  
7 how the letter came to us in such a way. I know that  
8 we looked at the procedures, how we were trying to look  
9 at possible recipients of the service that we hope to  
10 offer, and it appears from what I was told in my brief  
11 investigations, because this didn't happened very long  
12 ago, that there is no direct contact between  
13 Mr. McCloskey and the gentleman who signed this letter.

14 We tried to track him down, and on a daily  
15 basis I've asked Mr. McCloskey if he's been able to  
16 contact the person who generated this letter. He's  
17 told me that he's left voice mail messages and has  
18 never received a phone call back, and that's the only  
19 thing I know about it.

20 Q. You mentioned taking a phone call from a  
21 woman who informed you about the letter; is that  
22 correct?

23 A. Yes.

24 Q. Do you recall her name?

25 A. No, I don't.



1884

1 Q. Did she say whether she was with the National  
2 Indian Health Board?

3 A. She might have. I don't know.

4 Q. Did you make any phone calls yourself to  
5 anybody at the National Indian Health Board after that  
6 phone call?

7 A. No.

8 Q. Why not?

9 A. Because I had to talk to Mr. McCloskey and  
10 ask him to resolve the issue, and I discussed with him  
11 how that anybody would even know we are asking for this  
12 permit, and he showed me a very standard form letter we  
13 have gone out to look for interest from all parties  
14 involved in this, and that appears to be the instrument  
15 that Mr. Bird --

16 Q. Birdinground?

17 A. Birdinground had responded to.

18 Q. I'm having you look at Exhibit 22 again. In  
19 that letter, I believe you mentioned that you were  
20 aware of some form letters going out from your company.  
21 Can you tell us what your knowledge of the form letters  
22 is

23 A. Basically, it was just kind of a brief  
24 request that they would be interested in service if we  
25 had this service offered after the UTC's decision, and

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1 basically, the form letter names things like who you  
2 were, the dates, things of that nature, and we asked  
3 them to fill in certain things so that all the form  
4 letters would be somewhat similar. I don't recall  
5 exactly what it says.

6 Q. Is there anything you wish to say to the  
7 Commission about the Exhibit 23 that was submitted from  
8 Mr. Birdinground? Is there anything you wish to say to  
9 the Commission about that document being submitted on  
10 behalf of the Company?

11 A. I have no idea who Mr. Birdinground is. I  
12 don't know even know what state he's in. The first  
13 time I've seen this letter was this morning in  
14 actuality to read it. I don't know anything about the  
15 National Indian Health Board or what their range is or  
16 what they do in terms of -- obviously, Indian health.  
17 My dealings with the Indians and reservations of that  
18 nature are more in the general construction point of  
19 view.

20 MR. HAFFNER: Your Honor, I have no other  
21 questions for the witness.

22 JUDGE RENDAHL: Mr. Johnson?

23

24

25

1 CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Thank you, Mr. Olson. Mr. Olson, are you  
4 aware of the laws applicable to perjury?

5 A. Yes.

6 Q. In a general sense?

7 A. General.

8 Q. So what you are telling us today is, the  
9 evidence you are giving is the truth, the whole truth,  
10 and nothing but the truth; is that correct?

11 A. Yes.

12 Q. Mr. Olson, I would like to refer you to  
13 Exhibit 22 for a moment, and Exhibit 22 is a rather  
14 lengthy letter that you and the other shareholders of  
15 Kleen Environmental Technologies signed and submitted  
16 for this record. Did you draft that letter?

17 A. No.

18 Q. Who drafted this letter?

19 A. Mr. McCloskey drafted the letter.

20 Q. Do you know what for a fact, or are you just  
21 assuming?

22 A. I'm assuming that, yes.

23 Q. So what's the basis for your assumption?

24 A. Based on my assumption, Mr. McCloskey brought  
25 the letter to me.

1887

1 Q. So it could have been drafted by someone  
2 else.

3 A. Yes, it could have.

4 Q. Did you read this letter carefully before you  
5 signed it?

6 A. I thought so, yes.

7 Q. Now, would you look at the third paragraph of  
8 Exhibit 22?

9 A. Yes.

10 Q. And would you look at the third sentence,  
11 beginning with the word "although"? Do you see that  
12 sentence?

13 A. Yes.

14 Q. It reads, "Although Mr. Olson was aware of  
15 the submission of this document --" referring now to  
16 what has been marked as Exhibit 23 "-- the other  
17 partners were not aware of its existence until after we  
18 were contacted by Becky Johnston of the American Indian  
19 Health Commission for Washington state."

20 Doesn't this letter indicate that you had  
21 knowledge of the letter before it was offered to the  
22 record of this proceeding?

23 A. Which letter are you referring to,  
24 Mr. Johnson?

25 Q. I'm sorry, Exhibit 23. Do you have it there

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1 in front of you?

2 A. Yes, I do.

3 Q. That's the letter.

4 A. Yes.

5 Q. Doesn't Exhibit 22 state that you had  
6 knowledge of that letter before it was submitted?

7 A. Yes. I had knowledge that this letter was  
8 there, but I had not read the letter.

9 Q. And you had never looked at the letter?

10 A. No.

11 Q. What was the state of your knowledge prior to  
12 the submission of Exhibit 23 into the record for this  
13 proceeding?

14 A. I don't understand the question.

15 Q. Well, you had knowledge of the letter. What  
16 was your knowledge?

17 A. Mr. McCloskey had referred there was a  
18 difficulty this letter which I had not seen, and I  
19 can't remember whether I had talked to the woman, I  
20 believe referred to as Becky Johnson in here, prior to  
21 or after that. I think it was prior to. My first  
22 understanding about this letter was after I had talked  
23 to the woman on the telephone who called to find out  
24 about the letter.

25 Q. So in reality, you did not know about the

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1 letter that is now marked as Exhibit 23 prior to its  
2 being offered into the record of this proceeding by  
3 your counsel; is that right?

4 A. I knew verbally of the content of the letter.  
5 I mean basically that somebody had some letter and said  
6 they would wish to have this service, but I had no idea  
7 of the letter, per se, in reading it.

8 Q. So you were aware that there was a letter  
9 from the National Indian Health Board that was going to  
10 be offered in support of your application before that  
11 letter was offered; is that correct?

12 A. I don't understand your question,  
13 Mr. Johnson.

14 Q. I'll ask it again. I believe you just  
15 testified that you were aware that there was a letter  
16 from the National Indian Health Board that was going to  
17 be offered in support of your application; is that  
18 correct?

19 A. I was aware of this letter subsequent to the  
20 telephone conversation with this Becky, I believe, the  
21 woman who called and I referred to Mr. McCloskey.

22 Q. So you were not aware that the letter from  
23 the National Indian Health Board, the one we've marked  
24 as Exhibit 23, was in existence prior to that phone  
25 call from Becky Johnston?

1890

1           A.     I have never read the letter prior to that  
2 time.

3           Q.     I didn't ask you whether you read it. I  
4 asked you whether you were aware of the existence of  
5 the letter?

6           A.     I don't know. I don't know.

7           Q.     You don't know whether you were aware of the  
8 existence of Mr. Birdinground's letter before it was  
9 offered to the Commission?

10          A.     I was not aware of Mr. Birdinground's letter  
11 because we have had several letters from people who  
12 were going to appear before the Commission. I was not  
13 aware of the National Indian Health Board letter,  
14 per se.

15          Q.     Doesn't this statement in Exhibit 22 that I  
16 just read suggest you were aware of the submission of  
17 this document?

18          A.     I know this document was sent to the  
19 Commission, but I had not seen the letter.

20          Q.     I'm sorry. I hope I'm not just going around  
21 in circles here, but my question is when did you become  
22 aware of the existence of the Birdinground letter that  
23 we've marked as Exhibit 23? Not when did you read it,  
24 but when did you become aware of its existence for the  
25 first time?

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1           A.     I believe the first time I became aware of  
2 the letter is when I talked to the lady who called on  
3 the telephone about this letter.

4           Q.     So if Exhibit 22 suggests that you knew about  
5 the Birdinground letter marked as Exhibit 23 prior to  
6 its submission by your counsel to be included in the  
7 record of this proceeding, that would be false; is that  
8 correct?

9           A.     I don't think so.

10          Q.     This sentence that I quoted to you said that  
11 the other partners were not aware of the existence of  
12 the Birdinground letter until after we were contacted  
13 by Becky Johnson, but the first part of the sentence  
14 says, although Mr. Olson was aware. So is that right  
15 or wrong?

16          A.     Mr. Johnson, I was aware that we had received  
17 the letter from the National Indian Health Board  
18 stating support of this effort, but we have other  
19 letters. This was in general conversation with  
20 Mr. McCloskey when this letter came in. I was not  
21 aware of the impact of the letter or its contents until  
22 after I spoke on the telephone to this Becky and then  
23 asked Mr. McCloskey about the letter itself.

24          Q.     I think that clarifies the situation. I  
25 think what you've said right now, if I can just



1892

1 confirm, is that you were aware of the existence of the  
2 letter on the letterhead of the National Indian Health  
3 Board before that letter was offered for admission into  
4 the record in this proceeding on October 12th; is that  
5 correct?

6 A. That is correct. In general conversation  
7 with Mr. McCloskey, he mentioned that he had received  
8 this letter, and I was not known exactly who the  
9 National Indian Health Board was, etcetera. It was  
10 among many letters or endorsements of people that were  
11 willing to go before the Public Utility Commission.

12 Q. You mentioned many letters that you had  
13 received endorsing your application; is that right?

14 A. Yes.

15 Q. Have those letters been offered into the  
16 record of this proceeding?

17 A. I don't know.

18 Q. Do you know from what facilities or  
19 institutions those letters were submitted?

20 A. By hearsay, in talking to people in general.  
21 Zymo-Genetics, I believe, was one. Multi-Care facility  
22 is one, Icos, our existing customers. That's all.

23 Q. Are you finished?

24 A. Yes.

25 Q. Are you talking about letters of support or

1893

1 indications that the generator customer would provide  
2 testimony?

3 A. I kind of use those simultaneously together.  
4 I've never seen a letter from, say, for example,  
5 Zymo-Genetics that says, I will do such and such. I've  
6 never observed anything like that.

7 Q. And there is no letter from Icos, is there?

8 A. I don't know.

9 Q. And there is no letter from any of your other  
10 existing customers.

11 A. I don't know.

12 Q. Would you look at Exhibit 192 for a moment?

13 A. 192?

14 Q. Right, which I believe contains the  
15 supporting shipper letters that have been received by  
16 the Commission in support of your application to the  
17 present date, and I have copies of two letters, one  
18 from Valley Medical Center and one from Multi-Care  
19 Health Systems. Is that what you see in Exhibit 192?

20 A. Yes. I'm looking at Valley Medical Center  
21 and Multi-Care.

22 Q. Are there other letters of support that  
23 you've seen?

24 A. This is the first time I've seen these  
25 letters.

1894

1 Q. So you don't know how many letters of  
2 support --

3 A. No, sir.

4 Q. -- have been submitted on Kleen's behalf?

5 A. No, sir, I don't.

6 Q. So when you testified just a moment ago that  
7 Kleen had received many letters of support for its  
8 application, what was that based on?

9 A. Based on conversations I've had with  
10 Mr. McCloskey.

11 Q. So Mr. McCloskey has told you you've received  
12 many letters of support.

13 A. I think we talked more in terms of general  
14 support as opposed to a letter, per se.

15 Q. Haven't there actually been very few letters  
16 in support of your application?

17 A. I don't know.

18 Q. Haven't there actually been only three  
19 letters in support of your application?

20 A. I don't know.

21 Q. How did you become aware of the Birdinground  
22 letter on the letterhead of the National Indian Health  
23 Board?

24 A. I believe I testified my first awareness of  
25 anything involving this letter was when I talked to the

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1 woman on the telephone, Becky. I believe that's her  
2 name. At that point, I told her I couldn't be of any  
3 help to her but that Mr. McCloskey was handling this  
4 for us, and I referred the phone call to Mr. McCloskey.

5 Q. Mr. Olson, I asked you when you first became  
6 aware of the letter, and you said you were aware of it  
7 in general terms from conversations with Mr. McCloskey  
8 before it was submitted, so I'm referring to that  
9 period of time.

10 A. Before it was submitted --

11 Q. Before the letter was submitted to the  
12 Commission for inclusion in the record of this  
13 proceeding on October 12th, and you just testified a  
14 moment ago, I believe I'm accurately characterizing  
15 your testimony, that you were aware of it through  
16 general conversation with Mr. McCloskey before it was  
17 offered to the Commission.

18 A. I was never aware of a letter coming from the  
19 National Indian Health Board. Mr. McCloskey would, in  
20 discussing our application here, would kind of keep me  
21 abreast, like in a very short meeting in the morning,  
22 and he would mention certain people he had talked to or  
23 had sent letters to in support of this application.

24 I have never known specifically that  
25 Mr. McCloskey had sent anything to the National Indian

1896

1 Health Board, and I have no idea who Lancing whatever  
2 it is. I don't know what state he is in. I have no  
3 idea of his capacity to answer this letter, and my  
4 conversations about knowing of this letter were mainly  
5 in very general terms of how we were looking for  
6 support of our application, and it became more focused  
7 when the lady called from, and I'm not sure who she was  
8 with, and I referred the letter or her conversations to  
9 Mr. McCloskey.

10 Q. Mr. Olson, at least I'm having trouble  
11 understanding your testimony. We went through this  
12 reference on Exhibit 22, the letter that you signed to  
13 the Commission, and the sentence that I referred you to  
14 that suggests, I believe, that you knew, that you were  
15 aware is the term you used, of the submission of this  
16 document, meaning the Birdinground letter, and it  
17 distinguishes your knowledge from the knowledges of the  
18 other partners, namely Mr. Lee and Mr. Perrollaz, who  
19 it says were not aware of the existence of that letter  
20 until after we were contacted by Becky Johnston of the  
21 American Indian Health Commission.

22 Is that statement wrong? You were not aware  
23 of the existence of the Lancing Birdinground letter  
24 prior to submission of the letter to the Commission?

25 A. I was not aware of the letter in its content.

1897

1 I was aware that someone had offered to write a letter,  
2 but I had no idea who it was or the purpose of the  
3 letter, the contents of the letter, and these were in  
4 very general conversations with Mr. McCloskey.

5 Mr. Lee works in a totally other building and  
6 is somewhat removed from this whole process other than  
7 the financial side of it. Mr. Perrollaz -- we are a  
8 small company, and basically, he's doing the operations  
9 that we are doing, ongoing business of our company, and  
10 I probably have more conversations with Mr. McCloskey  
11 regarding this on a daily basis than the other two  
12 people.

13 Q. When this letter came in, did you become  
14 aware of it? Did Mr. McCloskey mention it to you?

15 A. This letter was mentioned to me in reference  
16 to the fact that this woman, when I asked him what was  
17 the meaning of this telephone conversation,  
18 Mr. McCloskey told me that I think this Ms. Becky  
19 Johnson referred to this letter as basically that this  
20 man who signed this letter cannot speak for whatever  
21 group that is there, which I have no knowledge of.

22 At that point I said to him, "Well, what does  
23 this mean?" He said, "Well, we submitted the letter  
24 to the UTC in good faith, and we were not aware, and we  
25 are still not aware, of who Mr. Birdinground is,

1898

1 although we've made attempts to find out, and that's my  
2 only knowledge of the letter until this morning when I  
3 actually read the letter and saw its attachments.

4 Q. So then if I understand your testimony now,  
5 it is that you did not learn of the existence of the  
6 letter until after you were called by Becky Johnston?

7 A. I knew through Mr. McCloskey, verbally, that  
8 he had received some form, and I guess I would use the  
9 word endorsement or application, but I had no idea of  
10 the content of the letter or who it was from.

11 Q. Understood. I'm trying to get the idea of  
12 when you first became aware of its existence. So you  
13 did have knowledge of it from conversations with  
14 Mr. McCloskey before Becky Johnston called you; is that  
15 right?

16 A. Not in the essence that I knew it was the  
17 National Indian Health Board. Mr. McCloskey would tell  
18 me on a daily basis of his ongoing efforts, whether  
19 he's meeting with one of our existing clients or  
20 anybody new. Now, we had canvassed people to find out  
21 if they were interested in the service, and he told me  
22 he had received an endorsement, and I had absolutely no  
23 idea of what the National Indian Health Board was.

24 Q. Did he say he had received an endorsement  
25 from the National Indian Health Board?

1899

1 A. Not to my knowledge.

2 Q. Did he say he had received a letter from  
3 Lancing Birdinground?

4 A. No.

5 Q. So did he say anything to you that would  
6 identify this letter --

7 A. No.

8 Q. So your conversation with him was generally  
9 about letters?

10 A. My conversation with him generally on a daily  
11 basis was about his daily efforts, and there have been  
12 many conversations about different clients we have,  
13 existing clients and other people we've contacted, but  
14 nothing specific.

15 Q. Didn't Mr. McCloskey tell you he received a  
16 supporting letter from the National Indian Health  
17 Board?

18 A. I don't know who the National Indian Health  
19 Board is.

20 Q. That's not the question I asked you. Didn't  
21 Mr. McCloskey tell you he had received a letter from  
22 the National Indian Health Board supporting the Kleen  
23 application?

24 A. I can't remember he did.

25 Q. Do you know how this letter was received by



1900

1 Kleen?

2 A. I have no idea, no.

3 Q. Mr. McCloskey didn't tell you?

4 A. No.

5 Q. Did Mr. McCloskey in later discussions with  
6 you indicate that he had solicited input or support  
7 from the National Indian Health Board?

8 A. No.

9 Q. Did he indicate that he had not solicited  
10 support from the National Indian Health Board?

11 A. No.

12 Q. Did he say that he had solicited support from  
13 Lancing Birdinground?

14 A. No.

15 Q. Did he indicate that he knew who Lancing  
16 Birdinground was?

17 A. No.

18 Q. Did you ask him?

19 A. No.

20 Q. Did you ask him if he solicited support from  
21 the National Indian Health Board?

22 A. No.

23 Q. Did you ask him if he knew who Lancing  
24 Birdinground was?

25 A. No.

1901

1 Q. Are you concerned about the submission of an  
2 apparently fraudulent letter to the Commission in  
3 support of your application?

4 A. Yes.

5 Q. But you didn't get around to reading the  
6 letter until this morning in the hearing room?

7 A. Yes.

8 Q. Did Mr. McCloskey tell you at any time that  
9 he was soliciting support from Indian tribes in the  
10 state of Washington for your application?

11 A. No.

12 Q. Now, Mr. Olson, I think Mr. Haffner asked you  
13 if you had taken any action after learning about the  
14 problems with Exhibit 23; is that correct?

15 A. Would you repeat the question, please?

16 Q. I will repeat it. Mr. Haffner asked if you  
17 had taken any action after you learned there were  
18 problems with the Lancing Birdinground letter that has  
19 been marked as Exhibit 23.

20 A. Yes.

21 Q. What actions were those?

22 A. I went and asked Mr. McCloskey, and this was  
23 all closely related with the conversation with Becky  
24 when I took the call personally, and that was just by  
25 the fact that I picked up the phone, and I asked

1902

1 Mr. McCloskey what she was talking about.

2 Mr. McCloskey verbally told me what the situation was  
3 here.

4 Q. What was the situation that he described to  
5 you?

6 A. That Becky, and she had told me the same  
7 thing, that Mr. Birdinground had no authority to speak  
8 on behalf of the National Indian Health Board, and I  
9 didn't know what the National Indian Health Board was.  
10 I wasn't even aware of it, and that's when I turned it  
11 over to Mr. McCloskey and asked him to converse with  
12 the woman and find out what the difficulty was.

13 Q. But then did he report to you that there was  
14 a problem?

15 A. Yes.

16 Q. What problem did he describe?

17 A. He came back and told me the woman, Becky  
18 Johnson, had said to him that this letter was not  
19 represented by Mr. Birdinground, or Mr. Birdinground  
20 did not have the authority to write this letter, and  
21 that she doesn't understand why it was sent to us, and  
22 basically after that, we had the discussions about the  
23 letter had been submitted, and we decided at that point  
24 to try to contact Mr. Birdinground so we would be able  
25 to tell the Commission or yourself, Mr. Johnson, how

1903

1 this thing happened.

2 On numerous events, Mr. Birdinground has not  
3 answered his phone, or all we've received, I believe,  
4 is a voice mail, left messages for him to call us, and  
5 he has not.

6 Q. So the only effort you've made to find out  
7 the origin of this letter marked Exhibit 23 is by  
8 calling the phone number at the bottom of the page; is  
9 that correct?

10 A. I haven't made any efforts. Mr. McCloskey  
11 has made an effort to get ahold of Mr. Lancing  
12 Birdinground. I have not made any efforts.

13 Q. You have not made any efforts to follow-up on  
14 this letter.

15 A. No. Mr. McCloskey has.

16 Q. Did Mr. McCloskey describe the problem to you  
17 that he saw with the letter after receiving the call  
18 from Becky Johnston, and you don't need to repeat what  
19 Becky Johnston has said, but what did Mr. McCloskey  
20 tell you about the letter at that point?

21 A. Mr. McCloskey basically reiterated what Becky  
22 Johnson had said to me, and I asked Mr. McCloskey did  
23 he know of this individual personally. He said no. We  
24 are still at a loss to figure out why this letter came,  
25 other than the fact that we were basically talking to a

1904

1 lot of different people, like the government agencies,  
2 etcetera, about this application. I have no idea  
3 what's to be benefitted by this letter.

4 Q. Mr. Olson, I'm going to refer you to  
5 Exhibit 34, and that's a letter on the Kleen  
6 Environmental Technologies letterhead signed by  
7 Mr. Allen McCloskey, and it has a response from Becky  
8 Johnston, with a "T," by e-mail that's attached in that  
9 exhibit. Mr. Olson, this letter is dated October 15,  
10 2004. Do you see that letter?

11 A. I see it, yes.

12 Q. Was this the date on which you received the  
13 phone call from Becky Johnston?

14 A. I don't know.

15 Q. So you don't know whether this letter was  
16 written on that date or a later date?

17 A. No, I don't know.

18 Q. So you don't know when you received the call  
19 from Becky Johnston.

20 A. No, sir.

21 Q. Mr. Olson, you've indicated that Kleen  
22 developed a number of form letters that you sent out to  
23 potential supporters of the application in this  
24 proceeding; is that correct?

25 A. Yes.

1905

1 Q. Have you provided those form letters for the  
2 record?

3 A. I have not, no.

4 Q. Do you have copies of those form letters with  
5 you today?

6 MR. JOHNSON: Your Honor, we would like to  
7 have those form letters produced for the record since  
8 the testimony seems to be that the Birdinground letter  
9 on the letterhead of the National Indian Health Board  
10 was some modification or response to one of those  
11 forms.

12 JUDGE RENDAHL: Let me clarify what your  
13 request is. You are asking for the form that Kleen  
14 sent out?

15 MR. JOHNSON: It's actually for all forms  
16 that Kleen sent out seeking support for its  
17 application.

18 JUDGE RENDAHL: Is that something you  
19 understand, Mr. Olson, the request that Mr. Johnson is  
20 making for all forms or form letters that Kleen  
21 Environmental sent out seeking support of the  
22 application?

23 There is a format in this proceeding and  
24 Commission proceedings where counsel can ask for  
25 information. It's called a records requisition, and

1906

1 there have been a few made on the record already. So  
2 what he's asking for Kleen to provide, in particular  
3 for you to provide, is all forms or form letters that  
4 Kleen, your company, sent out seeking support that  
5 would have generated form letters; is that correct?

6 MR. JOHNSON: Right. That would have  
7 generated a response if they did.

8 JUDGE RENDAHL: Do you understand that  
9 request?

10 THE WITNESS: Yes.

11 JUDGE RENDAHL: If you could provide that  
12 information to counsel in a time period of ten days.

13 MR. HAFFNER: Can we get a clarification?  
14 Are we seeking a form that was used to generate  
15 letters, or are we seeking actual letters that went out  
16 seeking support that was -- it's one thing to submit a  
17 form to these people for them to fill out, sign, and  
18 send back, but are you asking also for or instead the  
19 letters that went to people?

20 MR. JOHNSON: My request at this point is  
21 just for the form shipper support letters that were  
22 sent out, and I believe Mr. Olson has testified there  
23 were three forms, if I recall his testimony correctly.

24 THE WITNESS: If I said that I apologize,  
25 because I don't know if there were three forms.

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1           MR. HAFFNER: I believe there is one form  
2 already in the record that was offered through one of  
3 Mr. Johnson's witnesses.

4           MR. JOHNSON: There is. It was from January  
5 of 2004 and substantially predated the Birdinground  
6 letter and is not similar in content.

7           MR. HAFFNER: We will try and get the other  
8 forms.

9           JUDGE RENDAHL: So any other forms other than  
10 what has been submitted in the record, and that would  
11 be Record Requisition No. 6.

12           MR. SELLS: Excuse me. I think I understand  
13 now, but rather than bring this up again during my  
14 time, if there is a list of to whom these letters went,  
15 I think that would be very valuable from my view, who  
16 got them.

17           JUDGE RENDAHL: Is this request made to  
18 Mr. Olson or generally to the Company?

19           MR. SELLS: Well, I'll make it to Mr. Olson,  
20 but I'm presuming the Company is going to respond.

21           JUDGE RENDAHL: So the request would be a  
22 list of who the form or form letters were sent to. Is  
23 that something you understand, Mr. Olson?

24           THE WITNESS: Yes.

25           MR. JOHNSON: If I might, Mr. Sells, when you



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1 say "sent," I think you are looking for a list of the  
2 individuals to whom those letters were provided in any  
3 form in any manner.

4 MR. SELLS: Correct. Whether they are  
5 dropped off or sent or e-mailed.

6 JUDGE RENDAHL: To the extent that Kleen has  
7 a list generated. I'm not asking for them to prepare  
8 one, but if they have a list prepared of who they sent  
9 the information to by mail, fax, or in person for some  
10 kind of a log or list prepared, then that is what is  
11 requested.

12 MR. JOHNSON: Mr. Sells made the request.

13 MR. SELLS: Obviously what I want to see is  
14 if one went out to the National Indian Health Board or  
15 not. I think that's what we are all looking for here,  
16 so maybe just ask for that.

17 JUDGE RENDAHL: Instead of the entire list.

18 MR. HAFFNER: If I could offer that I think  
19 you can find that out through Mr. McCloskey.

20 JUDGE RENDAHL: I'm not going to mark it as a  
21 record requisition at this time. Why don't we defer  
22 the issue of a list or who the forms were sent to until  
23 we get to Mr. McCloskey's testimony.

24 MR. SELLS: Very well.

25 JUDGE RENDAHL: It's a pertinent point, but I

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1 think we may find out later. Go ahead, Mr. Johnson.

2 Q. (By Mr. Johnson) Mr. Olson, can you tell me  
3 who was in the office of Kleen Environmental  
4 Technologies in Seattle on October 12, 2004?

5 A. I don't know.

6 Q. Who are the people that might have been in  
7 the office in a sense that they work there?

8 A. Myself. I probably would be the one most  
9 likely to be there continuously.

10 Q. Like Mr. Perrollaz is not in the office  
11 during the day, is he?

12 A. Sometimes he is; sometimes he isn't. He's  
13 the project manager, and it depends on if we have a  
14 project going, and that's pretty much true with  
15 everyone there.

16 Q. So like Mr. Testeo, and there are several  
17 other folks that work in the hazardous materials side  
18 of it, they would have been -- this is October 12th.  
19 That's not that long ago. Would they have been out on  
20 a project?

21 A. I imagine so, yes, sir.

22 Q. So the person who really mans the office  
23 during the day on a regular basis would be yourself; is  
24 that correct?

25 A. Yes, sir.

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1 Q. Now, October 12th was a hearing date, so  
2 Mr. McCloskey would not have been there, would he?

3 A. I don't know.

4 Q. You don't recall?

5 A. No, sir, I don't.

6 Q. Is there any record that's kept of who is in  
7 the office?

8 A. No. We have records, yes. We have payroll  
9 records that would indicate if a person was on a job  
10 that day.

11 Q. But that just tells you whether he was  
12 working for Kleen that day but not physically where  
13 they are located; is that right?

14 A. No, sir. Our payroll records would pretty  
15 much tell where the person was geographically. We try  
16 to account for a customer basis if that person is on a  
17 job site, and we have to do that for a number of  
18 different reasons. One for billing purposes and the  
19 other for Labor and Industries in terms of insurance.

20 MR. JOHNSON: Your Honor, we would like to  
21 requisition those payroll records to indicate where the  
22 personnel employed by Kleen Environmental were on  
23 October 12th.

24 JUDGE RENDAHL: Mr. Haffner?

25 MR. HAFFNER: I guess I'm trying to figure

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1 out the relevance of the request. I'll object based on  
2 relevance.

3 JUDGE RENDAHL: Mr. Johnson?

4 MR. JOHNSON: I'm happy to provide the  
5 relevance. If you look at Exhibit 23, you will notice  
6 that that document was faxed to the Commission from the  
7 offices of Kleen Environmental Technologies at  
8 apparently 4:47 p.m. on October 12th. I want to know  
9 who sent that fax.

10 MR. HAFFNER: No inquiry has been made to  
11 that. Maybe if an inquiry were made, it could be  
12 cleared up and make the records requisition  
13 unnecessary.

14 MR. JOHNSON: We can always take a step back  
15 if that time comes. The issue might be that Mr. Olson  
16 is no longer in front of me testifying at that point in  
17 time. I want to have Mr. Olson provide those payroll  
18 records. If it becomes unnecessary at a later time, we  
19 can revisit it.

20 JUDGE RENDAHL: We have two witnesses here to  
21 testify as to what occurred. Why don't you ask  
22 Mr. Olson the question if he knows who faxed the letter  
23 to the Commission instead of inquiring into records  
24 that would come in in ten days. So why don't we ask  
25 the question and then proceed, and if we need to visit

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1 it through Mr. McCloskey as well. I don't know that we  
2 need to go into extensive records at this point, but  
3 you can ask some questions on the record.

4 MR. JOHNSON: I'll do my best, Your Honor.

5 Q. (By Mr. Johnson) Mr. Olson, this Exhibit 23  
6 that's the copy of the letter from Mr. Birdinground on  
7 the letterhead of the National Indian Health Board,  
8 this is the copy that is in the Commission's records  
9 and available on its docket. It shows a fax transmit  
10 at 4:47 p.m. on October 12, 2004, from Kleen to the  
11 Commission. Did you send that fax?

12 A. No.

13 Q. Do you know who sent that fax?

14 A. No.

15 Q. Do you know where Mr. McCloskey was on the  
16 afternoon of October 12th?

17 A. No.

18 Q. Do you know whether there was a hearing  
19 taking place in this proceeding on October 12th?

20 A. No.

21 Q. If I suggested to you that there was a  
22 hearing in this proceeding on October 12th, would that  
23 affect your -- would you suspect that Mr. McCloskey was  
24 in the hearing?

25 A. I don't know.

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1 Q. Have you asked Mr. McCloskey to attend these  
2 hearings throughout?

3 A. Yes.

4 Q. So if there was a hearing that date and it  
5 ended late in the afternoon, the question would be who  
6 faxed this to the Commission?

7 MR. HAFFNER: Objection, asked and answered.

8 JUDGE RENDAHL: I'll sustain the objection  
9 because it is clear that Mr. Olson doesn't know who  
10 sent the fax, but now that we have that clarification,  
11 I'll mark as Record Requisition No. 7 the payroll  
12 records for October 12th as to who was present in the  
13 office, and if it becomes clear through testimony of  
14 Mr. McCloskey that we do not need this record  
15 requisition, then we will withdraw it.

16 MR. JOHNSON: Thank you, Your Honor.

17 Q. (By Mr. Johnson) So Mr. Olson, other than  
18 asking Mr. McCloskey to check into the problem with the  
19 Birdinground letter, you didn't yourself take any  
20 action with respect to that letter, did you?

21 A. No.

22 Q. You didn't even read it.

23 A. No.

24 Q. Mr. McCloskey, are you paying for  
25 Mr. Haffner's work in this proceeding?

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1 MR. HAFFNER: This is Mr. Olson.

2 Q. I'm sorry. Mr. Olson, are you paying for  
3 Mr. Haffner's work in this proceeding?

4 A. Yes.

5 Q. So are you paying for Mr. McCloskey's work in  
6 this proceeding?

7 A. Yes.

8 Q. And you have, in fact, paid them for their  
9 work up to date?

10 A. Yes.

11 Q. Do you think you are getting your money's  
12 worth?

13 A. Yes.

14 Q. I believe you testified then that  
15 Mr. McCloskey made some efforts to determine who  
16 Mr. Lancing Birdinground is and how to reach him; is  
17 that correct?

18 A. That was my conversation with Mr. McCloskey,  
19 yes.

20 Q. And Mr. McCloskey took some action to try to  
21 locate Mr. Birdinground?

22 A. That's what I was told, yes.

23 Q. What action was that that he took?

24 A. I asked Mr. McCloskey what Mr. Birdinground  
25 had to say, and he said he had not had a conversation

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1 with him, that he had called on several occasions and  
2 received voice mail, and he left him a message to  
3 please call him back, and we have not had a response.

4 Q. That was with respect to the telephone number  
5 shown on the bottom of Exhibit 23.

6 A. I don't know.

7 Q. Did you ask Mr. McCloskey whether he knew  
8 Mr. Birdinground?

9 A. Yes.

10 Q. What did he say?

11 A. No.

12 Q. Did you ask Mr. McCloskey whether he had  
13 solicited support from Mr. Birdinground?

14 A. No, I did not.

15 Q. Did you ask him whether he had solicited  
16 support from the National Indian Health Board?

17 A. No, I did not.

18 Q. Mr. Olson, you've provided a little bit of  
19 testimony with respect to work done by Kleen with  
20 respect to Indian facilities, I believe. Has Kleen  
21 done any work with tribal health care clinics or health  
22 facilities?

23 A. No.

24 Q. Has Kleen done any actual work directly with  
25 Indian tribes?



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1 A. Yes.

2 Q. What was that work?

3 A. We had a job that had popped up in the Daily  
4 Journal of Commerce for the Makah tribe at Neah Bay.  
5 They had an abandoned tank facility distribution center  
6 that they wanted to close, remove the tanks, and I  
7 think the subsequent idea was to put a little mini-mart  
8 on the situation.

9 We went up and we did the tank removal, the  
10 lead abatement on the tanks. We took contaminated soil  
11 off. We backfilled the site. We did compaction.

12 Q. Any other contract work with any other Indian  
13 tribes directly?

14 A. We did work through, I believe, some federal  
15 agency with the Nez Pierce tribe in Idaho.

16 Q. I know Mr. Perrollaz has provided us some  
17 testimony about contracts through the Army Corps of  
18 engineers.

19 A. Yes.

20 Q. I'm talking about direct contracts with  
21 Indian tribes.

22 A. Yes, we did.

23 Q. What other direct contracts have you had with  
24 Indian tribes?

25 A. We had a contract, and I'm not sure how to

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1 say the name of the tribe in all respect to the tribe.

2 It's up in Darrington.

3 Q. Maybe this is the one referred to in  
4 Mr. Perrollaz's affidavit as the Sauk-Suiattle tribe?

5 A. That's correct.

6 Q. With the exception of those two tribes, has  
7 Kleen had any contracts or other business relationships  
8 with Indian tribes in the State of Washington?

9 A. No.

10 Q. Mr. Olson, who prepared the application  
11 submitted in this proceeding for Kleen Environmental?

12 A. I don't know.

13 Q. Did you prepare it?

14 A. No.

15 Q. Did you ever look at the tariff that was  
16 submitted as an attachment to this application?

17 A. Yes.

18 Q. It was a proposed tariff for Kleen?

19 A. Yes.

20 Q. Did you look at it at the time you signed the  
21 application?

22 A. I don't know.

23 Q. When did you look at the tariff?

24 A. I don't know.

25 Q. Have you looked at the revised tariff that's

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1 now been submitted on behalf of Kleen in this  
2 proceeding?

3 A. I don't know.

4 Q. Well, let's see. I guess we could look at  
5 it.

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

8 (Recess.)

9 JUDGE RENDAHL: Mr. Johnson, I believe you  
10 were about to ask about tariffs, and I have a question  
11 in terms of moving this along what the relevance of the  
12 tariff is to the issue of the potentially fraudulent  
13 letter.

14 MR. JOHNSON: What I'm trying to do is  
15 inquire into the nature of Mr. Olson's oversight of  
16 Mr. McCloskey's activities and whether we can determine  
17 whether Mr. Olson is actually overseeing  
18 Mr. McCloskey's activities or whether Mr. McCloskey has  
19 been given carte blanche to do anything with respect to  
20 this proceeding, and I was taking a stroll through the  
21 major elements of the case as it has evolved to see  
22 whether Mr. Olson has been a part of the process of  
23 presenting evidence and information to the Commission  
24 for use in this proceeding.

25 JUDGE RENDAHL: Mr. Haffner?

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1           MR. HAFFNER:  Maybe he could ask what he's  
2  overseeing, if anything, and start with that and ask  
3  Mr. Olson to declare what he's been managing, if  
4  anything, rather than taking this stroll that might  
5  take us from Point A to Point W to Point Q.

6           JUDGE RENDAHL:  I'm a bit concerned about  
7  time and the focus of this hearing versus getting into  
8  what was, I believe, also inquired upon in Mr. Olson's  
9  appearance earlier as to what he was doing for the  
10 application versus Mr. McCloskey, so I'm a bit  
11 concerned about going into that.  Mr. Johnson, I would  
12 like to focus on the letter itself.

13           MR. JOHNSON:  If I could just ask a general  
14 question, as Mr. Haffner suggested, to sort of try to  
15 elicit Mr. Olson's roll in this proceeding, I will try  
16 to do that.

17         Q.     (By Mr. Johnson)  Mr. Olson, I was going to  
18 ask you about the revised tariff that has been marked  
19 and submitted in this proceeding as Exhibit 32, but  
20 instead of that, I would like to ask you whether you  
21 have overseen the preparation of the case that has been  
22 submitted in these proceedings in support of Kleen's  
23 application.

24         A.     Mr. Johnson, I really don't understand that  
25 question.

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1 Q. I'll try again. To what extent have you  
2 supervised Mr. McCloskey's activities in relation to  
3 this proceeding?

4 A. My supervision of Mr. McCloskey has been on a  
5 daily basis from the very beginning. We started into  
6 this hearing scenario based on the fact that some of  
7 our existing customers had asked us to do it over a  
8 period of about three years. We went to the Seattle  
9 Health Department because we thought there was a way if  
10 you had existing customers that you did not have to go  
11 through the UTC. It was exempt from it. We were told  
12 it was not.

13 We then decided that based on our customers'  
14 request that we would file for a Limited G permit with  
15 the Public Utility Commission. At that point, we sat  
16 down and discussed finding counsel for it, and we went  
17 through a series of three or four lawyers and had  
18 discussions, which I personally did. We elected to go  
19 with Mr. Haffner.

20 At that point, as we prepared the case, we  
21 talked on a daily basis how we thought the relevance of  
22 the witnesses would be, which I thought was in my  
23 understanding of the case was really based on the fact  
24 whether people wanted to have that service. I knew all  
25 the witnesses personally and their firms. Being small

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1 businesses, I talked to them on multiple different  
2 levels, everything from scheduling jobs to collecting  
3 bills, accounts receivable.

4           We have had, I believe, two or three  
5 informational meetings, which we set up at hotels and  
6 invited various people to come to them, which we did,  
7 and discussed their particular desires. When we set  
8 the tariff rate, what we were looking at is basically  
9 helped Mr. McCloskey come up with what the cost would  
10 be to put in a tariff by factoring in labor and  
11 equipment and supplies based on our previous experience  
12 with hazardous waste and Mr. Lee's performance of  
13 putting together a pro forma with regard to financing  
14 the operation, if it was so granted. I contributed the  
15 input of the labor hours and the cost of doing the job,  
16 the loaded hours with the FICA and the insurances and  
17 things of that nature.

18           Probably on a daily basis, I meet with  
19 Mr. McCloskey when he comes back from hearings to  
20 discuss with him what was said. Before he goes in in  
21 the morning, I discussed which witnesses I think that  
22 are going to show, generator witnesses, and that's on a  
23 daily basis. Most of my input with Mr. McCloskey  
24 basically is verbal. A lot of times, he doesn't get  
25 back to the office if there are hearings until five or

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1 5:30 at night, so I usually wait until he gets back to  
2 find out if he needs any kind of support or help.

3 Q. Thank you, Mr. Olson. You mentioned that you  
4 have discussions with Mr. McCloskey on a daily basis  
5 prior to the hearings; is that correct?

6 A. Each daily hearing?

7 Q. Yes.

8 A. It's either done the night before or if I can  
9 get ahold of him before he goes out, yes.

10 Q. Exhibit 203, which has now been withdrawn by  
11 your company, was offered to the Commission record in  
12 this proceeding on October 12th. Did you have a  
13 discussion with Mr. McCloskey prior to the submission  
14 of that?

15 A. What's 203?

16 Q. It's the same text that is found in Exhibit  
17 23.

18 JUDGE RENDAHL: Let's be off the record for a  
19 moment.

20 (Discussion off the record.)

21 Q. (By Mr. Johnson) You can look at Exhibit 203  
22 or Exhibit 23. The texts are the same, but you  
23 mentioned that you discussed with Mr. McCloskey either  
24 before or after the hearing things that were relevant  
25 to the hearing that day, and I am asking you whether

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1 Mr. McCloskey discussed with you the exhibit that's  
2 marked as 203 or 23 either before or after the hearing  
3 on October 12th?

4 A. I don't know, October 12th.

5 Q. Do you recall --

6 A. I have stated previously that when I received  
7 the telephone call when I happened to pick up the phone  
8 from Ms. Becky Johnston that I transferred the call to  
9 Mr. McCloskey, and he discussed whatever the parameters  
10 were of this letter with her.

11 Q. I understand.

12 A. And then I subsequently went to Mr. McCloskey  
13 and I queried into what was this lady talking about,  
14 and he told me, generally speaking, that she had stated  
15 to him that Mr. Birdinground had no authority to write  
16 this letter, and she didn't understand why he did so.

17 Q. Okay. Accept my statement for the moment  
18 that this letter that's marked as Exhibit 203 or  
19 Exhibit 23 was offered in the hearing on October 12th.  
20 Did Mr. McCloskey discuss the fact after that day, at  
21 the end of the day when he met with you, that he had  
22 submitted this or that Kleen had submitted this letter  
23 for the Commission record?

24 A. No.

25 Q. Did that seem unusual to you?



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1 A. No.

2 Q. What did you talk about if you didn't talk  
3 about what was submitted as evidence for the record of  
4 the proceeding?

5 A. My general concerns after I talked to  
6 Ms. Becky Johnston was the fact, and my brief  
7 conversation with her before I turned it over to  
8 Mr. McCloskey, that there was concern on her part about  
9 this letter.

10 Q. Mr. Olson, please. I'm not talking about the  
11 time when you received a call from Becky Johnston.  
12 That's later. I'm talking about the time, close to the  
13 time when this letter was offered by your counsel for  
14 the record of this proceeding, which was October 12th.

15 So I'm talking about your contacts with  
16 Mr. McCloskey related to this letter. I'm asking  
17 whether he either talked to you before the hearing on  
18 October 12th or after the hearing on October 12th with  
19 respect to what appeared at that time to you, according  
20 to your testimony or to Mr. McCloskey or to your  
21 company, a supporting letter from the National Indian  
22 Health Board. Did he talk to you about it before or  
23 after that date?

24 A. I don't know. I don't know those dates.

25 Q. So the question is the date. So did he talk

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1 to you about it after he came back from a hearing on  
2 some date to inform you that this letter had been  
3 submitted for the record?

4 A. No.

5 Q. Did he talk to you about this letter before  
6 it was submitted for the record?

7 A. No.

8 Q. Did he ever tell that you he had gotten a  
9 letter from the National Indian Health Board before you  
10 received a call from Becky Johnston?

11 A. Not that I can remember.

12 Q. Mr. Olson, I'm referring you to Exhibit 22  
13 now for a moment, which is a letter that you signed,  
14 and I'm referring you to that third paragraph again,  
15 and I'm looking at the last sentence. Are you with me?

16 JUDGE RENDAHL: Which sentence are you  
17 referring to?

18 MR. JOHNSON: The sentence is, "We have been  
19 in contact with the National Indian Health Board and  
20 the American Indian Health Commission for Washington  
21 state and are working with them to address the great  
22 deal of concern surrounding the letter in question."

23 Q. (By Mr. Johnson) Do you see that sentence?

24 A. Yes.

25 Q. What contact did you make with the National

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1 Indian Health Board?

2 A. I did not make contact with the National  
3 Indian Health Board. I directed Mr. McCloskey to look  
4 into this.

5 Q. Do you know whether Mr. McCloskey made  
6 contact with the National Indian Health Board?

7 A. I was told he had called and was looking to  
8 find out information on this Lancing Birdinground, and  
9 he told me that he had left voice mail messages and  
10 they were not returned.

11 Q. Now, the voice mail messages were left at the  
12 phone number at the bottom of the page on Exhibit 23;  
13 right?

14 A. I don't know.

15 Q. I'm talking about what Mr. McCloskey did, if  
16 anything, to contact the National Indian Health Board.  
17 Is it your understanding that all he did was to call a  
18 telephone number for Mr. Lancing Birdinground and leave  
19 messages asking for a call back?

20 A. I don't know.

21 Q. So you don't whether any effort was made to  
22 contact the National Indian Health Board.

23 A. No.

24 Q. So you don't know whether this statement is  
25 true that we just read out of the letter of October 21

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1 marked as Exhibit 22. You don't know whether that  
2 sentence is true at all, do you?

3 A. I think that sentence is true in the fact  
4 that I know he had talked to this Becky Johnston  
5 because I had talked to her and I had referred the  
6 phone call to Mr. McCloskey. I subsequently asked  
7 Mr. McCloskey what the conversation was about, because  
8 I think she had identified herself as being with the  
9 National Indian Health Board, and he had discussions  
10 with her, and subsequent to that, he was trying to  
11 clarify who the Lancing Birdinground was.

12 So when I made the statement here, there had  
13 been interrogations by what I assumed was the National  
14 Indian Health Board with Ms. Becky Johnston.

15 Q. If you look at Exhibit 34, there is a letter  
16 on Kleen Environmental Technologies letterhead to the  
17 American Indian Health Commission; right?

18 A. Uh-huh.

19 Q. And you see it says, "Attention, Becky  
20 Johnston." Doesn't that indicate that Becky Johnston  
21 is associated with the American Indian Health  
22 Commission?

23 A. It's addressed to her at the American Indian  
24 Health Commission, yes.

25 Q. So she's not with the National Indian Health

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1 Board; right?

2 A. I don't know the difference between the two.

3 Q. So with respect to the sentence we previously  
4 quoted in Exhibit 22, or that I previously quoted, it  
5 says, "We have been in contact with the National Indian  
6 Health Board." And you really have no knowledge  
7 whether that is true or not, do you?

8 A. No. I assume that the National Indian Health  
9 Board in conversation and the American Indian Health  
10 Commission were the same people, in general  
11 conversation.

12 Q. Is there any reason for your assumption? Why  
13 did you assume that?

14 A. I can't tell you. I don't know. I still  
15 don't know the difference between the two.

16 Q. But you said you had been in contact with the  
17 National Indian Health Board. You just don't know  
18 whether that's true.

19 A. Myself?

20 Q. Right.

21 A. No, I have not been, other than the original  
22 phone call to Ms. Becky Johnston.

23 Q. And that's a phone call she made to you;  
24 right?

25 A. Yes.

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1 Q. Now, if you continue to the end of the  
2 sentence, it says, "Basically, we are working with  
3 them--" namely, the National Indian Health Board and  
4 the American Indian Health Commission "--to address the  
5 great deal of concern surrounding the letter in  
6 question." In what way were you working with the  
7 National Indian Health Board or the American Indian  
8 Health Commission for Washington state to address the  
9 concerns raised by the letter?

10 A. When I discussed this with Mr. McCloskey, he  
11 told me about his conversation with Ms. Becky Johnston,  
12 and I said one of those conversations was Ms. Johnston  
13 didn't recognize this gentleman's name, and that was  
14 one of her concerns or the concerns of other people,  
15 and I asked Mr. McCloskey to look into this and bring  
16 some relevance to it, and this happened like about a  
17 week ago, and when I discussed with him on a daily  
18 basis, I'm told we tried to reach Mr. Birdinground, and  
19 he has not called back yet.

20 Q. So the only way in which Kleen Environmental  
21 Technologies was working with the National Indian  
22 Health Board was by making telephone calls to Lancing  
23 Birdinground and waiting for a return call; is that  
24 correct?

25 A. I think that and discussions with Cindy

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1 Johnston.

2 Q. Becky Johnston?

3 A. Yes, I'm sorry.

4 Q. You yourself didn't go on the Internet to see  
5 whether the National Indian Health Board was listed  
6 there.

7 A. No, sir. I'm not a computer user.

8 Q. You have Internet access at your office?

9 A. Yes.

10 Q. Do you know whether Mr. McCloskey made any  
11 effort to contact the National Indian Health Board?

12 A. No, I don't. I made the assumption in his  
13 dealing with Becky Johnston he was speaking in  
14 relationship to this letter and the validity of who  
15 Lancing Birdinground was.

16 Q. Mr. Olson, is Kleen Environmental  
17 Technologies sharing space with any other company at  
18 its facility at 754 Garfield Street?

19 A. No.

20 Q. So there is no other company with personnel  
21 located at that address?

22 A. No.

23 Q. Mr. Olson, who produces the Kleen  
24 Environmental Technologies' Web site, the content of  
25 that Web site?

1931

1           MR. HAFFNER:  Objection as to the relevance  
2 regarding the letter we're speaking of in today's  
3 proceeding.

4           JUDGE RENDAHL:  I tend to agree.  Can you  
5 make an offer of proof as to why this is relevant?

6           MR. JOHNSON:  I guess I'm trying to lay the  
7 foundation for some questions for Mr. McCloskey later  
8 on with respect to his economic incentives in this  
9 proceeding, and I'm going ask him a question about  
10 what's on the Web site.

11           JUDGE RENDAHL:  I think you should do that  
12 through Mr. McCloskey.

13           MR. JOHNSON:  All right, I will try to do  
14 that.

15         Q.     (By Mr. Johnson)  Mr. Olson, has  
16 Mr. McCloskey or anybody associated with Mr. McCloskey  
17 promised to indemnify you against costs incurred in  
18 this proceeding if the application is not granted?

19         A.     No.

20         Q.     Mr. Olson, do you anticipate receiving any  
21 economic benefit, that is, you or your company  
22 receiving any economic benefit if this application is  
23 granted other than such benefits as might accrue from  
24 the operation of a biomedical waste collection  
25 business?



1932

1 A. No.

2 Q. Do you have any plan to sell the certificate  
3 that is at issue in this case?

4 A. No.

5 JUDGE RENDAHL: Mr. Johnson, how is this  
6 related to the letter?

7 MR. JOHNSON: I guess what I'm --

8 JUDGE RENDAHL: These are questions you could  
9 have asked Mr. Olson when he was here on the 27th.  
10 This hearing has a very narrow scope.

11 MR. JOHNSON: Understood, Your Honor.

12 Q. (By Mr. Johnson) Mr. Olson, when you first  
13 got acquainted with Mr. McCloskey, what was his  
14 position?

15 A. He was doing economic development for Indian  
16 tribes.

17 Q. What Indian tribe was he working for?

18 A. I believe the Makah tribe.

19 Q. Do you know what his title was?

20 A. Not specifically, but it had something to do  
21 with economic development.

22 Q. Did he have some responsibility for your work  
23 with the Makah tribe at that time?

24 A. Yes.

25 Q. What was his responsibility?

1933

1           A.     I believe Mr. McCloskey had written the  
2 request for quotation on removal of a tank farm. This  
3 is very brief and appeared in the Daily Journal of  
4 Commerce.

5           Q.     So was Mr. McCloskey the person you dealt  
6 with in terms of your contract with the Makah tribe?

7           A.     Yes, one of the persons.

8           Q.     Did Mr. McCloskey sign that contract with the  
9 Makah tribe?

10          A.     I don't remember. I don't think so.

11          Q.     Did Mr. McCloskey supervise your activities  
12 under the contract with the Makah tribe?

13                   MR. HAFFNER:  Objection, Your Honor, to the  
14 relevance of this whole line of questioning.

15                   JUDGE RENDAHL:  I would ask the same thing,  
16 Mr. Johnson.

17                   MR. JOHNSON:  I'm trying to lay the  
18 foundation for a question I'm going to ask  
19 Mr. McCloskey.

20                   JUDGE RENDAHL:  I'll entertain a very brief  
21 continuation of this, but I'm not seeing the relevance  
22 to this particular letter from Mr. Birdinground.

23                   MR. JOHNSON:  I think one of the things we  
24 are going to be inquiring into is sort of the general  
25 relationship to truthfulness.

1934

1                   JUDGE RENDAHL:  Then you can inquire into  
2 that with Mr. McCloskey.

3                   MR. JOHNSON:  But I need to lay the  
4 foundation with somebody else that can establish facts  
5 that we will then check in with Mr. McCloskey, if I  
6 may.

7                   JUDGE RENDAHL:  This hearing is not to  
8 inquire into Mr. McCloskey's general truthfulness but  
9 to focus on the letter itself, so let's focus, please.

10                  MR. JOHNSON:  You don't think Mr. McCloskey's  
11 credibility is relevant?

12                  JUDGE RENDAHL:  I do believe it's relevant,  
13 but let's first focus on the letter itself, and then if  
14 you see the need to move further, then let's do that,  
15 but let's focus our questions to Mr. Olson in a way  
16 that we can move him along.  We've now been at this for  
17 over an hour with Mr. Olson, so let's continue.

18                  MR. JOHNSON:  I will do my best.  Am I going  
19 to be able to have Mr. Olson back?

20                  JUDGE RENDAHL:  It depends on the time.  
21 That's my intent, if we have time.  It all depends on  
22 how long we go with each witness.

23                  Q.     (By Mr. Johnson)  Mr. Olson, I think I just  
24 have one or two more questions, if you will bear with  
25 me.  I want to clarify what investigation Mr. McCloskey

1935

1 has done, to your knowledge, with respect to the origin  
2 of the Birdinground letter marked as Exhibit 23 and  
3 203.

4 A. I don't understand the word "investigations."

5 Q. What has Mr. McCloskey done to try to find  
6 out where that letter came from?

7 A. In my conversations with Mr. McCloskey, I  
8 asked him to relate to me the conversation he had with  
9 Ms. Johnston, and he related those to me in regard to  
10 Ms. Johnston had a concern that Mr. Birdinground didn't  
11 represent whichever one of these two groups it was on a  
12 daily basis. I asked him what his success was and  
13 found out the background of Mr. Birdinground, and on a  
14 daily basis, we would call and leave a voice mail  
15 message, and he doesn't respond back to it.

16 Q. So did Mr. McCloskey try to locate  
17 Mr. Birdinground, to your knowledge?

18 A. What I know is he has called a number that he  
19 has and received the voice mail message, assuming  
20 that's Mr. Birdinground's phone, and leaves a message  
21 for him to call Kleen Environmental, and it has not  
22 been done to date. He has not returned the call.

23 Q. But as far as you know otherwise, he hasn't  
24 made any effort to find Mr. Birdinground.

25 A. I don't know the extent of the effort.

1936

1 Q. Did you ask him about that?

2 A. I have asked him the relationship of the  
3 situation with the letter, and he replies to me that he  
4 has called a telephone number of Mr. Birdinground and  
5 left the voice mail message to try to ascertain  
6 information from him, and he has not received a  
7 telephone call back.

8 Q. Mr. McCloskey has told you that he doesn't  
9 know Mr. Birdinground; isn't that right?

10 A. Yes.

11 MR. JOHNSON: I have no further questions.

12 JUDGE RENDAHL: Mr. Sells?

13 MR. SELLS: Thank you, Your Honor.

14

15

16 CROSS-EXAMINATION

17 BY MR. SELLS:

18 Q. Mr. Olson, you indicated when you hired  
19 Mr. McCloskey you were impressed with his education; is  
20 that correct?

21 A. Yes, and I was impressed with his attention  
22 to detail in having previously worked with him.

23 Q. Tell me what about his education that  
24 impressed you?

25 A. His bachelor of science degree from Humboldt

1937

1 State University. In discussing things with him, he  
2 had worked in the construction end of his father's  
3 business, and in as much as I am a specialty  
4 contractor, I can kind of relate to those two things.

5 Q. Did you contact any other employers he may  
6 have had?

7 A. No.

8 Q. So as far as you know, he was straight out of  
9 college and worked for his father.

10 A. I don't know that. I believe there was a  
11 period of time he worked for his father.

12 Q. Did you check with his father to see if that  
13 was true?

14 A. No.

15 Q. Did you do a background check?

16 A. No, sir, I did not.

17 Q. Did you ask him if he had ever been convicted  
18 of a crime?

19 A. No, sir, I did not.

20 Q. Did you ever check to see if he had been  
21 convicted of a crime?

22 A. No, sir, I did not.

23 Q. Did you check with Humboldt State to see if  
24 he actually graduated?

25 A. No, sir.

1938

1 Q. If you take a look at Exhibit 34, have you  
2 got 34 there in front of you?

3 A. Yes, sir.

4 Q. Now, that is a letter to the American Indian  
5 Health Commission from Mr. McCloskey; correct?

6 A. Yes, sir.

7 Q. If you look down at the bottom of the second  
8 paragraph, and I'm reading the last sentence now. It  
9 says, "In the future, conduct of business, and  
10 specifically proceedings such as these, we will make a  
11 conscious, deliberate, and determined effort to perform  
12 due diligence and confirm the authenticity of any  
13 future correspondence." Do you see that?

14 A. Yes, sir.

15 Q. Is that a statement now of the policy of  
16 Kleen Environmental Technologies?

17 A. Yes, sir.

18 Q. And that was not the policy prior to this  
19 hearing?

20 A. I believe we do due diligence in the pursuit  
21 of our business. When this statement, when I read this  
22 letter here, it was more, I felt, to encourage a person  
23 to understand that we would take greater efforts.

24 Q. Well, you will make a conscious, deliberate,  
25 and determined effort to perform due diligence.

1939

1 A. Much more so.

2 Q. Do you believe that in regard to this  
3 Birdinground letter that it was a conscious,  
4 deliberate, and determined effort to do due diligence?

5 A. With this letter here? (Witness indicating.)

6 Q. Yes.

7 A. I had not seen that letter prior.

8 Q. That's not my question. I'm asking you when  
9 you saw it, I'm asking you whether in regards to the  
10 Birdinground letter, do you believe that Kleen  
11 Environmental Technologies has done conscious,  
12 deliberate, and determined effort to perform due  
13 diligence?

14 A. No.

15 Q. Who do you hold responsible for that?

16 A. Myself.

17 Q. How about Mr. McCloskey?

18 A. I beg your pardon?

19 Q. Do you hold Mr. McCloskey responsible for it?

20 A. Any evolution that happens to this company on  
21 an annual basis or any basis potentially winds up on my  
22 desk.

23 Q. So the buck stops there.

24 A. I didn't want to be so trite, but apparently  
25 so.



1940

1 Q. Have you had any discussions with your  
2 partners about any consequences to you or to  
3 Mr. McCloskey for this mess?

4 A. Yes. I've had discussions with him.

5 Q. What are the nature of those discussions?

6 A. I think this is a travesty. I think the most  
7 affected thing about it is its timeliness in regard  
8 that this letter was received during the process of the  
9 hearings. I think that if it had not been for that  
10 particular dates when the hearings were going on, I  
11 think there would have been greater diligence, but on a  
12 general basis that ninety percent of the time  
13 Mr. McCloskey was out of the office, say basically  
14 working 12 hours a day, I think that if this letter had  
15 come 30 days prior to the hearings that the due process  
16 of investigation would have been far better in terms of  
17 phone calls or discussions.

18 Q. That's probably all very true, but it doesn't  
19 answer my question. My question was what were the  
20 nature of the discussions about any consequences to you  
21 personally or to Mr. McCloskey over here for this mess?

22 A. The nature of the consequences as I see it is  
23 my discussions with my partners. This is a morality  
24 issue. This taints how Kleen Environmental would do  
25 their work, obtain their work, and operate their

1941

1 business successfully.

2           We've been doing work in a very intricate in  
3 the hazardous waste business for more than 11 years,  
4 and I take a bad view of somebody, whatever the reason  
5 is that this happened and how it reflects on me, I take  
6 it personally, and I take it from the Company's point  
7 of view.

8       Q.    Is anything going to happen to you because of  
9 this, any disciplinary action, any loss of pay,  
10 anything like that?

11       A.    To me personally?

12       Q.    Yes.

13       A.    No.

14       Q.    How about to Mr. McCloskey?

15       A.    No.

16       Q.    Probably just one or two last questions.

17 Where do you think this letter came from, Exhibit 23?

18       A.    Where do I?

19       Q.    Yes.

20       A.    I wouldn't have the foggiest imagination.

21       Q.    Do you have any suspicions?

22       A.    I have absolutely no suspicions whatsoever.

23 I was surprised to look at the letterhead from  
24 Illinois. If it was like Washougal, Washington, you  
25 could get in your car and drive down and knock on the

1942

1 door, but Illinois of all places. I didn't even know  
2 they had Indian tribes in Illinois.

3 Q. Actually they don't.

4 A. If you understand what I mean.

5 Q. Do you think it's a prank?

6 A. I don't know. The thought has crossed my  
7 mind.

8 Q. Do you think it's somebody out to get you?

9 A. The thought has come to mind.

10 Q. It might be Stericycle?

11 A. No. Absolutely not.

12 Q. So as we sit here today, you don't have a  
13 clue.

14 A. I wish I did. To answer your question, no,  
15 sir, I don't.

16 MR. SELLS: No further questions.

17 JUDGE RENDAHL: Mr. Trautman?

18 MR. TRAUTMAN: Thank you, Your Honor. I just  
19 have one or two follow-ups.

20

21

22 CROSS-EXAMINATION

23 BY MR. TRAUTMAN:

24 Q. I still want to clarify, and I'm looking back  
25 at Exhibit 22, and that was the October 21st letter

1943

1 from Kleen Environmental signed by you and  
2 Mr. Perrollaz and Mr. Lee, and looking at Paragraph 3  
3 and the third sentence again, first of all, I believe  
4 you said that you did not know of the letter's  
5 existence at all until Becky Johnston called on October  
6 15th; is that right?

7 A. I'm not sure I said October 15th.

8 Q. But whenever she called.

9 A. Right.

10 Q. And she called after the letter was submitted  
11 to the Commission; right?

12 A. According to Ms. Johnston, yes.

13 Q. And the letter was submitted to the  
14 Commission October 12th; correct?

15 A. I guess.

16 Q. What I'm not clear of is the letter seems to  
17 distinguish you from the other partners saying that  
18 they did not know of the letter's existence until after  
19 we were contacted by Becky Johnston.

20 MR. JOHNSON: Which letter are you referring  
21 to?

22 MR. TRAUTMAN: Exhibit 22.

23 Q. (By Mr. Trautman) And it says that the other  
24 partners were not aware of the Birdinground letter, of  
25 the existence of a letter, until after we were

1944

1 contacted by Becky Johnston of the American Indian  
2 Health Commission for Washington state, but it says,  
3 Mr. Olson was aware of the submission of the document.  
4 So I'm confused as to what you knew prior to contact by  
5 Ms. Johnston.

6 A. Nothing.

7 Q. You did not know that it had been  
8 submitted --

9 A. I did not know that this letter existed.  
10 When I referred to this October 21st letter, this was  
11 subsequent to my discussions with Becky Johnston. I  
12 then went to Mr. McCloskey and I asked him to please  
13 bring me up to speed, paraphrase this whole thing, and  
14 he was equally surprised.

15 Q. So why did you sign this letter, Exhibit 22,  
16 which says that you were aware of the submission of  
17 this document, meaning the Birdinground letter? Why  
18 did you sign this Exhibit 22 that says you were aware  
19 of the submission of the document?

20 A. When I signed this letter, the spirit and  
21 intent was I was aware of it after talking to Becky  
22 Johnston and subsequent talking to Mr. McCloskey about  
23 what Ms. Johnston was saying about this letter.

24 Q. So to the extent Exhibit 22 says that you  
25 were aware of the submission of the Birdinground letter

1945

1 at an earlier date, it's incorrect; is that correct?

2 A. May I respond to that? I was aware of the  
3 letter subsequent to talking to Mr. McCloskey who told  
4 me that the letter had been submitted. I don't know if  
5 it was from Mr. Birdinground or how that letter came to  
6 the Commission, but he informed me that the letter had  
7 gone to the Commission and that she was concerned about  
8 it.

9 Q. When did Mr. McCloskey inform you of that?

10 A. I can't tell you the date, but it was the  
11 same day that I had talked to Mr. Johnston on the  
12 telephone, because I really didn't understand what she  
13 was talking about. After Mr. McCloskey talked to  
14 Ms. Johnston, I went to him and said, "What's the  
15 nature of this phone call," and he informed me about  
16 the letter, and that's what I'm referring to in this  
17 paragraph.

18 At that point, I knew the letter was in the  
19 system somehow, if I can use that term. I never saw  
20 the letter prior to that phone call with Ms. Johnston.

21 Q. I believe you said also you were concerned  
22 with the submission of fraudulent letters to the  
23 Commission; correct?

24 A. Yes.

25 Q. That was a concern to you and you said it was

1946

1 a serious matter; correct?

2 A. I think it was a very serious matter.

3 Q. Why then didn't you read the letter until  
4 this morning in the hearing room if you knew there was  
5 a fraudulent letter and that it was a very serious  
6 matter?

7 A. I believe I didn't read the letter because of  
8 the fact that I spent great detail discussing with  
9 Mr. McCloskey -- I assume you are talking about  
10 Mr. Birdinground's letter?

11 Q. Yes.

12 A. And it was very generic when I was talking to  
13 Mr. McCloskey about its content.

14 Q. But you knew that you were going to be asked  
15 about your knowledge of this matter; correct, the  
16 matter of the submission of the Birdinground letter;  
17 correct?

18 A. I knew that the Commission wanted me to come  
19 down and discuss this matter, but I didn't know in what  
20 scope.

21 Q. Is that your normal procedure when you are  
22 presented with a matter of this significance, that  
23 being a possible fraudulent letter? Is it your normal  
24 procedure not to read the item in question or the  
25 letter in question until the day of the hearing?

1947

1 A. Obviously an oversight on my part.

2 MR. TRAUTMAN: Thank you.

3

4

5 CROSS-EXAMINATION

6 BY JUDGE RENDAHL:

7 Q. I'm going to be very specific with you about  
8 the time frame I'm talking about. After you received  
9 the phone call from Ms. Becky Johnston, my  
10 understanding is you spoke with Mr. McCloskey; correct?

11 A. Yes.

12 Q. At that time that you spoke to Mr. McCloskey  
13 after receiving the call from Ms. Johnston, had  
14 Mr. McCloskey, was he aware of the issue with the  
15 letter? When you talked to him, when you first learned  
16 of the problem and you talked to Mr. McCloskey, was he  
17 already aware of the problem, or was this the first he  
18 had heard of it?

19 A. To the best of my knowledge, that was the  
20 first he was aware of the problem. When I transferred  
21 the call, my discussion with Mr. McCloskey was  
22 immediately after talking to Ms. Johnston. I talked to  
23 her a little bit, and she started asking me some  
24 questions about Mr. Birdinground, and I said, "I don't  
25 know the gentleman you are speaking of. We have a



1948

1 person who's working with that case," and I got up from  
2 my desk and I went to Mr. McCloskey's office and asked  
3 him to take the telephone call.

4 Q. So he took the telephone call and then you  
5 had a conversation with him?

6 A. Yes, ma'am.

7 JUDGE RENDAHL: That's all I have.

8 Mr. Haffner, do you have any redirect?

9 MR. HAFFNER: No, Your Honor.

10 JUDGE RENDAHL: Is there anything,  
11 Mr. Johnson, that came up in Mr. Sells' or  
12 Mr. Trautman's and my conversation with Mr. Olson that  
13 you need to inquire into?

14 MR. JOHNSON: I think there was just one or  
15 two things, if I could just look at my notes here  
16 briefly.

17

18

19 RE-CROSS-EXAMINATION

20 BY MR. JOHNSON:

21 Q. Going back to the question that Judge Rendahl  
22 asked you just a moment ago, what was Mr. McCloskey's  
23 reaction to the call from Becky Johnston?

24 A. Shock. I mean, it was like shock. He didn't  
25 understand the mechanics of what she was talking about.

1949

1 That's the impression I had.

2 Q. Did he believe what she told him?

3 A. I assumed he did, yes.

4 Q. That was the tenor of his remarks.

5 A. Yes.

6 Q. So he didn't need to do any investigation to  
7 determine whether what she told him was true or not.

8 A. I can't answer for Mr. McCloskey.

9 Q. I'm asking you based on the tenor of his  
10 remarks, did he conclude at that time that the letter  
11 was fraudulent?

12 A. I don't know.

13 Q. I thought you just said that he believed her?

14 A. My impression was he was shocked, and I use  
15 that term in a fact that this letter which we figured  
16 to be a bona fide letter was all of a sudden not a bona  
17 fide letter and not knowing how any of the mechanics  
18 had happened, which we still don't know.

19 Q. Right. The tenor of Mr. McCloskey's remarks  
20 to you after the conversation with Becky Johnston was  
21 that this was not a bona fide letter?

22 A. Yes.

23 Q. And that was immediately after that phone  
24 call?

25 A. I believe so, yes.

1950

1 Q. Mr. Olson, you mentioned in response to  
2 Mr. Sells that this letter, the Birdinground letter,  
3 was received during the process of the hearing; is that  
4 right?

5 A. I believe so, yes.

6 Q. Do you know when it was received?

7 A. No, sir.

8 Q. Do you know how it was received?

9 A. No, sir.

10 Q. Do you know how it was transmitted to  
11 Mr. McCloskey or Mr. Haffner?

12 A. No, sir.

13 Q. Do you know whether they received it during  
14 the course of a day of hearing in this proceeding?

15 A. No, sir.

16 Q. So you don't know whether they had it for  
17 several days before they offered it for the record of  
18 this proceeding?

19 A. No, sir.

20 MR. JOHNSON: I have no further questions.

21 JUDGE RENDAHL: With that, Mr. Olson, you are  
22 excused for now. We may bring you back later. Let's  
23 be off the record for a moment. We may take our lunch  
24 break during this break.

25 (Lunch break taken at 11:55 a.m.)

1951

1

2 DIRECT BY HAFFNER)

3

AFTERNOON SESSION

4

(1:01 p.m. - 2:22 p.m.)

5

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

6

Mr. McCloskey, if you could state your name for the

7

record, please.

8

THE WITNESS: Allen McCloskey,

9

M-c-C-l-o-s-k-e-y.

10

JUDGE RENDAHL: You remain under oath from

11

your testimony earlier in this proceeding.

12

Mr. Haffner, do you have any questions for the witness?

13

MR. HAFFNER: Yes, Your Honor.

14

15

16

DIRECT EXAMINATION

17

BY MR. HAFFNER:

18

Q. Mr. McCloskey, I'm handing you what's been

19

marked as Exhibit 23. Have you seen this document

20

before or any variation of it prior to today's hearing?

21

A. Yes, I have.

22

Q. When did you first see it?

23

A. This particular document when I first saw it

24

was when it first came to the office of Kleen

25

Environmental.

1952

1 Q. Do you recall when that was?

2 A. Specifically, I believe it was on the 11th.

3 Q. Do you recall what your reaction was when you  
4 first saw the document?

5 A. Well, my reaction was positive. We had  
6 received a response that was favorable, just as other  
7 responses that we had received regarding our effort.

8 Q. When did you first learn that the document  
9 was not authorized?

10 A. Well, we received a call from a gal by the  
11 name of Becky Johnston, and it was at that time that I  
12 was made aware.

13 Q. How were you involved in that phone  
14 conference?

15 A. Mr. Olson originally took the call and  
16 forwarded it on to myself.

17 Q. What was your reaction when you first found  
18 out that the document was fraudulent?

19 A. I was shocked just as Mr. Olson was shocked  
20 that this false document had been presented, but more  
21 importantly, once I was made aware of that, was looking  
22 at the impact it could have on what we are doing here.

23 Q. Did you learn that the document was  
24 fraudulent from Mr. Olson or Ms. Johnston?

25 A. I learned that through my conversation with

1953

1 Ms. Johnston.

2 Q. What did you do after you found out that the  
3 document was fraudulent?

4 A. Once she brought that to my attention and  
5 based on my conversation with her, I assured her that  
6 we would take the necessary steps to attempt to get to  
7 the bottom of this, and we would immediately be  
8 withdrawing this particular correspondence from the  
9 proceedings.

10 Q. Do you know what the National Indian Health  
11 Board is?

12 A. Specifically, no.

13 Q. Have you ever had any contact with anyone  
14 from the National Indian Health Board?

15 A. No. Prior to this, no.

16 Q. Do you know who Lancing Birdinground is?

17 A. No.

18 Q. Since you didn't know that information at the  
19 time you received the letter, why did you submit the  
20 letter to the Commission in this proceeding?

21 A. I didn't see it to be any different than any  
22 other correspondence that we had received. There was  
23 nothing that warranted me to question it otherwise, I  
24 guess.

25 Q. When you say other correspondence that you

1954

1 received, what are you referring to?

2 A. There are other letters that, form letters  
3 that we have sent out that we have received back. I  
4 viewed this to be no different. I took it for what it  
5 was, a letter of support.

6 Q. Are those letters you are referring to, are  
7 those the letters from Valley Medical Center and  
8 Multi-Care that are in this hearing already?

9 A. Yes.

10 Q. At the time that you received the document  
11 that's marked Exhibit 23, what did you know about the  
12 relationship between Kleen Environmental and any tribal  
13 facilities in the state of Washington?

14 A. I personally had directly worked with Kleen  
15 on a project that they did on the reservation directly  
16 with the tribe. I also knew of other relations or work  
17 that Kleen had done on reservations or within Indian  
18 country.

19 Q. How did you obtain that knowledge?

20 A. One was firsthand knowledge. The other one  
21 was work with the Sauk-Suiattle tribe. I had written  
22 the contract for that scope of work that they did on  
23 the Sauk-Suiattle tribe. Other than that, my knowledge  
24 of their capacity or relationship in Indian country was  
25 vague. I didn't have a great deal of understanding,

1955

1 but I knew they had worked in Indian country prior to  
2 this.

3 Q. Was there any reason for you to question the  
4 claim in this letter about the relationship between the  
5 people that Mr. Birdinground claimed to be representing  
6 and Kleen Environmental?

7 A. No. One of the things I did was to look at  
8 the attachment to the letter, and on this attachment  
9 appeared some of the names of the tribes that I knew  
10 specifically that Kleen had worked with directly or  
11 names of facilities which we had representatives attend  
12 meetings that we had had when we started this whole  
13 process.

14 Q. Have you done anything to confirm what work  
15 Kleen Environmental has ever done for any Indian  
16 facilities in Washington?

17 A. Yes. At your directive, I went back and  
18 reviewed job files specific to work done for tribes or  
19 tribal facilities.

20 Q. What type of work did you find was done?

21 A. Most of them were very similar in nature, but  
22 for the most part, it was either related to tank farm  
23 demolition. There was one historical site remediation,  
24 things of that nature.

25 Q. What were the approximate dates of the work



1956

1 that was done by Kleen Environmental at tribal  
2 facilities in the state of Washington?

3 MR. JOHNSON: Your Honor, if this is only  
4 repeating what's in Mr. Perrollaz's affidavit, we can  
5 skip over it.

6 MR. HAFFNER: I can ask if he's confirmed  
7 Mr. Perrollaz's affidavit.

8 Q. (By Mr. Haffner) Have you viewed the  
9 declaration signed by Mr. Perrollaz that was offered  
10 this morning?

11 A. Yeah. The projects are the same projects  
12 that I reviewed, yes.

13 Q. If I can have you look at Exhibit 22, have  
14 you seen that document before?

15 A. Yes, I have.

16 Q. How are you aware of that document?

17 A. Well, I drafted this letter in preparation  
18 for signature by the three representatives of Kleen  
19 Environmental.

20 Q. What do you know of the form letters that are  
21 referenced in that document?

22 A. Well, there were several form letters that  
23 were sent out throughout this process that were sent  
24 out to potential shipper witnesses, but just in general  
25 to generators regardless of their -- it was almost

1957

1 like --

2           This whole process has been kind of a foreign  
3 concept because it's like you are going out to sell the  
4 buggy before the horse. You almost had to go out and  
5 sell and get support prior to being able to provide the  
6 service, so in the process of doing that, one of the  
7 things we did was put out form letters for people to  
8 review and modify and have it read according to their  
9 facility or appropriate to their facility.

10        Q.    How did you put those form letters out, as  
11 you say?

12        A.    They were sent out several ways - mail, fax,  
13 e-mail. There were some that were hand-delivered to  
14 meetings. They were also sent out through online  
15 dashboards.

16        Q.    What do you mean by "online dashboard"?

17        A.    There are several organizations that have  
18 online listings and membership lists where you can  
19 post -- they are public forums, online public forums, I  
20 guess is the best way to refer to it, and it's just  
21 another media that we use to send out these  
22 correspondence.

23        Q.    Do you recall if you sent a form letter to  
24 anyone at the National Indian Health Board?

25        A.    Specifically, no, I don't recall.

1958

1 Q. Do you recall if you sent any form letters to  
2 any Indian facilities?

3 A. Yeah.

4 Q. How was that done?

5 A. It was done through each of those medias, as  
6 I call them.

7 Q. Do you recall ever sending a form letter to  
8 Mr. Birdinground?

9 A. One of the problems that I was faced with  
10 when I went back and tried to track this correspondence  
11 was that a lot of the people we had contact with were  
12 not necessarily identified by name, but if you look at  
13 some of these online dashboards, as I call them, they  
14 are listed by e-mail addresses.

15 Q. Was any one of those addresses, do you  
16 recall, an address for a Lancing Birdinground?

17 A. Not that I would know.

18 Q. Can I have you look at Exhibit 107? It  
19 should be towards the front of that book. Is that a  
20 document you are familiar with?

21 A. Yes.

22 Q. Can you tell us what that document is?

23 A. This is one of the form letters that we had  
24 sent out.

25 Q. If I could have you look at Exhibit 34,

1959

1 that's a two-page document. Can you look at those two  
2 documents and tell us if you are familiar with them?

3 A. Yes, I am.

4 Q. Is that your signature on the first page?

5 A. Yes.

6 Q. Is the e-mail that is the second page one  
7 that you received?

8 A. Yes.

9 Q. How do you believe Ms. Johnston obtained your  
10 e-mail address?

11 A. Well, when she called, one of the things that  
12 she had requested was that we provide her with some  
13 kind of correspondence stating what action we had taken  
14 to rectify the matter, and I think this was the  
15 response to an e-mail that I had sent her asking if she  
16 did, in fact, receive my correspondence, so it was kind  
17 of a combination e-mail.

18 Q. How many communications did you have with  
19 Ms. Johnston about the letter from Mr. Birdinground?

20 A. It was probably three conversations -- well,  
21 to the best of any recollection, three conversations on  
22 the phone and then this e-mail correspondence.

23 (Witness indicating.)

24 Q. Have you been able to find out any more about  
25 who Mr. Birdinground is?

1960

1           A.     No.  As Mr. Olson explained, I've attempted  
2  to make contact and have not been successful.

3           Q.     Have you spoken with anybody at the National  
4  Indian Health Board about this matter?

5           A.     I was under the impression that Becky was in  
6  some way related to the National Indian Health Board,  
7  but I understand it now to be that they are kind of two  
8  different organizations.

9           Q.     Is there anything you wish to say to the  
10 Commission about the submission of the letter from  
11 Mr. Birdinground being submitted on behalf of Kleen  
12 Environmental?

13          A.     Yeah.  I think it's an unfortunate thing, and  
14 I apologize for my inability to perform due diligence  
15 on the letter to authenticate this individual's ability  
16 to speak for this organization.

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

19                   JUDGE RENDAHL:  Mr. Johnson?

20

21

22                                   CROSS-EXAMINATION

23 BY MR. JOHNSON:

24          Q.     Mr. McCloskey, how did you receive the  
25 Birdinground letter?

1961

1 A. We received it in the mail.

2 Q. And I believe your testimony was you received  
3 it on October 11th; is that correct?

4 A. Well, that was the first time I saw it was on  
5 the 11th.

6 Q. When did you receive it in the mail?

7 A. I couldn't answer that specifically.

8 Q. So you saw it on October 11th. How did you  
9 receive it on October 11th?

10 A. In the mail. It was in an envelope. I  
11 opened the envelope, took the letter out.

12 Q. You believe you received it on October 11th.

13 A. I would assume that, yes. I wasn't in the  
14 office all day on the 11th, but when I was in the  
15 office and I came into contact with that particular  
16 letter, that's when I first saw it was on the 11th.

17 Q. So you received it by mail on the 11th.

18 A. Right.

19 Q. The day before the hearing was offered;  
20 right?

21 A. Yes.

22 Q. I would like you to look at Exhibit 23 or  
23 203 -- they are parallel -- if you would.

24 A. Okay.

25 Q. Would you note the date on the letter?

1962

1 A. It's dated October 12th.

2 Q. Does that seem strange to you when you  
3 received it on October 11th through the mail?

4 A. No. It wasn't something I paid particular  
5 attention to.

6 Q. Do you think this date of October 12th was  
7 somehow related to the scheduled hearing date on the  
8 12th?

9 A. Come again?

10 Q. Did you indicate when you solicited letters  
11 of support to anyone prior to the October 12 hearing  
12 that you were going to be involved in a hearing on  
13 October 12 in which supporting statements would be  
14 appropriate?

15 A. Yes. We continually -- one of the things I  
16 did was to keep people abreast of the process and the  
17 schedule associated with the process.

18 Q. So this person that wrote this letter would  
19 have been very much in tune with the process then if  
20 they wrote a letter intended to reflect a date of the  
21 hearing on October 12th; right?

22 A. I guess they could have been, yes.

23 Q. Either that or they dated the letter after  
24 you received it; right?

25 A. I don't understand that.

1963

1 Q. The date of the letter was after you  
2 testified you received it; correct?

3 A. Yes.

4 Q. But that didn't strike you as strange?

5 A. At the time, no.

6 Q. Mr. McCloskey, looking at the signature at  
7 the bottom of the page, do you know Mr. Lancing  
8 Birdinground?

9 A. No, I don't.

10 Q. Have you made any effort to try to find  
11 Mr. Lancing Birdinground?

12 A. Yes, I have.

13 Q. What efforts have you made?

14 A. Given the contact with him at this number,  
15 but I wasn't able to do that.

16 Q. So you are referring to the number at the  
17 bottom of the page on Exhibit 23?

18 A. Yes.

19 Q. What did you find when you called that  
20 number?

21 A. I got a voice mail.

22 Q. Did the voice mail have a greeting or  
23 identify the mailbox?

24 A. No. It was a pretty generic voice mail.

25 Q. So it didn't identify whose mailbox it was,



1964

1 for example?

2 A. No. It says you've reached the voice mail of  
3 and it said the phone number, and then there was a  
4 prompt to leave a message.

5 Q. Have you made any effort to contact the  
6 National Indian Health Board with respect to this  
7 matter?

8 A. I think it's important to note that in my  
9 correspondence with Becky Johnston, I was under the  
10 impression that communicating with her was  
11 communicating with the National Indian Health Board,  
12 but I guess to answer your question directly, no.

13 Q. Mr. McCloskey, would you be surprised to know  
14 that Lancing Birdinground knows you?

15 A. Yes, yes.

16 MR. JOHNSON: Your Honor, I would like to  
17 mark for the record another exhibit. This is a fax to  
18 me on October 25, 2004, with a declaration attached  
19 that I received yesterday by fax from Lancing  
20 Birdinground.

21 MR. HAFFNER: Do we have another copy for the  
22 witness?

23 MR. JOHNSON: Yes.

24 JUDGE RENDAHL: Let's be off the record for a  
25 moment while Mr. McCloskey has a chance to review the

1965

1 document.

2 (Discussion off the record.)

3 JUDGE RENDAHL: While we were off the record,  
4 Mr. McCloskey and counsel had an opportunity to review  
5 a document provided by Mr. Johnson. Mr. Johnson, I'm  
6 assuming you want this to be marked?

7 MR. JOHNSON: I do, Your Honor.

8 JUDGE RENDAHL: Why don't we mark as Exhibit  
9 24 the declaration of Lancing Birdinground with a cover  
10 sheet, a fax, from Kim Notafraid for Lancing  
11 Birdinground to Stephen Johnson on October 25th, 2004.  
12 And why don't you go ahead and proceed with the  
13 questions.

14 Q. (By Mr. Johnson) Mr. McCloskey, have you had  
15 a chance to read Mr. Birdinground's declaration?

16 A. Yes, I have.

17 Q. Do you want to change your testimony now?

18 A. No. I personally don't remember meeting with  
19 Mr. Birdinground as he claims in this letter, and I  
20 don't recall my father's company specifically working  
21 with him.

22 Q. Do you recall visiting the Crow Agency and  
23 the Crow Indian tribe and their tribal casino in 2001?

24 A. Yes. I do remember making a site visit to  
25 that facility.

1966

1 Q. Do you remember staying at the home of one of  
2 the Crow tribal members?

3 A. No. We stayed at the hotel during that  
4 visit.

5 Q. Was that at the Crow Agency?

6 A. If I recall properly, I think the tribe  
7 actually had a small lodging facility right next to the  
8 casino.

9 Q. So when Mr. Birdinground says in his  
10 declaration under oath under penalty of perjury that  
11 you stayed at his home, he's lying; is that correct?

12 A. I'm saying I never stayed at his home, yeah.

13 Q. You never stayed at anyone's home at the Crow  
14 Agency when you visited the casino there.

15 A. No.

16 Q. And you still say you do not know Mr. Lancing  
17 Birdinground.

18 A. I do not recall having any relations or  
19 correspondence with this individual.

20 Q. Do you recall meeting with the manager of the  
21 casino at that time during your visit?

22 A. We met with several people. I don't  
23 specifically remember who.

24 Q. Do you remember meeting the manager of the  
25 casino?

1967

1 A. Specifically, no.

2 Q. Do you remember meeting anyone specifically?

3 A. There were several people. The one that I  
4 can recall off the top of my head, there was a  
5 gentleman who had a nickname by the name of Popcorn. I  
6 specifically remember him just because of that name.

7 Q. That's the only name you remember from your  
8 visit to the Crow tribe casino in Crow Agency Montana  
9 in 2001; is that your testimony?

10 A. Yes. I don't recall specifically even if it  
11 was in 2001.

12 Q. What efforts did you make, Mr. McCloskey, to  
13 identify or find Lancing Birdinground when you found  
14 his name on this fraudulent letter that we've been  
15 referring to?

16 A. Well, not only did I attempt to contact via  
17 this number, I also sent out additional e-mail  
18 correspondence to the various lists of people that I  
19 had had contact with over the duration of this process.

20 Q. What did you send out in way of a message to  
21 these lists of your contacts?

22 A. What I had sent out was an e-mail saying that  
23 it was imperative that I be able to speak with the  
24 person who authored this letter.

25 Q. Do you have a copy of that e-mail

1968

1 correspondence with you?

2 A. No, not with me, no.

3 Q. Can you give us a list of the individuals to  
4 whom you sent that e-mail and a copy of that e-mail?

5 A. Yes.

6 MR. JOHNSON: I would like to request that,  
7 Your Honor. Your Honor, I think this goes back to  
8 Mr. Sells' request for a list of people to whom form  
9 letters were sent. If there were other lists of  
10 contacts to whom Mr. McCloskey or others at Kleen sent  
11 solicitation for support or communications related to  
12 this proceeding --

13 JUDGE RENDAHL: Let's separate those. The  
14 issue or the information you want now is the list of  
15 e-mails to whom Mr. McCloskey sent, the persons to whom  
16 Mr. McCloskey sent his e-mail seeking to determine the  
17 author of the letter?

18 MR. JOHNSON: Right.

19 JUDGE RENDAHL: So that would be Record  
20 Requisition No. 8, and that would be the list of e-mail  
21 addresses or persons to whom you wrote the e-mail  
22 trying to identify Mr. Birdinground.

23 MR. JOHNSON: So that would be both a list of  
24 addresses, sendees, and the actual e-mail itself.  
25 That's my request.

1969

1           JUDGE RENDAHL:  Would it have been one e-mail  
2 that you generated?

3           THE WITNESS:  No.  There were several.

4           JUDGE RENDAHL:  So the e-mails and the list,  
5 and then as a separate matter, why don't we inquire  
6 into the other issue that Mr. Sells was inquiring into  
7 and see if -- that's a separate issue in my mind.  So  
8 go ahead, Mr. Johnson.

9           Q.     (By Mr. Johnson)  Now, Mr. McCloskey, you  
10 testified, I believe, that you made a call to the phone  
11 number on the bottom of the Birdinground letter, and  
12 you sent these e-mails out to various people trying to  
13 find out, trying to make contact with Lancing  
14 Birdinground; is that correct?

15          A.     Yes.

16          Q.     Is that all you did to try to identify the  
17 person who wrote the fraudulent letter?

18          A.     Yes.

19          Q.     You didn't call the National Indian Health  
20 Board, for example?

21          A.     No.  As I stated in the conversations I had  
22 with Becky, it was my understanding that she was  
23 directly affiliated with the National Indian Health  
24 Board.

25          Q.     Why was that your understanding?  She didn't

1970

1 identify herself as associated with the National Indian  
2 Health Board, did she?

3 A. No, but when she called, she had stated that  
4 she had been corresponding and having conversations  
5 with -- there was a gentleman by the name of J.J. or  
6 J.T., the gentleman that you had a letter from.

7 Q. Becky Johnston told you she had been in  
8 contact with J.T. Petherick, P-e-t-h-e-r-i-c-k?

9 A. Yeah.

10 Q. What was the nature of the contact she told  
11 you about?

12 A. She had said that right before calling us  
13 that she had a conversation with Mr. Petherick, which I  
14 guess was my understanding that he communicated to her  
15 that she needed to call us to attempt to get to the  
16 bottom of this.

17 Q. But you made no effort to contact the  
18 National Indian Health Board; right?

19 A. No. Not directly, no.

20 Q. So indirectly you think you did by having a  
21 conversation with Becky Johnston; is that what you are  
22 saying?

23 A. That was my understanding, yes.

24 Q. Now, Exhibit 22 is a letter you drafted; am I  
25 correct?

1971

1 A. Yes.

2 Q. Do you have it in front of you?

3 A. Yeah, I do.

4 Q. Look at Paragraph 3, the last sentence that  
5 begins on the fourth line from the bottom, I believe.  
6 It says, "We have been in contact with the National  
7 Indian Health Board and the American Indian Health  
8 Commission for Washington state and are working with  
9 them to address the great deal of concern surrounding  
10 the letter in question."

11 A. Yeah.

12 Q. Doesn't that clearly distinguish between the  
13 two organizations?

14 A. It names both of them, but as I said, when I  
15 was -- it does. It distinguishes.

16 Q. You clearly knew they were two separate  
17 organizations; right?

18 A. Yeah.

19 Q. And your letter, which is in Exhibit 34 to  
20 Becky Johnston, is addressed to the American Indian  
21 Health Commission for Washington state, is it not?

22 A. Yes, it is.

23 Q. So the letter that you drafted that's Exhibit  
24 22, when it says that we -- and by that, I guess it  
25 either means the signatories to the letter or Kleen



1972

1 Environmental. I'm not sure which -- have been in  
2 contact with the National Indian Health Board, that's  
3 just false, isn't it?

4 A. I wouldn't say it's false. I guess if you  
5 take it in its literal sense it is.

6 Q. Is there some other way to take it other than  
7 in its literal sense, Mr. McCloskey?

8 A. As I said, it was my understanding that she  
9 was directly related or associated with the National  
10 Indian Health Board.

11 Q. "She" being Becky Johnston?

12 A. Yes.

13 Q. Even though we've gone through and you  
14 acknowledged she was with the American Indian Health  
15 Commission and you wrote to her at that address and you  
16 distinguished between the two organizations in your  
17 drafting Exhibit 22, but you are still taking the  
18 position that somehow she was connected to the National  
19 Indian Health Board; is that right?

20 A. That was my understanding, yes.

21 Q. Mr. McCloskey, I'm going to ask you to look  
22 again at Exhibit 23, which is the Birdinground letter.  
23 You indicate you received that in the mail; is that  
24 right?

25 A. Yes.

1973

1 Q. Do you have the copy that you received in the  
2 mail?

3 A. I believe so, yes.

4 Q. Where is it?

5 A. I believe it's at the office.

6 MR. JOHNSON: Your Honor, I think we need to  
7 have that original to the extent it is whatever it is,  
8 whatever they received. I would like to make it a  
9 records requisition for that original document to the  
10 extent we can locate it.

11 JUDGE RENDAHL: We can't each have an  
12 original, so you are proposing --

13 MR. JOHNSON: I would like you to file it  
14 with the Commission with an acknowledgment and a copy  
15 so that we can see what it is you have filed.

16 JUDGE RENDAHL: So your request is to have  
17 the original letter filed with the Commission and a  
18 cover letter indicating that it's being filed and that  
19 copy of that transmittal would be, a copy of the letter  
20 be circulated to all parties.

21 MR. JOHNSON: That's right, Your Honor, and I  
22 would like to be able to see what it looks like on the  
23 letterhead as close to the original as possible. We  
24 have a bunch of copies now which we are not quite sure  
25 how far removed they are from the original document.

1974

1                   JUDGE RENDAHL:  So Records Requisition No. 9  
2  is to have the original letter that essentially is  
3  Exhibit 203, the original of 203, be filed with the  
4  Commission with the cover letter and copies sent to all  
5  parties.

6           Q.     (By Mr. Johnson)  And Mr. McCloskey, did you  
7  save the envelope that that letter came in?

8           A.     No, I don't believe I did.

9           Q.     What did you do with it?

10          A.     I believe I discarded it.

11          Q.     Do you remember anything about that envelope?  
12  Was it hand addressed?  Was it addressed by typing?  
13  Did it show letterhead in the printed return address  
14  spot?

15          A.     As I recall, the sending address or the  
16  receiving address, I'm sorry, our address for Kleen was  
17  handwritten and the other was printed.

18          Q.     Was it addressed to anyone in particular at  
19  Kleen?

20          A.     No.

21          Q.     Were you the first person to open that  
22  envelope?

23          A.     Yes.

24          Q.     Why was that?

25          A.     Because I saw where it was coming from.

1975

1 Q. Where was it coming from?

2 A. It was labeled "National Indian Health  
3 Board."

4 Q. But would that automatically, would no one  
5 else in the Kleen office open an envelope addressed in  
6 this fashion except you?

7 A. I guess the best way to answer that is there  
8 is not really a routing process for mail at Kleen. I  
9 not only opened this, but I opened several other pieces  
10 of mail too.

11 Q. Do you open all the mail at Kleen?

12 A. Not all of it, no.

13 Q. How does Mr. Olson know what letters he  
14 should open and what letters you should open?

15 A. There is really no specific way that we go  
16 about it. I don't know how to answer that.

17 Q. In this particular case, you opened it.  
18 That's your testimony.

19 A. Yes.

20 Q. Mr. McCloskey, do you notice that in the text  
21 of the letter, Mr. Birdinground refers to the  
22 relationship with Kleen Environmental Technologies for  
23 the past 11 years?

24 A. Yeah, I see that.

25 Q. I'm just reminded that Mr. Olson was

1976

1     testifying this morning, and he mentioned that Kleen  
2     has been in existence for 11 years; right?

3             A.     To the best of my knowledge, yes.

4             Q.     So the person that wrote this letter must  
5     have had some knowledge of Kleen; is that correct?

6             A.     Yes.

7             Q.     Do you see on the third paragraph the  
8     sentence there, "I have reviewed Kleen Environmental's  
9     proposal both in its original form and revised and have  
10    addressed the revised proposal with the regional  
11    membership."

12            A.     Yes, I see that.

13            Q.     So doesn't it seem likely that the person who  
14    wrote this letter was aware of changes to the Kleen  
15    application made during the course of the hearing?

16            A.     Yes.

17            Q.     Mr. McCloskey, this Exhibit 23 we have comes  
18    off the Commission's Web site or out of the  
19    Commission's file, and it shows a fax transmittal  
20    information at the top showing it has been transmitted  
21    by Kleen Environmental Technologies to the Commission  
22    at 4:47 on October 12th, 2004. Do you see that?

23            A.     Yeah.

24            Q.     Did you fax this letter to the Commission?

25            A.     Yes, I did.

1977

1 Q. Why did you?

2 A. Well, after that day, after that particular  
3 day after we finished hearings, I was walking back to  
4 the office with Mr. Haffner, and it was communicated to  
5 me that this should be forwarded to the Commission  
6 because it was addressed to the Commission. So upon  
7 returning to the office, that's what I did.

8 Q. Well, normally, doesn't the person who writes  
9 a letter send it to the Commission? It's addressed to  
10 the Commission. You received a copy signed by somebody  
11 from the National Indian Health Board. Wouldn't you  
12 expect it to be mailed to the Commission?

13 A. You would assume, yeah.

14 Q. So why did you assume it would not be mailed  
15 to the Commission?

16 A. I don't think that I assumed that it wouldn't  
17 get mailed to the Commission. I just did what I  
18 interpreted counsel was telling me to do.

19 Q. So your counsel told you to fax this to the  
20 Commission on the afternoon of October the 12th?

21 A. That's what I understood, yes.

22 Q. Are you testifying that your counsel told you  
23 to fax this to the Commission?

24 A. Yes.

25 Q. Do you have any idea why your counsel thought

1978

1 that this letter would not be sent directly to the  
2 Commission by Mr. Birdinground at that point in time?

3 A. I don't know.

4 Q. Mr. McCloskey, did the letter that came to  
5 you in the mail, the Exhibit 23 letter from  
6 Mr. Birdinground, did that come to you as an original  
7 or as a copy?

8 A. I believe it was an original, yeah.

9 Q. You believe it was an original?

10 A. Yeah.

11 Q. So you have the original Birdinground letter  
12 in your office.

13 A. I believe so, yes.

14 Q. So that's the letter you are going to provide  
15 to the Commission.

16 A. Yeah.

17 Q. Was there any kind of transmittal cover  
18 letter or anything else with that letter when you  
19 received it in the mail?

20 A. No.

21 Q. So there was no note like, Dear Kleen or  
22 Mr. McCloskey, here's a letter. Please forward it on  
23 to the Commission, or something like that?

24 A. No.

25 Q. Have the other supporting shippers whose

1979

1 letters are in Exhibit 192 -- I believe there are two  
2 of them -- have they given you their original letters  
3 to file with the Commission?

4 A. We received several original letters.

5 Q. I'm referring to the ones in Exhibit 192 from  
6 Multi-Care and from Valley General. Did those folks  
7 give you the original letter to file with the  
8 Commission?

9 A. They gave us original letters, yes, but there  
10 was no instructions to file it with the Commission, but  
11 I do specifically remember faxing in the Multi-Care  
12 letter.

13 Q. Do you have the original Multi-Care letter in  
14 your file or in your possession?

15 A. I don't have them with me, no.

16 Q. But back in the office?

17 A. I believe so, yes.

18 Q. How about the Valley Medical Center letter?  
19 Do you have the original of that?

20 A. I don't believe so.

21 Q. Mr. McCloskey, when did you first provide a  
22 copy of the Birdinground letter to your counsel?

23 A. I believe it was the morning -- well, it was  
24 the day of the hearing.

25 Q. Was it the morning of the hearing or the



1980

1 afternoon?

2 A. I don't specifically recall.

3 Q. Did you explain to your counsel when and how  
4 you received it?

5 A. Specifically, no, I don't think I did.

6 Q. Was there any discussion of the date of the  
7 letter, which strangely enough was the date of the  
8 hearing itself and not the date when it was written?

9 A. No, there was no discussion on that.

10 Q. Mr. McCloskey, the name "Birdinground" is a  
11 somewhat unusual name; would you agree?

12 A. It's out of the norm, yes.

13 Q. And you read Mr. Lancing Birdinground's  
14 declaration which says it was a Crow Indian name;  
15 correct?

16 A. That's what he said, yes.

17 Q. Have you ever run across this name ever in  
18 any context before this one?

19 A. To the best of my recollection, no.

20 Q. Do you remember who the chairman of the Crow  
21 tribe was when you visited the Crow Indian casino?

22 A. I don't.

23 Q. Would it surprise you to know that it was  
24 Clifford Birdinground?

25 A. I'll take your word for that, yes.

1981

1 Q. I think you can refer to it in the  
2 declaration of Lancing Birdinground, but you still  
3 testify you were unaware of that name in any context  
4 that you dealt with prior to coming here to deal with  
5 this letter in these proceedings?

6 A. That's what I'm telling you, yes, that I  
7 don't recall that name. In my dealings with Indian  
8 people, you encounter names on a daily basis that are  
9 out of the norm.

10 Q. Mr. McCloskey, I think you testified  
11 previously that you had connection with an Indian tribe  
12 in California; is that correct?

13 A. Yes.

14 Q. What tribe is that?

15 A. There are several of them.

16 Q. What tribe do you personally have a  
17 relationship with? Aren't you a tribal member  
18 yourself?

19 A. Karuk tribe, K-a-r-u-k.

20 Q. Is that also known as the Yurok, Y-u-r-o-k  
21 tribe?

22 A. Yeah. There are several rancherias, yes.

23 Q. But it's the Yurok tribe you're a member of?

24 A. The Yurok and the Karuk.

25 Q. Those are both the same, are they not?

1982

1 A. Right.

2 Q. Now, what exactly is your relationship to  
3 that tribe?

4 A. I'm an involved member.

5 Q. Have you held leadership positions in the  
6 tribe?

7 A. No, political leadership, no.

8 Q. Any other kind of leadership?

9 A. I've served on committees, but I don't really  
10 consider that to be leadership.

11 Q. I believe you testified previously you were  
12 receiving some sort of income from McCloskey  
13 Enterprises or your connections with the Yurok tribe.  
14 Am I correct in any regard there?

15 A. Yes, you are.

16 Q. What income are you receiving from which of  
17 these sources?

18 A. It's a combination of things. I have some  
19 residual income from work I've done with tribal  
20 projects, per se. There is also tribal revenue sharing  
21 through casino dollars.

22 Q. So where are you receiving revenue sharing  
23 dollars for casino operations, from which tribe?

24 A. The Rancheria.

25 Q. Which tribe is that?

1983

1 A. It's the Yurok tribe.

2 Q. Are you receiving other income from McCloskey  
3 Enterprises or other sources other than the revenue  
4 sharing from the Yurok tribe?

5 A. No. Well, then what I do for work.

6 Q. I'm not talking about your work for Kleen  
7 Environmental.

8 A. No.

9 Q. Mr. McCloskey, have you ever been employed by  
10 the Makah tribe?

11 A. Yes.

12 Q. What was your position there?

13 A. I was the manager of economic development.

14 Q. Is that your title, or is that descriptive of  
15 what you did?

16 A. Well, that was my title. I was the manager  
17 of economic development. I was planning and economic  
18 development.

19 Q. I have a document here that's called "Tribal  
20 Technology Visioning Conference," prepared by the  
21 Governor's Office of Indian Affairs with respect to a  
22 conference held May 1 through 3 of 2002 at the Quinault  
23 Beach Resort, and it shows your title as the Makah  
24 tribal planning director. Would that have been your  
25 title?

1984

1           A.     Okay, yeah.  I was referred to as both  
2 manager, director, planner.

3           Q.     How long did you hold that position?

4           A.     Specifically, I don't recall.

5           Q.     Was it --

6           A.     It wasn't very long.

7           Q.     So was it six months or 12 months or a year  
8 or what?

9           A.     If I had to guess, I would say a year.

10          Q.     Can't you remember?  It's your history.  When  
11 did you start with the Makah?

12          A.     I don't specifically recall.

13          Q.     Do you remember the year?

14          A.     I believe it was in '02.

15          Q.     This report that I was referring to is dated  
16 May 1 through 3 of 2002.  Does that refresh your  
17 memory?

18          A.     What are you referring to?

19          Q.     (Indicating.)

20          A.     Yeah.

21          Q.     So does that refresh your memory about when  
22 you started with Makah tribe?

23          A.     It was prior to that, yeah.

24          Q.     But sometime in 2002?

25          A.     Right.

1985

1 Q. When did you leave the Makah tribe?

2 A. I believe it was later that year.

3 Q. Now, when I asked you these questions about  
4 your employment history cross-examining you on your  
5 direct testimony, you didn't mention your work for the  
6 Makah tribe. Was there any reason for that?

7 A. The reason I didn't is because the  
8 relationship with Makah tribe was kind of interesting.  
9 Originally when I started working with Makah, it was  
10 through a contract or relationship with my father's  
11 company, so I was getting paid through dollars that  
12 were exchanged through a contract with my father's  
13 company, and then there was a time when they did get a  
14 grant. I think it was the Office of Trade and Economic  
15 Development that allowed the tribe to bring me on as an  
16 actual employee.

17 Q. But you were an actual employee for most of  
18 the year there at Makah?

19 A. Yeah.

20 Q. Was there any reason why you didn't disclose  
21 that when I cross-examined you earlier in these  
22 proceedings?

23 A. I didn't think it was necessary. During the  
24 time that I was working for my father's company, I also  
25 did independent stuff as well as a consultant. I

1986

1 didn't bring that up.

2 Q. But you would agree that in your response to  
3 a question about your prior employment history that you  
4 should have identified Makah tribe as one of your prior  
5 employers; correct?

6 A. Technically, yes.

7 Q. Mr. McCloskey, would you tell us a little bit  
8 about McCloskey Enterprises? Where is it located?

9 A. It's a California company.

10 Q. Where is it located?

11 A. In Eureka.

12 Q. Eureka, California? Is that its principle  
13 office?

14 A. Yes.

15 Q. Is it its only office?

16 A. Yes.

17 Q. It has no offices in any other locations?

18 A. On occasion, they've set up satellite offices  
19 when projects are going on, but other than that, no.

20 Q. So at the present time, the only office is in  
21 Eureka, California; is that correct?

22 A. Yes.

23 Q. Is McCloskey Enterprises a corporation?

24 A. Specifically, I don't know how my father has  
25 that structured.

1987

1 Q. Are you a shareholder of McCloskey  
2 Enterprises or an owner?

3 A. No.

4 Q. A principle of McCloskey Enterprises?

5 A. No.

6 Q. Is McCloskey Enterprises located in Brisbane,  
7 California?

8 A. No.

9 Q. Do you know where Brisbane, California is?

10 A. No.

11 Q. Would you be surprised to learn there is no  
12 record of McCloskey Enterprises as a corporation in the  
13 California Secretary of State's database?

14 A. Personally, I wouldn't.

15 Q. Not a matter of significance for you.

16 A. No.

17 Q. Do you know a James G. McCloskey?

18 A. No.

19 Q. So you don't know whether McCloskey  
20 Enterprises is a corporation or is sort of a business  
21 trade name or what; is that correct?

22 A. Yes.

23 MR. JOHNSON: Your Honor, I would like to  
24 have another exhibit marked.

25 MR. HAFFNER: Can we get one for the witness



1988

1 also?

2 MR. JOHNSON: (Complies.)

3 MR. HAFFNER: Your Honor, can we take a break  
4 for the witness?

5 JUDGE RENDAHL: We will take a five-minute  
6 break and we will be back at five after two. I'm going  
7 to mark this as Exhibit 227 for the record.

8 (Recess.)

9 JUDGE RENDAHL: While we were off the record,  
10 Mr. McCloskey began to feel ill and is now here with  
11 paramedics, so we are going to take a medical  
12 adjournment of the finish of Mr. McCloskey's testimony,  
13 and I will early next week on Monday contact all of you  
14 and try to locate another time for a hearing. Who  
15 should we contact in your office, Mr. Sells?

16 MR. SELLS: I will be in the office on Monday  
17 in a deposition all day, but make sure they know you  
18 are a judge and they will put you through.

19 JUDGE RENDAHL: If we do continue the hearing  
20 in the near term, is there someone who will be  
21 assigned, or you will have to figure that out?

22 MR. SELLS: I will figure that out as we go.

23 JUDGE RENDAHL: Mr. Johnson, you indicated  
24 you wanted to take care of something on the record  
25 first?

1989

1           MR. JOHNSON: Your Honor, I had intended to  
2 offer -- first of all, we did have Exhibit 227, and I  
3 guess we haven't really delved into it, so whether we  
4 want to leave that open. Perhaps we should.

5           JUDGE RENDAHL: Which was the 227?

6           MR. JOHNSON: That's the Web site for  
7 McCloskey Enterprises.

8           JUDGE RENDAHL: I think we will just have to  
9 wait on these until we reconvene the hearing.

10          MR. JOHNSON: The other materials all relate  
11 to Mr. McCloskey and his testimony in one way or the  
12 other, so perhaps we should wait with those until we  
13 have a chance to cross-examine him further.

14          JUDGE RENDAHL: So my question would be as to  
15 22, 23, 24 and 34, whether we were waiting to admit  
16 those until we conclude the hearing. Any thoughts?

17                 22 is the letter. 24 is the fax from  
18 Mr. Lancing Birdinground or the declaration of  
19 Mr. Birdinground. 34 was the letters and e-mails to  
20 and from Ms. Johnston, and 227 is the Web site. Those  
21 are the documents we haven't addressed, and I'm  
22 assuming we will wait on those until we reconvene the  
23 hearing.

24          MR. JOHNSON: I think that will be fine, Your  
25 Honor.

1990

1 MR. HAFFNER: What are the numbers again?

2 JUDGE RENDAHL: 22 is the letter from the  
3 owners of Kleen that was drafted by mr. McCloskey. 23  
4 is the National Indian Health Board letter sent to the  
5 Commission. 24 is the declaration of Lancing  
6 Birdinground that was sent by fax, and then 34 are the  
7 letter to Ms. Johnston from Mr. McCloskey and the  
8 e-mail to Mr. McCloskey from Ms. Johnston, and then 227  
9 are the Web site pages from McCloskey Enterprises. So  
10 I'm assuming we will deal with those at a later date.

11 With that, is there anything more we need to  
12 address before we talk further on Monday? And we wish  
13 Mr. McCloskey the best.

14 MR. HAFFNER: Thank you, Your Honor.

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

16 (Hearing adjourned at 2:22 p.m.)

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