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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In Re Application No. GA-079254 of

KLEEN ENVIRONMENTAL
TECHNOLOGIES, INC.

For a Certificate of Public Convenience and
Necessity

DOCKET NO. TG-040248

**PROTESTANT STERICYCLE OF
WASHINGTON, INC.'S MOTION FOR
AWARD OF ATTORNEYS' FEES AND
COSTS**

Protestant Stericycle of Washington, Inc. ("Stericycle") respectfully submits this Motion for Award of Attorneys' Fees and Costs for consideration by the Commission. This Motion is based on the Declaration of Stephen B. Johnson ("Johnson Decl."), dated December 3, 2004; the Declaration of Rebecca Johnston, dated October 25, 2004; and the Declaration of Dennis Hein, dated December 2, 2004, all filed herewith; Order No. 07 herein; and the other exhibits, files and records of this proceeding.

RELIEF REQUESTED

Stericycle respectfully requests the Commission to issue an order (1) directing Applicant Kleen Environmental Technologies, Inc. ("Kleen") to pay Stericycle an amount equal to all attorneys' fees and costs reasonably incurred by Stericycle (a) as a result of the filing by Kleen of a fraudulent letter of support for its application (hereinafter referred to as the "Birdinground letter"); and (b) as a

ORIGINAL

1 result of other false, misleading or deceptive testimony offered by Kleen in support of its application,
2 with interest thereon at the judgment rate; and (2) providing that the Commission will not docket or
3 process any future application for a certificate of public convenience and necessity that Kleen may
4 file under RCW 81.77.040 until all such amounts have been paid in full.

5 I. INTRODUCTION AND SUMMARY

6 This is an adjudicative proceeding pursuant to the Washington Administrative Procedure Act,
7 RCW chapter 34.05, initiated to consider Kleen's application under RCW 81.77.040 for a certificate
8 of public convenience and necessity to conduct biomedical waste collection activities in the state of
9 Washington. The case presented by Kleen in support of its application was based on false,
10 misleading and deceptive testimony by Kleen's primary operating witness Allen McCloskey and
11 other Kleen witnesses. On October 12, 2004, Kleen filed a fraudulent letter of support for its
12 application with the Commission (the "Birdinground letter"). On that same date, Kleen offered a
13 copy of the fraudulent letter for admission into the record of this proceeding. The fraudulent
14 character of the Birdinground letter was revealed through inquiries initiated by Stericycle. Stericycle
15 now seeks an award from the Commission of attorneys' fees and costs incurred by Stericycle (1) in
16 demonstrating the fraudulent character of the Birdinground letter and otherwise responding to that
17 letter and (2) in responding to other false, misleading and deceptive testimony offered by Kleen in
18 support of its application.

19 II. STATEMENT OF FACTS

20 A. Kleen is Guilty of Serious Misconduct.

21 1. *Kleen Submitted a Fraudulent Letter in Support of its Case -- The "Birdinground 22 Letter"*

23 The basic facts relevant to Kleen's filing with the Commission of a fraudulent shipper support
24 letter -- referenced herein as the "Birdinground letter" -- are summarized in Order No. 07 herein,
25 Initial Order Dismissing Application; Establishing Procedural Schedule for Motions for Sanctions,
26 dated November 9, 2004. Stericycle's request for an award of attorneys' fees and costs incurred in

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responding to this fraudulent filing is based on the discussion and findings of Order No. 07, which are incorporated herein by this reference, and the following supplemental statement of relevant facts.

On October 12, 2004, Kleen offered a copy of a fraudulent letter in support of its application for admission into the record of this proceeding. See Exh. 203; Tr. 1606-7. This letter, on what appeared to be the letterhead of the National Indian Health Board (“NIHB”), was purportedly signed by one “Lancing Birdinground” on behalf of “region ten” of the NIHB and the Indian tribes and tribal health clinics listed in an attachment to the letter. The printed address for the NIHB shown on the Birdinground letter was in Kingston, Illinois. The letter claimed an eleven year business relationship between Kleen and the facilities of the NIHB. In offering the Birdinground letter for admission into the record, counsel for Kleen made the following representation to the Commission:

[T]he letter is being offered as sentiment in the community from the National Indian Health Board and the clinic and medical facilities they represent throughout the state of Washington that are listed on the second or the attachment to the letter. Mr. Birdinground was unable to testify, and when Your Honor stated last week that you would consider written testimony from other shipper witnesses, we went back to him and asked him if he would provide the letter.

Tr. 1607:9-18 (Haffner). In fact, as we now know, the Birdinground letter was manufactured by Allen McCloskey or persons working in concert with him. It has now been determined that Lancing Birdinground did not sign this letter; that Lancing Birdinground has no connection with the NIHB; that the NIHB does not have a “region ten;” that the NIHB has no office or address in Kingston, Illinois; that Kleen has never had any business relationship with the NIHB or any tribal healthcare facility; and that neither the NIHB nor the Indian tribes identified in the attachment authorized submission of the letter to the Commission in support of Kleen’s application.

After the fraudulent character of the Birdinground letter was exposed, the Commission held a hearing to permit examination of Kleen representatives Robert Olson and Allen McCloskey concerning the origins of the letter. During cross-examination, Allen McCloskey denied that he knew Lancing Birdinground. Counsel for Stericycle then presented the Declaration of Lansing

1 Birdinground, a member of the Crow Indian Tribe residing in Montana. See Exh. 24.

2 Mr. Birdinground testified in this declaration that he had met Allen McCloskey in 2001 when Allen
3 McCloskey visited the Crow Tribe to offer consulting services to the Crow tribal casino on behalf of
4 an entity known as "McCloskey Enterprises." Mr. Birdinground testified that he was the manager of
5 the Crow tribal casino at that time and that McCloskey spent a week with Birdinground, staying in
6 Birdinground's home and eating meals with Birdinground's family. Mr. Birdinground testified that
7 he had no connection with the NIHB and had no knowledge of the "Birdinground letter." Allen
8 McCloskey testified that, while he remembered visiting the Crow tribal casino, he did not recall
9 meeting Lansing Birdinground. Tr. 1965:18-21 (McCloskey).

10 On further cross-examination, McCloskey testified that "McCloskey Enterprises" was his
11 father's company; that he (Allen McCloskey) was not a shareholder, owner or principal of that
12 company; and that the only office of McCloskey Enterprises was in Eureka, California. Stericycle's
13 counsel then offered a copy of pages from the McCloskey Enterprises Internet Web site identifying
14 Allen McCloskey as a "principal" of McCloskey Enterprises and chair of that organization's
15 "Utilities and Transportation Services Division." See Exh. 227, p. 1. The Web site represented that
16 McCloskey Enterprises had offices in Los Angeles, San Francisco, Washington, D.C., Dallas, New
17 York City, San Diego and Seattle. The Web site showed Kleen's address in Seattle as the address of
18 the Seattle office of McCloskey Enterprises.

19 At this point in his cross-examination, Allen McCloskey requested a break in the proceedings.
20 During the break, McCloskey complained of chest pains and was taken by ambulance to a nearby
21 hospital. The hearing was recessed. Subsequently, Kleen's counsel reported that Allen McCloskey
22 had broken contact with Kleen, had vacated his residence in the state of Washington and was
23 believed to be residing in Trinidad, California. Tr. 1997:5-19, 1998:23-1999:4 (Haffner). Because
24 Allen McCloskey has absented himself from further participation in these proceedings and has
25 removed himself beyond the Commission's jurisdiction, the Commission can only conclude that
26 Allen McCloskey was responsible for the fabrication of the Birdinground letter.

1 Kleen has conceded that the Birdinground letter was fraudulent but has attempted to deny
2 responsibility for the fraud committed on its behalf by Allen McCloskey. Tr. 2011-17 (Haffner).
3 However, the record is clear that Kleen delegated responsibility for all matters related to the
4 preparation and presentation of its case to the Commission to Allen McCloskey. McCloskey's
5 prefiled testimony states:

6 I am a Development Consultant to Kleen Environmental Technologies,
7 Inc. My duties include overseeing this application before the
8 Washington Utilities and Transportation Commission to secure a
9 Certificate of Public Need and Necessity [sic]. If the certificate is
granted, I will be responsible for the oversight and implementation of
the services provided pursuant to that certificate

10 Exh. 25-T, p. 1:12-17. McCloskey is identified as Kleen's "Business Development Manager" and
11 issuing agent in the tariff filed with Kleen's original application, see Exh. 14, and in the revised tariff
12 filed for the record on September 28, 2004, see Exh. 32. In their October 21, 2004 letter to the
13 Commission, Kleen's principals represented to the Commission that McCloskey could speak for them
on the Birdinground letter, stating that "the duties and responsibilities relating to this process and the
15 overall efforts of Kleen Environmental to secure authority from the WUTC have been assigned to
16 Mr. McCloskey" Exh. 22. In arguing that Kleen's officers and shareholders should be excused
17 from testifying before the Commission on the origin of the Birdinground letter, Kleen's counsel
18 stated as follows:

19 It has been well-documented in this hearing that the authority to do
20 what is necessary to go forward with this application has been
21 delegated to Mr. McCloskey. For better or worse, they have put their
22 trust in Mr. McCloskey to do what is necessary to get them the
authority.

23 Tr. 1674:13-18 (Haffner; emphasis added). Allen McCloskey was Kleen's primary witness with
24 respect to the services Kleen proposed to provide if its application were granted and the features
25 claimed to distinguish those services from the services provided by existing biomedical waste
26 collection companies. See Exh. 25-T (McCloskey prefiled testimony). Allen McCloskey was

1 Kleen's primary representative at the hearings on Kleen's application. For all of these reasons, Kleen
2 is responsible for and bound by his actions.

3 The fraudulent character of the Birdinground letter was revealed as a result of inquiries
4 initiated by counsel for Stericycle with the National Indian Health Board ("NIHB") and several
5 Indian tribes identified in the attachment to the Birdinground letter. See Johnson Decl. On October
6 13, 2004, counsel for Stericycle obtained contact information for the NIHB from the NIHB's Internet
7 web site and sent an e-mail message to Mr. J. T. Petherick, Executive Director of the NIHB, asking
8 for information on the Birdinground letter. Johnson Decl. A copy of this e-mail message is attached
9 to the Johnson Decl. as Exhibit A. On October 14, 2004, counsel for Stericycle sent e-mail messages
10 to several attorneys representing Washington Indian tribes, including Alix Foster, an attorney with
11 the Swinomish Indian Tribe, asking whether these tribes had authorized submission of the
12 Birdinground letter to the Commission on their behalf. A copy of the e-mail message sent to Alix
13 Foster is attached to the Johnson Decl. as Exhibit B.

14 On the morning of October 15, 2004, responding to Stericycle's inquiry the day before, Leon
15 John, a member of the Swinomish Tribal Senate and the Swinomish Tribe's delegate to the American
16 Indian Health Commission for the State of Washington ("AIHC"), contacted Ms. Rebecca ("Becky")
17 Johnston, Director of the AIHC to inquire about the Birdinground letter. The AIHC is a non-profit
18 organization that works to improve the health of American Indians and Alaska Natives in
19 Washington State through increased tribal-state collaboration. AIHC's membership consists of
20 delegates appointed by the tribal leadership of 26 of the 29 federally recognized tribal governments in
21 Washington, as well as the two urban Indian health clinics located in Washington. As Director of the
22 AIHC, Becky Johnston is familiar with the organizations representing Native Americans nationally
23 on healthcare matters, including the National Indian Health Board, as well as the people and
24 organizations representing Washington Indian tribes on healthcare matters. See Declaration of
25 Rebecca Johnston, dated October 25, 2004, filed herewith.
26

1 Mr. John asked Ms. Johnston whether she knew anything about Kleen Environmental
2 Technologies and its pending application before the Washington Utilities and Transportation
3 Commission. Mr. John asked whether Ms. Johnston was familiar with a Mr. Lancing Birdinground
4 and whether Mr. Birdinground was affiliated with the National Indian Health Board. Ms. Johnston
5 told him that she was unfamiliar with any of these matters. Mr. John then forwarded a copy of the
6 October 12, 2004 Birdinground letter to Ms. Johnston. Id.

7 After reviewing the Birdinground letter, Ms. Johnston telephoned Mr. John and told him that
8 she would look into the matter because the NIHB did not have an office in Kingston, Illinois, there
9 was no "regional" structure at the NIHB, and Mr. Birdinground was not an NIHB delegate
10 representing any tribe in the Northwest, nor was he authorized to unilaterally represent the views of
11 Washington's sovereign tribal governments. Ms. Johnston then telephoned Kleen directly.
12 Mr. Robert Olson answered the phone. She told him who she was and why she was calling.
13 Mr. Olson transferred the call to Mr. McCloskey. Id.

14 Ms. Johnston then spoke with Mr. McCloskey. She identified herself, explained the AIHC's
15 organizational structure and expressed her concerns about the validity of the letter from
16 Mr. Birdinground. Mr. McCloskey replied that a widespread call for letters of support had been
17 issued and that Kleen had received a "stack" of supporting letters, including the one signed by
18 Mr. Birdinground. He said that he did not know Mr. Birdinground and was not familiar with the
19 NIHB's location or structure. He apologized for not conducting due diligence to verify its
20 authenticity and stated that it was one of many letters of support Kleen had received. Mr. McCloskey
21 said that he was sorry that the letter made it into the WUTC record because it would make Kleen look
22 bad. He said that he would contact Kleen's attorney and request that the letter be removed from the
23 record. Id.

24 Ms. Johnston asked Mr. McCloskey about the statement in Mr. Birdinground's letter in which
25 he claimed that the facilities of the National Indian Health Board had had a long business relationship
26 with Kleen and Mr. McCloskey replied that this statement was not true. Id.

1 The telephone conversations Rebecca Johnston had with Robert Olson and Allen McCloskey
2 of Kleen on October 15, 2004 were completed that day by approximately 10:00 a.m. Without further
3 investigation, without inquiry to the NIHB or any other source and without pause to consider
4 alternative explanations, Mr. McCloskey immediately accepted Ms. Johnston's suggestion that the
5 Birdinground letter was unauthorized and promised to have it removed from the record of this
6 proceeding. Mr. McCloskey himself informed Ms. Johnston that the eleven-year business
7 relationship with Kleen touted in the Birdinground letter was untrue. Obviously, Allen McCloskey
8 knew that the Birdinground letter was fraudulent before he was contacted by Rebecca Johnston.

9 At 10:23 a.m. on October 15, 2004, Alix Foster left a voice message for Stericycle's counsel
10 advising him that Becky Johnston had contacted Kleen with respect to the Birdinground letter and
11 had explained her concerns about the validity of the letter to Robert Olson and Allen McCloskey. A
12 true and correct transcription of this voice message is attached to the Declaration of Stephen B.
13 Johnson as Exhibit C.

14 At 11:35 a.m. on October 15, Allen McCloskey sent Ms. Johnston a letter by fax, repudiating
15 the Birdinground letter and assuring Ms. Johnston that Kleen would have it removed from the record
16 of the Commission's proceeding. A copy of the fax transmitting this letter to Ms. Johnston, showing
17 fax transmittal data, is attached to the Johnson Decl. as Exhibit D. See also Exh. 34. In his
18 October 15 letter to Rebecca Johnston, Mr. McCloskey acknowledged that the Birdinground letter
19 contained "fallacious statements" and expressed concern about the "false manner in which this letter
20 was issued." McCloskey stated further that "As agreed this morning I would personally be
21 contacting Kleens [sic] legal representative and instructing him to redact the record to not include this
22 unauthorized correspondence."

23 On October 15, 2004 at 12:55 p.m., after McCloskey learned that the fraudulent character of
24 the Birdinground letter had been discovered, counsel for Kleen notified Judge Rendahl and the other
25 parties by e-mail that Kleen would be withdrawing the Birdinground letter. A copy of the
26 October 15, 2004, e-mail message from Kleen's counsel is attached to the Declaration of Stephen B.

1 Johnson as Exhibit E. The e-mail message of October 15 from Kleen's counsel made no mention of
2 the reason for the withdrawal. Kleen did not notify the Commission that it had learned that the
3 Birdinground letter was fraudulent. The content of the e-mail message of October 15 from Kleen's
4 counsel is consistent with an intention to cover up Kleen's responsibility for the fraudulent letter.

5 On October 19, 2004, counsel for Stericycle received a copy of a letter to the Commission,
6 dated October 19, 2004, from Mr. J. T. Petherick, Executive Director of the NIHB, in which
7 Mr. Petherick informed the Commission that the Birdinground letter was "fraudulent."

8 On behalf of the National Indian Health Board (NIHB), I am writing in
9 response to information our organization has received indicating the
10 submission of a fraudulent letter purportedly sent to the Washington
11 Utilities and Transportation Commission, dated October 12, 2004, on
12 letterhead of the "NIHB", signed by a Mr. Lancing Birdinground and
13 issued on behalf of "region ten" of the NIHB in connection with a
14 proceeding before the Commission. I write this letter to correct a
15 number of misimpressions conveyed by that letter.

16 The NIHB has no association with Mr. Lancing Birdinground and
17 therefore he is not authorized to speak on behalf of the NIHB regarding
18 any proceeding pending before the Washington Utilities and
19 Transportation Commission. The NIHB has never been located in
20 Kingston, Illinois.

21 The National Indian Health Board has never operated under a
22 "Regional" system. . . . Further, the NIHB has no relationship with
23 Kleen Environmental Technologies, Inc. and has no knowledge of any
24 proceeding pending before the Commission involving that company.

25 Exh. 212 ("Petherick letter").

26 On October 19, 2004, counsel for Stericycle received a copy of a letter to the Commission
dated October 19, 2004, from the chairman of the Swinomish Indian Tribe in which he advised the
Commission that the Birdinground letter was not authorized by the Swinomish Tribe.

The Tribe has not authorized Mr. Birdinground to speak for it or the
tribal health clinic in connection with any proceeding before the
Washington Utilities and Transportation Commission.
Mr. Birdinground has no connection with the Tribe and is in fact
unknown to us.

1 The Tribe has no relationship with Kleen Environmental Technologies,
2 Inc. and has no knowledge of any proceeding pending before the
3 Commission involving that company.

4 Exh. 213.

5 On October 19, 2004, counsel for Stericycle also received a copy of a letter to the
6 Commission, dated October 19, 2004, from Brenda Nielson, Health Director of the Quileute Indian
7 Tribe in which she stated that the Quileute Tribe had not authorized Mr. Birdinground to represent
8 the views of the Quileute Tribe before the Commission.

9 The Quileute Tribe has not authorized Mr. Birdinground to speak for it
10 or the Quileute tribal health clinic in connection with any proceeding
11 before the Washington Utilities and Transportation Commission.
12 Mr. Birdinground has no connection with the Quileute Tribe and is in
13 fact unknown to us.

14 The Quileute Tribe was not aware of Mr. Birdinground's letter until
15 after it was submitted to the Commission.

16 The Quileute Tribe has no relationship with Kleen Environmental
17 Technologies, Inc. and has no knowledge of any proceeding pending
18 before the Commission involving that company.

19 Exh. 214.

20 On October 20, 2004, after receipt of the Petherick letter and the letters from the Swinomish
21 Tribe and the Quileute Tribe, counsel for Stericycle notified Administrative Law Judge Ann E.
22 Rendahl and counsel for the other parties by e-mail of the apparently fraudulent nature of the
23 Birdinground letter, provided her a copy of the Petherick letter and requested the opportunity to
24 examine Allen McCloskey and Kleen's three principals, Robert Olson, Kenneth Lee and Darin
25 Perrollaz, concerning the Birdinground letter. A copy of this e-mail message is attached to the
26 Johnson Decl. as Exhibit F. During a conference call on October 21, Judge Rendahl agreed to
schedule an additional day of hearing for the purpose of allowing at least some of Kleen's witnesses
to be examined concerning the Birdinground letter.

At the previously scheduled hearing on Friday, October 22, 2004, Judge Rendahl summarized the results of the October 21 conference call on the record and scheduled an additional day of hearing for the following Tuesday, October 26, to consider the Birdinground letter. At the hearing on October 22, Kleen's counsel presented a letter to the Commission signed by Kleen's three principals, dated October 21, 2004, in which they asked to be excused from testifying about the Birdinground letter. See Exh. 22. The Kleen principals stated, among other things, that "the duties and responsibilities relating to this process and the overall efforts of Kleen Environmental to secure authority from the WUTC have been assigned to Mr. McCloskey, and it is Mr. McCloskey who can best answer any questions that you or opposing counsel may have [about the Birdinground letter]." Id. Judge Rendahl required Kleen to make Robert Olson and Allen McCloskey available for examination at the hearing on October 26 but permitted Mr. Lee and Mr. Perrollaz to testify by affidavit concerning their knowledge of the Birdinground letter and any relationship between Kleen and the Indian tribes or tribal health clinics identified in the attachment to that letter.

Although Robert Olson, Kleen's president and majority shareholder, became aware of the fraudulent nature of the Birdinground letter no later than October 15, 2003, Tr. 1902:4-23 (Olson); Exh. 34, neither Mr. Olson, Kleen's other principals nor Kleen's counsel made any effort to determine the facts of the fraud or to disclose those facts to the Commission. Mr. Olson testified on October 26, 2004 that he had never seen or read the Birdinground letter until he arrived at the hearing room on October 26 for the hearing scheduled to inquire into the facts surrounding the Birdinground letter. Tr. 1879:15-25, 1880:1-2; Tr. 1885:12-14; Tr. 1913:22-23 (Olson).

The October 21, 2004 letter to the Commission by Kleen's three principals (Exh. 22) was drafted for them by Allen McCloskey. Tr. 1886:12-19 (Olson); 1956:13-19 (McCloskey). This letter can only be viewed as an effort to cover up Kleen's responsibility for the Birdinground letter. The Kleen letter of October 21 letter is full of false, misleading and self-serving statements intended to allow Kleen to evade responsibility for the fraud. Thus, the October 21 letter states:

2 We have made every effort to rectify this issue. We have been in
3 contact with the National Indian Health Board and the American Indian
4 Health Commission for Washington State and are working with them to
5 address the great deal of concern surrounding the letter in question.

6 In fact, the testimony of Mr. Olson and Mr. McCloskey on October 26, 2004 makes clear that no
7 representative of Kleen made any effort to contact the National Indian Health Board at any time.
8 Tr. 1913:17-21; Tr. 1925-26:25-4; Tr. 1928:16-22; Tr. 1929:1-19; Tr. 1935:5-1936-7; Tr. 1960:3-8;
9 1964:5-12; 1970:17-19 (McCloskey).

10 In their October 21, 2004 letter to the Commission, Kleen's shareholders claimed that the
11 Birdinground letter was based on a "form letter" Kleen had disseminated widely in seeking shipper
12 support:

13 Furthermore, this letter was one of three KET "form letters" sent out to
14 numerous shippers. Although we have control over who we send them
15 out to we do not have control over the manner in which they are
16 returned to us or the nature in which they are prepared. Just as we sent
17 out and received form letters of support from Hospital Shared Services
18 Association, Southwest Washington Medical Center, Multi-Care Health
19 Systems and others, we saw this to be no different. . . . [W]e did not
20 and do not know who Mr. Birdinground is and assumed he was
21 authorized as stated in the letter because of the form letters we sent
22 out.¹

23 However, when asked in Records Requisition No. 6 to produce the "form letter" on which the
24 Birdinground letter was supposedly based, Kleen was unable to do so. See Kleen Response to
25 Records Requisition No. 6, Johnson Decl. Exhibit I. No other shipper support letter with a text
26 similar to the Birdinground letter has been filed in connection with the Kleen application.² Thus,
Kleen has provided nothing to support the self-serving claim of its principals in their October 21
letter that the Birdinground letter was based on a widely distributed "form letter."

¹ Robert Olson repeated this claim in his testimony on October 26, claiming that McCloskey had shown him such a form letter. Tr. 1884:12-17 (Olson) ("[McCloskey] showed me a very standard form letter . . . and that appears to be the instrument that Mr. Birdinground had responded to.").

² Only two (2) shipper support letters were submitted by Kleen in support of its application -- one from Valley Medical Center and one from MultiCare. The texts of these letters bear no resemblance to the text of the Birdinground letter. Copies of these letters are found at Exhibit 192.

2 The October 21 letter attempted to mislead the Commission by suggesting that Kleen's prior
3 services to Indian tribes might explain why Kleen failed to recognize the fraudulent nature of the
4 Birdinground letter.

5 Although, Kleen Environmental has provided services to some of the
6 Tribal facilities found on the list attached to the letter, we did not and
7 do not know who Mr. Birdinground is and assumed he was authorized
8 as stated in the letter because of the form letters we sent out.

9 Exh. 23.³ However, the false claims of the Birdinground letter were obvious to anyone familiar with
10 Kleen's business. The Birdinground letter states,

11 As a regional representative of the National Indian Health Board and its
12 regional membership it is imperative that we see this application
13 granted. For the past eleven years our facilities have developed a
14 successful and collegial acquaintance with the owners and staff of
15 Kleen Environmental Technologies, Inc.

16 In fact, the testimony of Darin Perrollaz (Exh. 37) and Robert Olson made clear that Kleen never
17 provided any services whatsoever to the National Indian Health Board or any of the tribal health
18 clinics listed on the attachment to the Birdinground letter. Tr. 1880:12-15; 1915:18-23 (Olson).
19 Simply put, the claim in the Birdinground letter to a long business relationship between Kleen and the
20 NIHB and the healthcare facilities of its "regional membership" was obviously false. Yet, in their
21 October 21 letter to the Commission, Kleen's principals joined Mr. McCloskey in an effort to cover
22 up Kleen's responsibility for filing a fraudulent letter in support of its application.

23 Thus, the October 21 letter states:

24 We never had any reason to believe that this document was anything
25 other than what it appeared to be, a letter of support.

26 This statement is patently false. Despite these representations to the Commission, the truth is that the
Birdinground letter was fraudulent on its face and Kleen's principals had every reason to know that it
was fraudulent, based on its content alone. While it is possible that none of Kleen's principals looked

³ This effort at misdirection was supplemented by McCloskey's testimony on direct examination by Kleen's counsel on
October 26. See Tr. 1955:3-13 (McCloskey).

1 at the Birdinground letter prior to signing their letter of October 21, that would demonstrate that they
2 had no interest in determining the truth about the Birdinground letter or its origins. By signing the
3 October 21 letter Kleen's principals joined Allen McCloskey in an effort to cover up Kleen's
4 responsibility for the Birdinground letter and to mislead the Commission.

5 Kleen's president and majority shareholder Robert Olson testified that he had not seen the
6 Birdinground letter until he reviewed it in the hearing room on October 26, 2004 -- eleven days after
7 he learned of the fraudulent character of the letter from Becky Johnston and five days after he signed
8 a letter to the Commission representing that Kleen's principals had "made every effort to rectify this
9 issue" and "never had any reason" to doubt the validity of the Birdinground letter. Notwithstanding
10 the self-serving statements in the October 21 letter, it is apparent that Kleen's shareholders made no
11 effort whatsoever to determine the facts behind the Birdinground letter or to rectify the attempted
12 fraud on the Commission once the fraud was exposed. All of the efforts of Kleen's principals
13 following exposure of the fraudulent nature of the Birdinground letter were aimed at covering up
Kleen's responsibility for the fraud.

15 Robert Olson's testimony on October 26 makes clear that the fraudulent character of the
16 Birdinground letter should have been apparent to him on its face. Olson testified that Kleen had
17 never performed any services for any tribal clinic or tribal healthcare facility. Tr. 1915:18-23
18 (Olson). He testified that Kleen had no prior business relationship with the National Indian Health
19 Board. Tr. 1880:12-15 (Olson). Olson stated that he had never heard of the National Indian Health
20 Board or Lancing Birdinground prior to the flap about the Birdinground letter. Tr. 1880:9-17
21 (Olson). Accordingly, Olson clearly knew or should have known that the claim in the Birdinground
22 letter to an eleven-year business relationship with Kleen was false.

23 Olson testified that he had been aware of the Birdinground letter before it was submitted to
24 the Commission, Tr. 1888:5-8; 1891:10-1892:11 (Olson),⁴ but he was extremely evasive as to the
25

26 ⁴ See also, Exh. 22 ("Although Mr. Olson was aware of the submission of this document the other partners were not aware of its existence until after we were contacted by Becky Johnston . . .").

2 extent of his knowledge prior to the exposure of the fraudulent character of the letter, contradicting
3 himself several times. Tr. 1888:5-1899:1; compare, e.g., Tr. 1891:16-1892:11 with Tr. 1895:18-19
4 and Tr. 1898:11-23 (Olson).

5 Olson's testimony on October 26 makes clear that he took no action to investigate the
6 Birdinground letter after it was exposed as fraudulent or to advise the Commission of the fraud.
7 Olson testified that he learned that the Birdinground letter was fraudulent as a result of a telephone
8 call made by Becky Johnston of the American Indian Health Commission for the State of Washington
9 on October 15. Exh. 22; Tr. 1882:16-1883:3; 1888:21-24; 1901:16-1902:22 (Olson). He testified
10 that he transferred Ms. Johnston's telephone call to Allen McCloskey and that McCloskey
11 immediately accepted Ms. Johnston's assertion that the Birdinground letter was not bona fide.
12 Tr. 1948:21-1949:25 (Olson). Olson testified that he personally took no action to determine the
13 origin of the Birdinground letter. Tr. 1903:6-15 (Olson). The only action he took after learning of
14 the fraudulent character of the Birdinground letter was to ask Allen McCloskey to look into the
15 matter. Tr. 1913:17-21; 1882:10-1883:19; 1903:6-15 (Olson). He testified that the only efforts that
16 McCloskey made to determine the origin of the Birdinground letter were telephone calls McCloskey
17 made to the telephone number shown on the Birdinground letter and voice messages left by
18 Mr. McCloskey at that telephone number, which calls were never returned. Tr. 1883:14-19; 1902:17-
19 1903:5; 1914:14-1915:3; 1926:5-10; 1929:10-19; 1935:5-15 (Olson). As previously noted, Olson
20 testified that he had not seen or read the Birdinground letter until the morning of October 26, 2004,
21 immediately prior to the start of the hearing at which he was expected to testify on that subject.
22 Tr. 1879:12-1880:2; 1885:12-14 (Olson). Clearly, Robert Olson had no interest in determining the
23 origin of the Birdinground letter, in advising the Commission of the fraud or in taking any action to
24 correct or otherwise address the fraud committed on his company's behalf. Although Olson knew
25 that Allen McCloskey was the person most likely responsible for the fraud, Olson left the
26 responsibility within Kleen for addressing the Birdinground letter entirely to Allen McCloskey.

1 On October 29, 2004 at 5:08 p.m., Kleen's counsel, Greg Haffner, advised Judge Rendahl and
2 counsel for the other parties that McCloskey had not reported on the results of the heart stress test he
3 was supposedly scheduled to have that day and that McCloskey had not returned Haffner's telephone
4 calls. The full text of the October 29 e-mail message was read into the record by Mr. Haffner at the
5 status conference held November 4, 2004 and appears at Tr. 1997:9-1998:18 (Haffner). Haffner's
6 e-mail reported that Robert Olson had spoken with McCloskey "earlier this week" and it had been
7 agreed that McCloskey should resign. Haffner's October 29 e-mail expressed concern that
8 McCloskey was avoiding both him and the people at Kleen and might seek to avoid further testimony
9 in this proceeding. Haffner also reported that he had spoken by phone with Lansing Birdinground
10 and that he (Haffner) had no reason to doubt the testimony provided in Mr. Birdinground's
11 declaration. Haffner noted further that Mr. Birdinground's testimony "clearly contradicts
12 Mr. McCloskey's testimony." Haffner acknowledged the obvious implication of McCloskey's
13 behavior, stating that he was "appalled at what appears to have taken place" and that "neither I nor
14 anyone in my firm had any knowledge of any misrepresentations that may have been made by
15 Mr. McCloskey."

16 On November 1, 2004, Judge Rendahl issued a notice scheduling a status conference on
17 November 4 "to address whether and how to proceed with the Kleen Environmental Technologies,
18 Inc., application and how to address the testimony and exhibits sponsored by Mr. McCloskey." At
19 the status conference on November 4, counsel for Kleen, reported that neither he nor Robert Olson
20 had been able to reach McCloskey. Haffner reported, "It does appear as though he [McCloskey] has
21 left his residence here in the state and moved back to California. Mr. Olson has been in contact with
22 some of his family members and they believe that he is in -- I think it's Trinidad, California."
23 Tr. 1998:23-1999:4 (Haffner).

24 As the Commission concluded in dismissing Kleen's application,

25 The testimony and evidence developed in the hearings, in particular the
26 October 26, 2004, hearing, as well as the facts surrounding the events

2 and the actions of Mr. McCloskey indicate that Mr. McCloskey
3 prepared or was involved in the preparation and dissemination of the
4 Birdinground letter, attempted to cover up his involvement with the
5 letter, and gave false testimony before the Commission concerning the
6 letter and other matters. Although the applicant insists that the
7 fraudulent document, misconduct of Mr. McCloskey and his apparent
8 perjury were a result of the actions of Mr. McCloskey and not the
9 applicant itself, the applicant must bear the responsibility of someone it
10 hired to conduct its affairs.

11 Initial Order Dismissing Application, etc., Order No. 07, p. 19.

12 2. ***Kleen's Entire Case Was Based on False, Misleading and Deceptive Testimony***

13 Kleen's entire case was based on false, misleading and deceptive testimony, including the
14 following:

15 (1) False Testimony Concerning Availability of Hydroclave Disposal Alternative.

16 In his prefiled testimony, Allen McCloskey stated that Kleen "will also be offering an additional
17 method of disposal not currently offered by existing providers, i.e., Hydroclave." Exh. 25-T at 3:3-4
18 (McCloskey). This statement was false. Kleen neither intended nor had the ability to offer a
19 "hydroclave" disposal alternative. Later in the same prefiled testimony, McCloskey stated,
20 "Biomedical waste generally produced by hospitals, health-care facilities, doctors, and dentists in the
21 course of delivering patient care will likely be transported to Covanta Energy waste-to-energy facility
22 located in Brooks, Oregon . . ." Id. at 7:5-7 (McCloskey). On cross-examination, McCloskey
23 admitted that all of the waste Kleen collected would be disposed of at the Covanta/Marion County
24 incinerator in Brooks, Oregon. Tr. 322:2-8, 330:22-24 (McCloskey). "As I said, the proformas are
25 based on taking waste to Covanta, and that's where waste would be taken at all times whenever
26 possible." Tr. 330:22-24 (McCloskey). During the hearing, Kleen submitted a revised tariff for its
27 proposed service eliminating all containers except a single cardboard box because of Covanta's
28 inability to handle reusable tubs. Tr. 367:11-24, 388:3-7 (McCloskey).⁵ McCloskey's testimony that

29 _____
30 ⁵ Although acknowledging that Canadian permits would be required to transport Washington-origin waste into Canada for
31 processing at the hydroclave facility, McCloskey had never investigated the requirements of the Canadian regulations.
32 Tr. 327:9-328:4 (McCloskey).

1 Kleen intended to offer “an additional method of disposal called hydroclave”, Exh. 25-T at 2:10-11,
2 was false and was known to be false at the time it was offered.

3 (2) False Testimony Concerning the Cost to Process Medical Waste at the HSS
4 Hydroclave Facility. When asked on September 27, 2004 whether he knew what it would cost to
5 process waste at the HSS hydroclave facility, Allen McCloskey replied, “I don’t know. . . . [W]e
6 haven’t negotiated a set dollar price to take medical waste there.” Tr. 322:23-323:4 (McCloskey).
7 Yet, on October 6, on rebuttal, Kleen’s counsel elicited testimony from McCloskey that directly
8 contradicted his testimony of September 27:

9 Q. . . . Is it your understanding that the cost of disposal quoted to
10 you by the hydroclave facility people is three [times] the cost of
11 incineration at Covanta?

12 A. . . . We had negotiated a rate not only with HSS, but with Iatron
13 Corporation, which is the parent company of this technology.

14 Q. What was the rate that you negotiated?

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

18 Tr. 1053:12-25 (McCloskey). See also, Tr. 1070:20-1074:13 (McCloskey). Based on what we now
19 know about Mr. McCloskey, it is apparent that McCloskey’s October 6 about an “agreement” with
20 HSS for processing at \$240 per ton was a fabrication.

21 (3) False Testimony Concerning Availability of Reusable Tubs. Kleen filed a
22 proposed tariff as an attachment to the prefiled testimony of Kenneth Lee on August 13, 2004, see
23 Exh. 45, that purported to offer a service materially different from the service Kleen actually intended
24 to provide.⁶ Thus, the tariff filed on August 13 with Mr. Lee’s prefiled testimony indicated that
25 Kleen would make several sizes of reusable plastic tubs available to its customers. However, during

26 ⁶ Kenneth Lee’s prefiled testimony identifies Exh. 45 as “Proposed tariff for the proposed Bio-Hazardous (biomedical)
waste program.” However, the Kleen tariff was sponsored at the hearing by Allen McCloskey and McCloskey testified
that he prepared it. Tr. 295:25-296:9 (McCloskey).

cross-examination, Allen McCloskey admitted that Kleen intended to dispose of all the waste it handled at the Covanta incinerator in Brooks, Oregon and that the Covanta incinerator could only handle cardboard boxes and could not handle reusable tubs. Tr. 341:19-342:15 (McCloskey). McCloskey conceded that Kleen would not offer its customers reusable tubs, because of Covanta's restrictions, and that Kleen's proposed service would be limited to single-use cardboard boxes. Tr. 367:11-24, 388:3-7 (McCloskey). At the hearing on September 28, McCloskey offered an amended tariff that deleted all reusable tubs, see Exh. 32, explaining that the tariff had been revised to eliminate "the inconsistency in what is actually going to be offered and what was reflected in the tariff." Tr. 388:19-21 (McCloskey). "[W]e have made those changes to correspond with one another, that what's actually being offered is what's actually being proposed in the tariff." Tr. 388:21-23 (McCloskey). McCloskey acknowledged that he visited Covanta and became aware of the Covanta's requirements concerning the containers it could handle "four or five, maybe five and a half months ago." Tr. 425:6-18 (McCloskey). Clearly, McCloskey knew that the tariff submitted with Kleen's prefiled testimony on August 13 did not describe the service Kleen actually intended to offer.⁷

(4) False Testimony Concerning Availability of Backup Disposal Facilities.

Although the Commission's regulations, WAC 480-70-436(4), required Kleen to identify an alternative treatment or disposal site in case its primary treatment or disposal site became unavailable, Kleen failed to identify a backup treatment or disposal facility in its prefiled testimony. During cross-examination on September 27, Allen McCloskey testified that Kleen would have access to an autoclave facility operated by Land Recovery, Inc. in Puyallup and to a municipal solid waste incinerator in Spokane for the treatment and disposal of Kleen's biomedical waste in the event that the Covanta facility became unavailable. Tr. 328:21-329:16; 330:20-331:6 (McCloskey). These statements were false. Rusty Cole of Pierce County Recycling, Composting and Disposal (formerly,

⁷ Both Allen McCloskey and Robert Olson knew of Covanta's restrictions and limitations since they visited Covanta together "four or five, maybe five and a half months" prior to the hearing. Tr. 425:5-18 (McCloskey).

Land Recovery, Inc.) testified by declaration that his company's Puyallup autoclave "is available for use only by Harold LeMay Enterprises, Inc. and Waste Connections, Inc., which are the two owners" of his company. Exh. 201, p. 2. He also testified that his company is "under contract with Pierce County to accept only Pierce County waste; thus, we cannot take out-of-county medical waste for treatment by the autoclave." *Id.* Thus, the "Land Recovery, Inc." autoclave could not serve as a backup treatment facility for Kleen's proposed service. Mike Philpott of Stericycle testified that the Spokane waste-to-energy facility would not accept untreated biomedical waste from a commercial facility. Tr. 1749:13-1750:20 (Philpott). Similarly, the Declaration of Dennis Hein, Director of the Spokane Regional Solid Waste System, filed herewith, makes clear that the Spokane Regional Waste-to-Energy Facility did not agree to accept untreated biomedical waste from Kleen. Plainly, Allen McCloskey's representations that these facilities would provide backup treatment or disposal services for Kleen were false.⁸

(5) False Testimony Concerning Online Interactive Generator Profile System. In his written prefiled testimony, Allen McCloskey testified,

We will offer an online interactive generator profile system that will allow generators to review the various documents associated with their waste, e.g., manifests, certificates of destruction, invoices, weight tickets, and any other documents associated with the transporting and disposal of their waste, a service not offered by any other transporter.

Exh. 25-T at 2:12-16 (McCloskey). McCloskey testified that the online generator profile system would be integrated with a bar-code tracking system: "Each container will be scanned and entered into an electronic tracking system, at which time the manifest will be updated and uploaded to an online generator profile, ready for perusal by a generator representative." *Id.* at 6:11-14 (McCloskey). "Detailed work orders and invoices will be prepared for each generator electronically and will directly reflect that information that is uploaded to the user profiles." *Id.* at 8:8-11.

⁸ McCloskey conceded in response to the examination of Judge Rendahl that the LRI autoclave could not accept pathological or chemotherapy wastes and that the Spokane incinerator would not accept sharps waste. Tr. 371:21-372:20 (McCloskey). Thus, McCloskey knew that these treatment/disposal facilities could not provide adequate backup services to Kleen in any event.

2 However, all of this was pure fantasy on the part of Mr. McCloskey. On cross-examination,
3 McCloskey admitted that Kleen had not included any costs for this online system in the pro forma
4 financial statements submitted in support of its application, did not know what the shipper need for
5 the system was and did not know what features the system would include.

6 Q. My question here goes this way, have you included any of the
7 costs of this program in your proforma?

8 A. No, we haven't, and we didn't include it for a reason. And that
9 reason is you can't, you know, until you go to each of these generators
10 and identify the need, what is it that you want to see in this system,
11 what is it that's going to make this on-line generator profile user
12 friendly, until you identify each and every one of those components,
13 you can not nail down a cost for this system.

14 Q. Okay. So basically you have not identified the scope, content,
15 parameters for the system that you're describing here; is that correct?

16 A. We haven't, and if you -- and if we went out and tried to do
17 that, it would be premature.

18 Q. Okay. Have you talked to generators about what it is they
19 would like to have in this regard?

20 A. I mean there has been general discussion as to, you know, with
21 a few generators as to, you know, what kind of information they would
22 like to have stored on the system, but as far as the overall market all
23 together, no.

24 Q. So you don't know exactly what this system would be
25 composed of, what its constituent elements would be?

26 A. Not without first talking to the generators. I mean you can't go
out and build a system for people until you identify what it is they want
to see on the system.

Tr. 311:21-312:25 (McCloskey). In responding to questions from Judge Rendahl, McCloskey
indicated that Kleen could not acquire a "template system" off the shelf for this purpose and that the
software for the on-line profile system he contemplated would have to be specially designed.

Tr. 369:19-24 (McCloskey). He stated that he didn't know but that it might take a software engineer

engaged full-time in designing such systems “four months, five months” to create the software for such a system. Tr. 370:7-10 (McCloskey). Obviously, then, the “interactive on-line generator profile” that McCloskey touted in his prefiled testimony was nothing but a vague idea. The proposed on-line system did not exist. Kleen did not know the parameters of this hypothetical on-line system, did not know its costs (which McCloskey’s own testimony indicated would be substantial), and would not have the ability to implement it for many months, if ever. Clearly, Kleen’s “on-line interactive generator profile system” was a complete fantasy.

(6) False Testimony Concerning Kleen’s Ability to Provide Improved Chain-of-Custody Documentation, Including a Certificate of Destruction. Allen McCloskey testified that Kleen would provide its customers improved “chain-of-custody” documentation, including a “certificate of destruction,” a document attesting to receipt and treatment/disposal of each generator’s medical waste signed by a representative of the treatment/disposal facility. Exh. 25-T at 8:13-17; Tr. 336:6-10; 340:5-7 (McCloskey). McCloskey asserted on cross-examination that officials at the Covanta/Marion County incinerator had indicated to him that “they would work with us to help us meet these parameters that I have identified, you know, to have a facility representative assert that that waste has been destroyed.” Tr. 336:20-24 (McCloskey). In his prefiled testimony, McCloskey asserted flatly that “the Covanta facility also provides our driver with a Certificate of Destruction” Exh. 25-T at 7:15-16. However, McCloskey later admitted that Covanta Marion Inc. provides waste haulers a delivery receipt of the type admitted into the record as Exhibit 138, a document that contains no information concerning any individual generator’s waste. Tr. 340:20-25 (McCloskey). Although McCloskey asserted that he intended to develop improved forms to document all important steps in the chain-of-custody for medical waste handled by Kleen, he admitted that Kleen had not yet developed these forms and had not provided them for the record. Thus, the improved chain-of-custody documentation promised by McCloskey, including a certificate of destruction signed off by the Covanta disposal facility, were entirely imaginary.

(7) Misleading Testimony Concerning Facilities Required for Proposed Medical

2 Waste Service. Kleen's prefiled testimony makes no mention of an intention to move Kleen's
3 operations to a new location if the application was granted. See Exhs. 1-T, 25-T, 35-T, 40-T. Allen
4 McCloskey testified on cross-examination that the mileage costs assumed in Kleen's pro forma
5 financial projections were calculated on the assumption that Kleen's medical waste operations would
6 be based at its current location, 754 Garfield Street in Seattle. Tr. 422:1-2, 18-19 (McCloskey). The
7 prefiled testimony of Kenneth Lee indicates that Kleen's pro forma financial projections were based
8 on "sharing our current building insurance" with Kleen's existing business operations. Exh. 40-T at
9 2:8-9. Mr. Lee's letter to Mr. Olson itemizing capital funding requirements for the proposed medical
10 waste service refers to necessary "building modifications" and suggests that such modifications "can
11 usually be funded by our landlord by extending our building lease in duration and monthly rate."
12 Exh. 42 at 1. The summary in the same document again states that the "building modification" would
13 be funded "by our landlord." Id. at 2. During cross-examination, Robert Olson testified that the plan
14 to have Kleen's landlord fund the building modifications was based on Kleen's experience with its
15 current landlord at 754 Garfield Street and that Kleen had had discussions with its current landlord
16 about this in connection with the building modifications referenced in Exhibits 42 and 43.
17 Tr. 219:17-21; 221:22-222:7 (Olson). Thus, Kleen's prefiled testimony suggested that Kleen's
18 proposed medical waste collection service would be based at 754 Garfield Street. Certainly, there
19 was nothing in Kleen's prefiled testimony disclosing that Kleen intended to relocate its operations if
20 the application was granted.

21 However, when confronted on cross-examination with photographs demonstrating that
22 Kleen's facilities at 754 Garfield Street were unsuitable for the proposed medical waste collection
23 service, see Exhibits 165-190, Robert Olson admitted that Kleen's present location would not be
24 suitable, Tr. 230:14-24, and indicated that Kleen intended to find a new location for its proposed
25 medical waste business, Tr. 222:20 et seq. At a minimum, Kleen's prefiled testimony was misleading
26 concerning Kleen's facilities and intentions. Kleen sought to mislead the Commission and the

1 protestants and to disguise the fact that Kleen did not have an appropriate facility from which to
2 conduct medical waste collection operations.

3 Allen McCloskey, Kleen's primary operating witness, provided false, misleading and
4 deceptive testimony concerning the features of Kleen's proposed service that were alleged to be
5 different from the biomedical waste collection services provided by Stericycle and other existing
6 carriers. His testimony was thus critical to Kleen's argument that existing carriers were not providing
7 service to the satisfaction of the Commission under RCW 81.77.040. Much of Stericycle's case
8 addressed these claims. Much of the hearing was spent examining Kleen's witnesses and
9 shipper/generator witnesses with respect to these claims. Absent McCloskey's false, misleading and
10 deceptive testimony on these issues, Kleen's case could not have survived a motion to dismiss on the
11 filing of its prefiled case.

12 **B. Attorneys' Fees and Costs Incurred by Stericycle as a Result of Kleen's Misconduct.**

13 The attorneys' fees and costs that Stericycle has incurred as a direct result of Kleen's fraud,
14 false testimony and other misconduct in this proceeding are detailed in the Declaration of Stephen B.
15 Johnson (hereinafter "Johnson Decl."), filed herewith.

16 **III. STATEMENT OF ISSUES**

17 Should the Commission award Stericycle the attorneys' fees and costs it has incurred in
18 responding to Kleen's filing of the fraudulent Birdinground letter and otherwise as a result of Kleen's
19 false, misleading and deceptive testimony in this proceeding?

20 **IV. LEGAL AUTHORITY**

21 The Commission should exercise its authority under RCW chapters 80 and 81 and its inherent
22 powers as an adjudicative tribunal to ensure the integrity of its processes and to regulate the conduct
23 of those appearing before it by awarding Stericycle its reasonable attorneys' fees and costs incurred
24 as a result of Kleen's misconduct in this proceeding.

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A. **The Commission Has The Authority To Regulate The Conduct Of Parties In Adjudicative Proceedings Before It And To Ensure The Integrity Of Its Proceedings By Awarding Attorneys' Fees and Costs To A Party Injured by Another Party's Fraud Or Other Misconduct.**

The Washington Legislature has delegated to the Commission broad adjudicatory responsibilities under RCW Titles 80 and 81. The Commission has broad powers to implement these responsibilities. Specifically, the Commission is charged with "regulating, in the public interest, the rates, services, facilities, and practices of all persons engaging in the transportation by whatever means of persons or property within this state for compensation," as well as other public service companies. RCW 80.01.040(2) and (3). The Commission's duties include the resolution of contested cases under the procedures specified in Part IV of the Administrative Procedure Act, RCW 34.05.410 et seq., including contested applications under RCW 81.77.040.

The present proceeding involves a contested application for a certificate of public convenience and necessity under RCW 81.77.040. It is an adversarial, quasi-judicial proceeding in which the Commission has performed all of the functions of an adjudicative tribunal -- managing discovery, conducting hearings, ruling on motions, receiving sworn testimony and other evidence and applying the law.⁹

The Commission's responsibility to perform adjudicative functions in contested cases necessarily carries with it the power to regulate the conduct of the parties appearing before it and to protect the integrity of the Commission's processes. This power includes the authority to impose remedial sanctions against a party guilty of fraud, false testimony, bad faith or other misconduct in the course of Commission proceedings, including the authority to award attorneys' fees and costs to a party injured by such misconduct.

⁹ The Commission has promulgated rules governing procedure in these quasi-judicial proceedings. *See* WAC Chapter 480-07. Generally, "persons involved in an actual case or controversy within the jurisdiction of the commission to resolve may apply to the commission for an adjudicative proceeding to secure an order resolving the disputed matter." WAC 480-07-305(2). These rules provide for discovery, incorporating applicable court rules (WAC 480-07-400), formal submission of pleadings and briefs (WAC 480-07-370 and -375), and Commission decision upon dispositive motion (WAC 480-07-380). Hearings are conducted in formal adjudicative proceedings with an Administrative Law Judge presiding. Parties are represented by attorneys; witnesses are sworn in and cross examined by attorneys. The Commission must make its decision based on evidence in the formal record of the hearing. WAC 480-07-800 - -850.

2 The Washington courts have long recognized that an adjudicative tribunal has inherent power
3 to assess remedial awards of attorneys' fees and costs for a party's misconduct in litigation. See, e.g.,
4 Wilson v. Henkle, 45 Wn. App 162, 174-75, 724 P.2d 1069 (1986) ("A Washington court has the
5 inherent power to assess the litigation expenses, including attorney fees, against an attorney for bad
6 faith litigation conduct."); see also Rogerson Hiller Corporation v. Port of Port Angeles, 96 Wn. App.
7 918, 928, 982 P.2d 131 (1999) (acknowledging that attorneys' fees could be awarded for party's bad
8 faith conduct in litigation); State v. S.H., 102 Wn.2d 468, 8 P. 3d 1058 (2000) (recognizing court's
9 ability to impose sanctions for late filing of motion). A tribunal's power to regulate the conduct of
10 parties appearing before it and to preserve the integrity of its processes has been recognized as an
11 equitable exception to the so-called "American Rule" that each party must bear its own litigation
12 costs. Under the American Rule, Washington courts do not award attorneys' fees to the prevailing
13 party unless "authorized by contract, statute or a recognized ground in equity." Rogerson Hiller, 96
14 Wn. App. at 926-27. The Rogerson Hiller court delineated three types of bad faith conduct that have
15 been found to warrant an award of attorneys' fees in federal litigation: (1) prelitigation misconduct
16 ("obdurate or obstinate conduct that necessitates legal action to enforce a clearly valid claim or
17 right"); (2) procedural bad faith ("vexatious conduct occurring during the course of litigation"); and
18 (3) substantive bad faith. 96 Wn.2d at 928, *citing* In re Recall of Pearsall-Stipeck, 136 Wn.2d 255,
19 961 P. 2d 343 (1998) (holding that the filing of frivolous recall petitions with the intent to harass
20 would have warranted the award of attorneys' fees had the trial court made a specific finding of bad
21 faith). "Sanctions may be appropriate if an act affects the integrity of the court and left unchecked,
22 would encourage future abuses." Rogerson Hiller at 929 (internal quotation omitted).

23 When a party attempts to deceive the fact-finder or opposing party, Washington courts will
24 award attorneys' fees incurred by an innocent party as a result of the misconduct. In Seals v. Seals,
25 22 Wn. App. 652, 590 P. 2d 1301 (1979), the trial court found that the husband had willfully and
26 fraudulently failed to disclose the existence of certain community property in a dissolution
proceeding and awarded the wife the attorneys' fees she had incurred in the two week trial

necessitated by her former husband's fraud. Id. The court of appeals determined that the grant of attorneys' fees was proper under the court's inherent powers: "[A] trial court does not exceed its authority in awarding attorney's fees if the losing party's conduct constituted bad faith." Id. at 658. See also, Hsu Ying Li v. Tang, 887 Wn.2d 796, 87 Wn.2d 796 (1976) (attorney's fees awarded for bad faith breach of fiduciary duties).

The federal courts have described this inherent authority of an adjudicative tribunal as encompassing those powers which are necessary for the performance of adjudicative functions. In Roadway Express, Inc. v. Piper, 447 U.S. 752, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980), the U.S. Supreme Court upheld a trial court's dismissal of an action and award of attorneys' fees to the defendant as a result of the plaintiff's repeated discovery violations and disobedience to related orders. Id. at 494. While determining that the trial court's reliance upon certain statutes allowing costs to the prevailing party was misplaced, the Supreme Court upheld the assessment of attorneys' fees under either Fed R. Civ. P. 37 or the court's inherent powers. Id. at 495, 500. The Supreme Court described these inherent powers as those powers "necessary to the exercise of all others." Id. at 500. Although the Court acknowledged that "the most prominent of these powers is the contempt sanction," id., it upheld the trial court's award of attorneys' fees as another appropriate means to regulate the conduct of the parties before it.

The federal courts have recognized a court's authority to award attorneys' fees in the context of all forms of misconduct in litigation before them. In Chambers v. NASCO, Inc., 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), the parties had entered into an agreement for sale of a radio and television station. Id. at 35. The seller changed his mind and, subsequent to buyer's initiation of suit, attempted to place the property beyond the jurisdiction of the trial court through a fraudulent transfer, followed by a series of "meritless motions and pleadings and delaying actions." Id. at 37, 41. After a decision in its favor, the buyer moved for an award of attorneys' fees and was awarded \$966,644.65, representing the buyer's total litigation costs. Id. Because the seller's behavior was beyond the reach of CR 11 or any potentially applicable statutory remedy, the trial court relied on its "inherent power

1 in imposing sanctions, stressing that the wielding of that inherent power is particularly appropriate
2 when the offending parties have practiced a fraud upon the court.” *Id.* at 42. (internal quotation
3 omitted). In affirming the award of attorneys’ fees, the U.S. Supreme Court stated that “certain
4 implied powers must necessarily result to our Courts of justice from the nature of their institution. . . .
5 These powers are governed not by any rule or statute but by the control necessarily vested in courts to
6 manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id.* at 43
7 (internal quotations omitted).

8 In *NASCO*, the Supreme Court recognized the authority of a court to make an award of
9 attorneys’ fees when a party has “acted in bad faith, vexatiously, wantonly, or for oppressive
10 reasons.” *NASCO*, 501 U.S. at 45. “In this regard, if a court finds that fraud has been practiced upon
11 it, or that the very temple of justice has been defiled, it may assess attorneys’ fees against the
12 responsible party.” *Id.* at 45-46 (internal quotations omitted). The Court held that this power could
13 be called upon to remedy injustice wrought by a party’s bad faith conduct: “The imposition of
14 sanctions in this instance transcends a court’s equitable power concerning relations between the
15 parties and reaches a court’s inherent power to police itself, thus serving the dual purpose of
16 vindicating judicial authority . . . and making the prevailing party whole for expenses caused by his
17 opponent’s obstinacy.” *Id.* at 46 (internal quotation omitted).

18 In *Green v. Mayor and City Council of Baltimore*, 198 F.R.D. 645 (D. Md. 2001), the district
19 court dismissed the complaint, awarding attorneys’ fees and costs to the defendant, upon a
20 determination that the plaintiff had submitted forged affidavits. The court noted that “the affidavits --
21 and the integrity thereof -- were both material and critical to an important part of the Court’s process
22 of adjudication. The plaintiff’s conduct in submitting these falsely notarized affidavits . . . amounts
23 to willfully deceiving the court and engaging in conduct utterly inconsistent with the orderly
24 administration of justice.” *Id.* at 647 (internal citations omitted).

25 Even where the false testimony had little effect on the merits of the case, the courts have
26 awarded attorneys’ fees incurred by the opposing party in responding to fraudulent actions. In *Bower*

1 v. Weisman, 674 F. Supp. 109 (S.D.N.Y. 1987), the plaintiff gave false testimony in a deposition.

2 While the district court refused to dismiss the case because the plaintiff's perjury had little actual
3 effect upon the merits of the case, the court did impose sanctions, consisting of an award to the
4 defendant of all "costs, fees, expenses and attorneys' fees associated with the deposition, motion, and
5 other actions taken directly to follow-up the [false testimony]." Id. at 112. The court concluded that,
6 "even absent Rule 11, in the exercise of its inherent powers, a court may tax costs and attorneys fees
7 against a party for bad faith action taken in the conduct of litigation, even if the litigation itself is not
8 in bad faith." Id.

9 Court rules imposing sanctions for misconduct in a litigation context provide additional
10 guidance concerning the types of remedies that may properly be imposed for such misconduct.
11 Courts have routinely levied sanctions against offending parties under CR 11 when confronted with
12 the filing of false declarations or pleadings. As noted in Mercury Service, Inc. v. Allied Bank of
13 Texas, 117 F.R.D. 147 (C.D Cal. 1987), CR 11, in addition to expediting litigation, also is an
14 enforcement tool. "In appropriate circumstances, a [court] may impose a punitive sanction for the
15 filing of a paper that lacks factual foundation and is intended to mislead the Court and opposing
16 parties, even if the paper does not significantly delay proceedings, because of the disrespect shown to
17 the judicial process." 117 F.R.D. at 156. In Pope v. Federal Express Corporation, 49 F. 3d 1327 (8th
18 Cir. 1995), the plaintiff and her attorney knowingly offered a falsified document into evidence in the
19 plaintiff's employment discrimination suit. The 8th Circuit affirmed the trial court's award under
20 CR 11 of a \$25,000 sanction against the attorney for abusing the judicial process and awarded an
21 additional \$8,882.50 to the defendant for attorneys' fees and costs incurred in responding to the
22 manufactured document. Id. at 1328. In Warshay v. Guinness PLC, 750 F. Supp 628 (S.D.N.Y.
23 1990), another case under CR 11, the plaintiff lied about his contacts with the forum state in an
24 affidavit supporting his response to a motion for summary judgment. Id. at 639. Both plaintiff and
25 plaintiff's counsel were ordered to pay \$2,500 each to the court and \$10,000 to the defendant for
26 attorneys' fees and costs incurred as a result of the fraudulent representation. Id. at 641.

1 In Watson v. Maier, 64 Wn. App. 889, 827 P.2d 311 (1992), the plaintiff sued all of the
2 dentists who had performed various surgeries to repair damage done to his jaw in a motorcycle
3 accident. Watson, 64 Wn. App. at 892. One of the defendant dentists was only involved in a
4 procedure performed after the alleged malpractice had been committed. Id. Plaintiff's attorney relied
5 on the advice of a medical consulting firm in deciding whom to sue on the plaintiff's behalf. Id. at
6 894. The court noted that even a cursory review of the facts would have shown that the claim against
7 this dentist lacked any factual or legal basis. The court awarded the defendant dentist his attorneys'
8 fees under CR 11 as a sanction against the plaintiff's counsel for failing to investigate the factual
9 basis of the claim. Id. at 891.

10 Administrative agencies, such as the Commission, that have been charged by statute with the
11 responsibility and authority to adjudicate disputes have the inherent authority to regulate the
12 misconduct of parties appearing before them and to impose sanctions or make remedial awards
13 necessary to ensure the integrity of the agency's adjudicative proceedings. As stated by the United
14 States Supreme Court, "There can be little doubt that the role of the modern federal hearing examiner
15 or administrative law judge within this framework is 'functionally comparable' to that of a judge, his
16 powers are often, if not generally, comparable to those of a trial judge: He may issue subpoenas,
17 rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions."
18 Butz v. Economou, 438 U.S. 478, 513, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978) (discussing the proper
19 measure of immunity for federal officials charged with adjudicative functions). Because the power to
20 control the parties appearing before the Commission is necessary to the performance of its
21 adjudicative functions, such power is implicit in the grant to the Commission of the power to conduct
22 adjudications.

23 In Cohn v. Department of Corrections, 78 Wn. App. 63, 895 P.2d 857 (1995), the Washington
24 court of appeals recognized the authority of an administrative agency to award attorneys' fees to a
25 party injured by misconduct before the agency. Although in that case the court concluded that an
26 award of attorneys' fees was not warranted under the facts presented, the court indicated that the

1 board would, like the state courts, be governed by the American Rule, meaning that attorneys' fees
2 could not be awarded to the prevailing party by the board unless authorized by statute or contract or
3 "upon recognized equitable ground." Id. at 66.

4 Relying on the U.S. Supreme Court's description of the function and purpose of
5 administrative adjudicative hearings, the federal General Services Administration Board of Contract
6 Appeals has concluded that, "The need for docket control, and the authority to exercise power in
7 furtherance of that objective, is not limited to the federal courts; it arises from the nature of the
8 judicial tribunal and the vesting in the tribunal of jurisdiction over any subject matter. . . . The above
9 cases [*citing to Roadway Express*, among others] point inescapably to the conclusion that this Board
10 has the authority to impose sanctions, including awards of reasonable attorney fees and other costs,
11 against parties and attorneys who litigate in bad faith." Protest of International Technology
12 Corporation, GSBICA No. 10056-C (10010-P), 1989 GSBICA LEXIS 476, 90-1 B.C.A. (CCH)
13 P22,341 at pp. 10-12; see also Metadure Corporation v. United States, 6 Cl. Ct. 61 (1984) (upholding
14 an administrative law judge's dismissal of the complaint as sanction for failure of party to comply
15 with outstanding discovery requests: "The [Armed Services Board of Contract Appeals] is not a
16 court. However, the case management authority of the ASBCA's administrative law judges is no
17 different from that of federal courts which, by virtue of their case management authority, are given
18 broad discretion to manage the litigation of their dockets").

19 The Colorado and Delaware courts have recognized the inherent equitable powers of agency
20 adjudicative bodies to award attorneys' fees in contexts where a court could do so. In Hawes v.
21 Colorado Division of Insurance, 65 P.3d 1008 (2003), the petitioners intervened in an equitable
22 proceeding before the agency involving the conversion of a health insurance organization from non-
23 profit to for-profit status. Id. at 1013. As a result of their "zealous advocacy" before the commission,
24 the fair market value of the nonprofit was increased by \$55,000,000. Id. Upon completion of the
25 conversion, the petitioners requested attorneys' fees under the equitable "common fund" exception to
26

1 the American Rule. Id. at 1014. The agency concluded that it had no statutory authority to award the
2 fees and denied the order. The appellate court affirmed. Id.

3 The Colorado Supreme Court reversed, finding that agencies performing judicial or quasi-
4 judicial functions have the same equitable powers as the courts when not specifically limited by
5 statute. Id. at 1013. At the outset, the Hawes court acknowledged the American Rule that, “absent
6 express statute, court rule, or private contract to the contrary, attorneys’ fees cannot be recovered.”
7 Id. at 1015. However, the court noted that the common fund doctrine is a recognized exception to the
8 American Rule, “an equitable remedy that affords fees to attorneys for their advocacy for the benefit
9 of others,” grounded in the equitable principles of quantum meruit and unjust enrichment. Id. “The
10 common fund [exception] springs from the court’s power to do equity and has its origins in fiduciary
11 law” Id.

12 The Colorado Supreme Court, held that such equitable exceptions to the American Rule could
13 be utilized by administrative agencies performing adjudicative functions. The court reasoned:

15 [T]he Division of Insurance and Commissioner have no general,
16 inherent, or common-law powers, but only those powers expressly
17 conferred by the legislature. That is not to say, however, that the
18 legislature must detail the Commissioner’s jurisdiction in the legislative
19 code because the General Assembly cannot delegate explicitly for
20 every contingency that may arise. Not surprisingly, therefore, it is also
well-established that agencies possess implied and incidental powers
filling the interstices between express powers to effectuate their
mandates. Thus, the lawful delegation of power to an administrative
agency carries with it the authority to do whatever is reasonable to
fulfill its duties.

21 Id. (internal citations omitted). The court proceeded to cite several instances where the Division and
22 the Commission had been granted express statutory authority to award attorneys’ fees, but held that
23 such express authority “does not compel the conclusion that the absence of such a provision
24 precludes an agency from granting attorneys’ fees where authority can be implied, particularly where
25 a denial of fees would constitute an abrogation of common law rights and where the General
26 Assembly has enacted no legislation otherwise prohibiting an award of fees.” Id. at 1017. “The

1 legislature need not recite the talismanic phrase ‘do all things . . . which are necessary and
2 convenient’ for an agency to invoke its implied and incidental powers.” Id. at 1018. While nothing
3 in Colorado state law expressly conferred authority on the Commissioner to award attorneys’ fees to
4 a party that successfully challenged the proposed conversion of a non-profit public service company
5 into a for-profit company and, by so doing, rendered a service on behalf of general consumer
6 interests, “unless the legislature clearly and unmistakably abrogates a remedy available at common
7 law, we will not infer it.” Id. at 1021.

8 The Supreme Court of Delaware reached a similar conclusion regarding the grant of
9 attorneys’ fees for bad faith actions before an agency adjudicative body. In Brice v. State of
10 Delaware, Department of Correction, 704 A.2d 1176 (1998), an agency personnel board determined
11 that an employee had been wrongly denied promotion and awarded the employee a new position with
12 back pay. Id. at 1177. The employee requested attorneys’ fees based on the employer’s bad faith
13 during litigation before the board, but the board determined that it lacked authority to grant such a
14 request. Id. at 1177, 78. The employee argued that language in the board’s statutory grant of
15 authority, permitting it to award back pay and to “otherwise make employees whole,” was legislative
16 authorization to award attorneys’ fees. Id. The Delaware supreme court held that the “make whole”
17 remedy did not “constitute specific statutory authorization for the routine award of attorneys’ fees to
18 successful employees, either as a matter of right or as an exercise of discretion.” Id. at 1179.
19 However, the court noted that Delaware courts had recognized the exception to the American Rule
20 permitting the award of attorneys’ fees when the “losing party has ‘acted in bad faith, vexatiously,
21 wantonly, or for oppressive reasons.’” Id. quoting Alyeska Pipeline Service Co. v. Wilderness
22 Society, 421 U.S. 240, 258-59, 44 L. Ed. 2d 141, 95 S. Ct. 1612 (1975). “The purpose of this
23 exception is not to award attorney’s fees to the prevailing party as a matter of right, but rather to
24 ‘deter abusive litigation in the future, thereby avoiding harassment and protecting the integrity of the
25 judicial process.’” Id. (citation omitted). In upholding the award of attorneys’ fees, the court stated,
26

1 An express grant of broad equitable jurisdiction to an administrative
2 tribunal by the General Assembly also vests that tribunal with the
3 ancillary authority to do all that is reasonably necessary to execute that
4 power. This Court has recognized that in limited circumstances equity
5 may require an assessment of attorney's fees for the prevailing party to
6 be 'made whole.'

7 Id. at 1179 (internal quotations omitted).

8 In Unbelievable, Inc. v. NLRB, 118 F.3d 795 (D.C. Cir. 1997), the Court of Appeals for the
9 District of Columbia Circuit recognized that an agency could award attorneys' fees to a prevailing
10 party based on the losing party's bad faith litigation actions. In Unbelievable, the board awarded the
11 Union not only its negotiation costs, but also attorneys' fees incurred in hearings before the Board's
12 administrative law judge on the question of the employer's bad faith negotiating tactics. Id. at 797-
13 98. While ultimately holding that an award of fees to the prevailing party was not available under the
14 controlling statute, the majority concluded that the Board could have made an award of attorneys'
15 fees based on an explicit finding of bad faith, despite its lack of authority to impose punitive
16 sanctions, but had failed to make such a finding. Id. at 800 n.*.¹⁰ The dissent forcefully argued that a
17 bad faith finding had in fact been made and that the award of attorneys' fees should have been upheld
18 on this ground. Id. at 809.

19 The Commission has broad authority to adjudicate disputes involving the services, rates, and
20 practices of public service companies on behalf of both regulated entities and their customers. This
21 broad authority necessarily includes the authority to regulate the parties appearing before it and, most
22 importantly, to ensure the integrity of its processes. Kleen's misconduct is the type of bad faith
23 conduct in litigation that justifies an award of attorneys' fees.

24
25 ¹⁰ The employer also attempted to lay the blame for any misconduct upon its attorney, claiming that the board had erred in
26 determining that the employer should pay for its attorney's misconduct. The court said that the company was liable for its
agent's actions: "A company may not hire an attorney to represent it in negotiations, and then by claiming ignorance of
the attorney's tactics avoid paying the price of the attorney's misconduct." Unbelievable, 118 F.3d at 800.

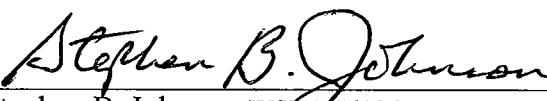
V. CONCLUSION

Kleen's entire application case was built on a foundation of fabrications and deception. Kleen has acknowledged that Allen McCloskey filed a fraudulent letter with the Commission on Kleen's behalf. An examination of McCloskey's earlier testimony shows that it was rife with falsehoods. Stericycle should be compensated for the attorneys' fees and costs it has incurred in exposing the fraudulent character of the Birdinground letter and in defending against the fraudulent, misleading and deceptive testimony of Kleen's witnesses. The Commission has authority to make such an award to Stericycle and should do so to compensate Stericycle for damage it has suffered as a consequence of Kleen's misconduct, to deter future misconduct and to preserve the integrity of its proceedings.

DATED this 3rd day of December, 2004.

Respectfully submitted,

GARVEY SCHUBERT BARER

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed below:

PROTESTANT STERICYCLE OF WASHINGTON, INC.'S MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS; DECLARATION OF STEPHEN B. JOHNSON IN SUPPORT OF PROTEST

For Kleen Environmental:

Greg Haffner
Curran Mendoza
555 W. Smith Street
Kent, WA 98035
VIA MESSENGER
Fax: 253-852-2040
Email: gwh@curranmendoza.com

For WRRRA, LeMay, Rubatino and

Consolidated:
James K. Sells
Ryan Sells Uptegraft, Inc.
9657 Levin Road N.W., Suite 240
Silverdale, WA 98383
Via U.S. Mail Postage Prepaid

For Commission Staff:


Greg Trautman, Asst. Attorney General
1400 S. Evergreen Park Drive S.W.
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VIA MESSENGER
fax: 360-586-5522
Email: Gtrautma@wutc.wa.gov

Carole Washburn, Executive Secretary

WUTC
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504
VIA MESSENGER
Email: records@wutc.wa.gov

Copies of the referenced document were served on the foregoing by hand delivery and/or deposit today in the U.S. Mail.

DATED at Seattle, WA this 3rd day of December, 2004.



Rondi K. Susort

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

RECEIVED
RECORDS MANAGEMENT
04 DEC -3 PM 3:55

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

In Re Application No. GA-079254 of

KLEEN ENVIRONMENTAL
TECHNOLOGIES, INC.

For a Certificate of Public Convenience and
Necessity

DOCKET NO. TG-040248

**DECLARATION OF STEPHEN B.
JOHNSON IN SUPPORT OF
PROTESTANT STERICYCLE OF
WASHINGTON, INC.'S MOTION FOR
AWARD OF ATTORNEYS' FEES AND
COSTS**

Stephen B. Johnson, subject to penalty of perjury under the laws of the State of Washington,
declares and states:

1. I am an attorney with the law firm of Garvey Schubert Barer, Seattle, Washington. I
have been the principal attorney responsible for the legal representation of Protestant Stericycle of
Washington, Inc. ("Stericycle") in the proceedings before the Washington Utilities and
Transportation Commission in the above captioned matter. I make this declaration in support of
Stericycle's Motion for Award of Attorneys' Fees and Costs.

2. Stericycle seeks an award of the attorneys' fees and costs it has incurred as a result of
the misconduct of Applicant Kleen Environmental Technologies, Inc. ("Kleen") in this proceeding, as
hereinafter set forth.

The Birdinground Letter

3. On October 12, 2004, Kleen offered a copy of a fraudulent letter in support of its
application for admission into the record of this proceeding. See Exh. 203; Tr. 1607, 1612-13. Many
of the facts relevant to this matter are recited in the Commission's Order No. 07 herein. This letter,

ORIGINAL

1 on what appeared to be the letterhead of the National Indian Health Board (“NIHB”), was
2 purportedly signed by one “Lancing Birdinground” on behalf of “region ten” of the NIHB and the
3 Indian tribes and tribal health clinics listed in an attachment to the letter. The printed address for the
4 NIHB shown on the Birdinground letter was in Kingston, Illinois. The letter claimed an eleven year
5 business relationship between Kleen and the facilities of the NIHB.

6 4. The fraudulent character of the Birdinground letter was revealed as a result of
7 inquiries I initiated with the National Indian Health Board (“NIHB”) and several Indian tribes
8 identified in the attachment to the Birdinground letter.

9 5. On October 13, 2004, I obtained contact information for the NIHB from the NIHB’s
10 Internet Web site and sent an e-mail message to Mr. J. T. Petherick, Executive Director of the NIHB,
11 asking for information on the Birdinground letter. A true and correct copy of this e-mail message is
12 attached hereto as Exhibit A.

13 6. On October 14, 2004, I sent e-mail messages to attorneys representing the following
14 Washington Indian tribes, asking whether these tribes had authorized submission of the Birdinground
15 letter to the Commission on their behalf: Muckleshoot Indian Tribe, Tulalip Indian Tribe, Quileute
16 Indian Tribe, Swinomish Indian Tribe, Yakama Indian Tribe, Quinault Indian Tribe, Lummi Indian
17 Tribe, Puyallup Indian Tribe, Suquamish Indian Tribe, Nooksack Indian Tribe and Nisqually Indian
18 Tribe. Among the recipients of my October 14 e-mail was Alix Foster, an attorney representing the
19 Swinomish Indian Tribe. All of the e-mail messages I sent to these tribal attorneys were essentially
20 identical. A true and correct copy of the e-mail message I sent to Alix Foster is attached hereto as
21 Exhibit B.

22 7. On October 14, 2004, I also sent an e-mail message to Mr. Ed Fox, Executive Director
23 of the Northwest Portland Area Indian Health Board, an organization composed of representatives of
24 Pacific Northwest Indian Tribes that advises the federal Indian Health Service. A true and correct
25 copy of my e-mail message to Mr. Fox is attached hereto as Exhibit C. Mr. Fox responded by e-mail
26 on the same day, advising me that the Northwest Portland Area Indian Health Board was not aware of

1 the Birdinground letter, that Mr. Birdinground was not connected in any way with the Northwest
2 Portland Area Indian Health Board and that Mr. Birdinground was not authorized to speak for the
3 Northwest Portland Area Indian Health Board. A true and correct copy of the e-mail message
4 received from Mr. Fox is attached hereto as Exhibit D.

5 8. At 10:23 a.m. on October 15, 2004, Alix Foster left a voice message for me, advising
6 me that, as a result of my inquiries to the Swinomish Tribe, representatives of the Swinomish Tribe
7 had contacted Rebecca Johnston, Director of the American Indian Health Commission for the State of
8 Washington, seeking information. Alix Foster's voice message advised me that Rebecca Johnston
9 indicated that the Birdinground letter was "bogus." Alix Foster's message advised me further that
10 Rebecca Johnston had contacted Kleen by telephone, had confronted Robert Olson and Allen
11 McCloskey with questions about the validity of the Birdinground letter and that Kleen had agreed to
12 withdraw the letter from this proceeding. A true and correct transcription of the October 15 voice
13 message I received from Alix Foster is attached hereto as Exhibit E. Rebecca Johnston's testimony
1 with respect to these events is found in the Declaration of Rebecca Johnston, dated October 25, 2004,
15 filed herewith. I spoke by telephone with Rebecca Johnston later on October 15 and confirmed the
16 facts with respect to Ms. Johnston's telephone conversations that day with Robert Olson and Allen
17 McCloskey.

18 9. At 11:35 a.m. on October 15, Allen McCloskey sent Ms. Johnston a letter by fax,
19 repudiating the Birdinground letter and assuring Ms. Johnston that Kleen would have it removed
20 from the record of the Commission's proceeding. A true and correct copy of Kleen's fax transmitting
21 this letter to Ms. Johnston, showing fax transmittal data concerning the date and time of transmission,
22 is attached hereto as Exhibit F. See also Exh. 34. In his October 15 letter to Rebecca Johnston, Mr.
23 McCloskey acknowledged that the Birdinground letter contained "fallacious statements" and
24 expressed concern about the "false manner in which this letter was issued." McCloskey stated further
25 that "As agreed this morning I would personally be contacting Kleens [sic] legal representative and
26 instructing him to redact the record to not include this unauthorized correspondence."

1 10. On October 15, 2004 at 12:55 p.m., after Ms. Johnston's telephone call had made it
2 clear to Olson and McCloskey that the fraudulent character of the Birdinground letter had been
3 discovered, counsel for Kleen notified Judge Rendahl and the other parties by e-mail that Kleen
4 intended to withdraw the Birdinground letter. A copy of the October 15, 2004, e-mail message from
5 Kleen's counsel is attached hereto as Exhibit G. The e-mail message of October 15 from Kleen's
6 counsel made no mention of the reason for Kleen's withdrawal of the Birdinground letter. Kleen did
7 not notify the Commission that it had learned that the Birdinground letter was fraudulent. The
8 content of the e-mail message of October 15 from Kleen's counsel is consistent with an intention to
9 cover up Kleen's responsibility for the fraudulent letter.

10 11. Between October 14 and October 25, 2004, I had numerous telephone and e-mail
11 communications with J. T. Petherick of the National Indian Health Board, Ed Fox of the Northwest
12 Portland Area Indian Health Board and various representatives of Washington Indian tribes, soliciting
13 information and requesting that they send letters advising the Commission that the Birdinground
! letter had not been unauthorized by their organizations.

15 12. On October 19, 2004, I received a copy of a letter to the Commission, dated
16 October 19, 2004, from Mr. J. T. Petherick, Executive Director of the NIHB, in which Mr. Petherick
17 informed the Commission that the Birdinground letter was "fraudulent."

18 On behalf of the National Indian Health Board (NIHB), I am writing in
19 response to information our organization has received indicating the
20 submission of a fraudulent letter purportedly sent to the Washington
21 Utilities and Transportation Commission, dated October 12, 2004, on
22 letterhead of the "NIHB", signed by a Mr. Lancing Birdinground and
issued on behalf of "region ten" of the NIHB in connection with a
proceeding before the Commission. I write this letter to correct a
number of misimpressions conveyed by that letter.

23 The NIHB has no association with Mr. Lancing Birdinground and
24 therefore he is not authorized to speak on behalf of the NIHB regarding
25 any proceeding pending before the Washington Utilities and
26 Transportation Commission. The NIHB has never been located in
Kingston, Illinois.

1 The National Indian Health Board has never operated under a
2 "Regional" system. . . . Further, the NIHB has no relationship with
3 Kleen Environmental Technologies, Inc. and has no knowledge of any
proceeding pending before the Commission involving that company.

4 See Exh. 212 ("Petherick letter").

5 13. On October 19, 2004, I received a copy of a letter to the Commission dated October
6 19, 2004, from the chairman of the Swinomish Indian Tribe in which he advised the Commission that
7 the Birdinground letter was not authorized by the Swinomish Tribe.

8 The Tribe has not authorized Mr. Birdinground to speak for it or the
9 tribal health clinic in connection with any proceeding before the
Washington Utilities and Transportation Commission.
10 Mr. Birdinground has no connection with the Tribe and is in fact
unknown to us.

11 The Tribe has no relationship with Kleen Environmental Technologies,
12 Inc. and has no knowledge of any proceeding pending before the
Commission involving that company.

13 See Exh. 213.

14 14. On October 19, 2004, I also received a copy of a letter to the Commission, dated
15 October 19, 2004, from Brenda Nielson, Health Director of the Quileute Indian Tribe in which she
16 stated that the Quileute Tribe had not authorized Mr. Birdinground to represent the views of the
17 Quileute Tribe before the Commission.

18 The Quileute Tribe has not authorized Mr. Birdinground to speak for it
19 or the Quileute tribal health clinic in connection with any proceeding
before the Washington Utilities and Transportation Commission.
20 Mr. Birdinground has no connection with the Quileute Tribe and is in
21 fact unknown to us.

22 The Quileute Tribe was not aware of Mr. Birdinground's letter until
after it was submitted to the Commission.

23 The Quileute Tribe has no relationship with Kleen Environmental
24 Technologies, Inc. and has no knowledge of any proceeding pending
before the Commission involving that company.

25 See Exh. 214.
26

1 15. On October 20, 2004, after receipt of the Petherick letter and the letters from the
2 Swinomish Tribe and the Quileute Tribe, I notified Administrative Law Judge Ann E. Rendahl and
3 counsel for the other parties by e-mail of the apparently fraudulent nature of the Birdinground letter,
4 provided her and all parties a copy of the Petherick letter and requested the opportunity to examine
5 Allen McCloskey and Kleen's three principals, Robert Olson, Kenneth Lee and Darin Perrollaz,
6 concerning the Birdinground letter. A copy of this e-mail message is attached hereto as Exhibit H.
7 During a conference call on October 21, Judge Rendahl agreed to schedule an additional day of
8 hearing for the purpose of allowing at least some of Kleen's witnesses to be examined concerning the
9 Birdinground letter.

10 16. At the previously scheduled hearing on Friday, October 22, 2004, Judge Rendahl
11 summarized the results of the October 21 conference call on the record and scheduled an additional
12 day of hearing for the following Tuesday, October 26, to consider the Birdinground letter. At the
13 hearing on October 22, Kleen's counsel presented a letter to the Commission signed by Kleen's three
14 principals, dated October 21, 2004, in which they asked to be excused from testifying about the
15 Birdinground letter. See Exh. 22. The Kleen principals stated, among other things, that "the duties
16 and responsibilities relating to this process and the overall efforts of Kleen Environmental to secure
17 authority from the WUTC have been assigned to Mr. McCloskey, and it is Mr. McCloskey who can
18 best answer any questions that you or opposing counsel may have [about the Birdinground letter]."
19 Id. Judge Rendahl required Kleen to make Robert Olson and Allen McCloskey available for
20 examination at the hearing on October 26 but permitted Mr. Lee and Mr. Perrollaz to testify by
21 affidavit concerning their knowledge of the Birdinground letter and any relationship between Kleen
22 and the Indian tribes or tribal health clinics identified in the attachment to that letter.

23 17. Robert Olson, Kleen's president and majority shareholder, testified on October 26 that
24 he had been aware of the Birdinground letter before it was submitted to the Commission, Tr. 1888:5-
25 8; 1891:10-1892:11 (Olson); see also, Exh. 22, but he was extremely evasive as to the extent of his
26 knowledge prior to the exposure of the fraudulent character of the letter, contradicting himself several

1 times. Tr. 1888:5-1899:1; compare, e.g., Tr. 1891:16-1892:11 with Tr. 1895:18-19 and Tr. 1898:11-
2 23. Olson testified that when he discussed the Birdinground letter with McCloskey after receiving
3 Rebecca Johnston's telephone call on October 15, McCloskey "showed me a very standard form
4 letter we have gone out to look for interest from all parties involved in this, and that appears to be the
5 instrument that Mr. Birdinground had responded to." Tr. 1884:12-17. However, in an e-mail
6 response to Data Requisition No. 6, Kleen acknowledged that it could not provide a form shipper
7 support letter with a text resembling the Birdinground letter. Attached hereto as Exhibit I is a true
8 and correct copy of Kleen's response to Data Requisition No. 6.

9 18. Robert Olson testified on October 26 that he had not seen the Birdinground letter until
10 he reviewed it in the hearing room on October 26 -- eleven days after he learned of the fraudulent
11 character of the letter from Becky Johnston and five days after he signed a letter to the Commission,
12 dated October 21, representing that Kleen's principals had "made every effort to rectify this issue"
13 and "never had any reason" to doubt the validity of the Birdinground letter. See Exh. 22. According
14 to Mr. Olson's testimony on October 26, the only action he took after learning of the fraudulent
15 character of the Birdinground letter except to ask Allen McCloskey to look into the matter. Tr.
16 1913:17-21; 1882:10-1883:19; 1903:6-15 (Olson). He testified that the only efforts that McCloskey
17 had made to determine the origin of the Birdinground letter were telephone calls McCloskey made to
18 the telephone number shown on the Birdinground letter and voice messages left by Mr. McCloskey at
19 that telephone number, which calls were never returned. Tr. 1883:14-19; 1902:17-1903:5; 1914:14-
20 1915:3; 1926:5-10; 1929:10-19; 1935:5-15 (Olson).

21 19. At the hearing on October 26, 2004, Allen McCloskey testified that the Birdinground
22 letter, although dated October 12, had arrived at Kleen's office by mail on October 11. McCloskey
23 denied knowing Lansing Birdinground. Tr. 1953:16-17 (McCloskey). However, Stericycle then
24 offered the Declaration of Lansing Birdinground which contradicted Mr. McCloskey's testimony.
25 See Exh. 24. In this declaration, Mr. Birdinground testified that he was a member of the Crow Indian
26 Tribe and that he had met Allen McCloskey in 2001 when Allen McCloskey visited the Crow Tribe

1 to offer consulting services to the Crow tribal casino on behalf of an entity known as "McCloskey
2 Enterprises." Mr. Birdinground testified that he was the manager of the Crow tribal casino at that
3 time and that McCloskey spent a week with Birdinground, staying in Birdinground's home and eating
4 meals with Birdinground's family. Mr. Birdinground testified that he had no connection with the
5 NIHB and had no knowledge of the "Birdinground letter." Allen McCloskey testified that, while he
6 remembered visiting the Crow tribal casino, he did not recall meeting Lansing Birdinground. Tr.
7 1965:18-21 (McCloskey).

8 20. On further cross-examination, McCloskey testified that "McCloskey Enterprises" was
9 his father's company; that he (Allen McCloskey) was not a shareholder, owner or principal of that
10 company; and that the only office of McCloskey Enterprises was in Eureka, California. Stericycle
11 then offered a copy of pages from the McCloskey Enterprises Internet Web site identifying Allen
12 McCloskey as a "principal" of McCloskey Enterprises and chair of that organization's "Utilities and
13 Transportation Services Division." See Exh. 227, p. 1. The Web site represented that McCloskey
14 Enterprises had offices in Los Angeles, San Francisco, Washington, D.C., Dallas, New York City,
15 San Diego and Seattle. The Web site showed Kleen's address in Seattle as the address of the Seattle
16 office of McCloskey Enterprises.

17 21. At this point in his cross-examination on October 26, Allen McCloskey requested a
18 break in the proceedings. During the break, McCloskey complained of chest pains and was taken by
19 ambulance to a nearby hospital. The hearing was recessed. Subsequently, Kleen's counsel reported
20 that Allen McCloskey had broken contact with Kleen, had vacated his residence in the state of
21 Washington and was believed to be residing in Trinidad, California. Tr. 1997:5-19, 1998:23-1999:4
22 (Haffner).

23 22. Because Allen McCloskey absented himself from further participation in these
24 proceedings and removed himself beyond the Commission's jurisdiction, the Commission could only
25 conclude that Allen McCloskey was responsible for the fabrication of the Birdinground letter and had
26 committed perjury concerning his knowledge of the letter. Based on Kleen's misconduct, Judge

1 Rendahl dismissed the Kleen application by Order No. 07, dated November 9, 2004, Initial Order
2 Dismissing Application; Establishing Procedural Schedule for Motions for Sanctions. Because Kleen
3 did not seek review of Judge Rendahl's initial order, that order is now the final order of the
4 Commission.

5 23. Stericycle incurred attorneys fees in the amount of \$23,994.50 for the work of our firm
6 in exposing the fraudulent character of the Birdinground letter and in otherwise addressing that letter
7 and the related perjury of Allen McCloskey after October 12, 2004. True and correct copies of
8 excerpts from our firm's invoices to Stericycle covering our work for Stericycle on the Kleen
9 application proceeding in the period October 12, 2004 through November 4, 2004 are attached hereto
10 as Exhibit J. Exhibit J shows the contemporaneous time entries made by our attorneys and other
11 timekeepers for our work for Stericycle on the Kleen application matter (matter 1900) in the relevant
12 time period. Time entries for activities related to the Birdinground letter and our firm's related
13 charges are circled and marked with a "B." I have carefully reviewed the time entries shown on
14 Exhibit J. Where those time entries show activities both related and unrelated to the Birdinground
15 letter, I have allocated the time and charges based on my best judgment as to the time spent on each
16 activity. In those cases, the handwritten note next to the time entry shows the time allocated to our
17 work connected to the Birdinground letter. The fees and costs Stericycle has incurred for our firm's
18 activities directly related to the Birdinground letter, as shown in Exhibit J, are as follows:

<u>Timekeeper</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Charges</u>
Stephen B. Johnson	\$330	61.3	\$20,229.00
David Smith	\$290	0.15	43.50
Charles C. Cottrell	\$175	20.0	3,500.00
Kristi Emigh	\$120	1.85	222.00
		Total:	<u>\$23,994.50</u>

24 24. Charles C. Cottrell, David Smith and I are attorneys. Ms. Emigh is a paralegal. I am a
25 principal in the firm. I graduated from Harvard Law School in 1975 and have practiced law since
26

1 1975. A substantial part of my practice over the past 29 years has involved administrative law and
2 administrative litigation. I have represented Stericycle since 1992. I have represented Stericycle in
3 Commission proceedings since 1992 and have advised Stericycle since 1992 on issues related to the
4 statutes and regulations administered by the Commission. My standard hourly rate is \$330 per hour,
5 which is a reasonable hourly rate for a partner-level attorney with my experience and expertise,
6 practicing in Seattle. Charles C. Cottrell is an associate attorney in our firm. Mr. Cottrell graduated
7 from the University of Washington Law School in 2001 and has practiced law in Seattle since 2001.
8 Mr. Cottrell's practice focus is litigation. Mr. Cottrell's standard hourly rate is \$175 per hour, which
9 is a reasonable hourly rate for an associate attorney of his experience level practicing in Seattle. Ms.
10 Emigh has been employed as a paralegal for eight years. Her standard hourly rate is \$115 per hour,
11 which is a reasonable hourly rate for a paralegal of her experience in a Seattle law firm.
12
13

1 **Other Misconduct**

15 25. In addition to the attorneys' fees detailed above which Stericycle has incurred for the
16 activities related to the Birdinground letter, Stericycle has incurred substantial additional attorneys'
17 fees for the work of our firm in responding to false, misleading and deceptive testimony offered by
18 Allen McCloskey and other Kleen witnesses in their prefiled testimony, filed herein on August 13,
19 2004, as detailed in Stericycle's Motion for Award of Attorneys' Fees and Costs. Stericycle seeks an
20 award of the fees and costs it has incurred on and after August 13 in responding to this false,
21 misleading and deceptive testimony. In particular, Stericycle seeks an award of the fees and costs it
22 incurred (a) for the work of its attorneys in the preparation of the prefiled of Michael Philpott and
23 Stephen Shiner; (b) for preparation and hearing time related to the testimony of Al Graves; and (c) for
24 preparation and hearing time related to the testimony of Allen McCloskey.
25
26

1 26. True and correct copies of excerpts from our firm's invoices to Stericycle covering our
 4 work for Stericycle on the Kleen application proceeding from August 13, 2004 through October 31,
 3 2004 are attached hereto as Exhibit K. Exhibit K shows the contemporaneous time entries made by
 4 our attorneys and other timekeepers for our work for Stericycle on the Kleen application matter
 5 (matter 1900) in that time period. Time entries for our activities related to addressing Kleen's false,
 6 misleading and deceptive testimony about its proposed services are circled. I have carefully reviewed
 7 the time entries shown on Exhibit K. Where those time entries show activities both related and
 8 unrelated to the work related to Kleen's deceptive testimony, I have allocated the time and charges
 9 based on my best judgment as to the time spent on each activity. In the case of our work in preparing
 10 the Philpott prefiled testimony, I have allocated 80% of our time to responding to Allen McCloskey's
 11 misrepresentations. Where an allocation of a time entry has been made, the handwritten note next to
 12 the time entry shows the time allocated to our work for which an award of fees is sought.
 13

15 The attorneys' fees which Stericycle has incurred for our firm's work in responding to Kleen's false,
 16 misleading and deceptive testimony on and after August 13, 2004 is as follows:

<u>Timekeeper</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Charges</u>
Stephen B. Johnson	\$330	107.7	\$35,541.00
Charles C. Cottrell	\$175	2.3	402.50
Jill Allyn	\$120	1.85	31.00
		Total:	<u>\$35,974.50</u>

22 27. The total amount of the attorneys' fees award sought by Stericycle on the present
 23 motion is \$59,969.00.

24 Signed at Seattle, Washington this 3rd day of December, 2004.

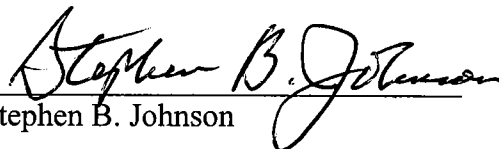
25 
 26 Stephen B. Johnson

Exhibit A

Steve Johnson

From: Steve Johnson
Sent: Wednesday, October 13, 2004 2:49 PM
To: 'jpetherick@nihb.org'
Subject: Letter Representing Position of NIHB

Dear Mr. Petherick,

I am an attorney practicing law in Washington State. A letter on the letterhead of the National Indian Health Board was recently submitted as evidence in a legal proceeding in which I am involved before the Washington Utilities and Transportation Commission.

The letter is dated October 12, 2004 and purports to be issued "on behalf of region ten of the National Indian Health Board." The letterhead is "National Indian Health Board" and the address in the footer is 15112 Constitution Ave., Kingston, Illinois 60145. The person who purportedly signed the letter is Lancing Birdinground, identified as "Executive Regional Board Member." A copy of the letter is attached.

Please advise me on the following:

- (1) Were you previously aware of Mr. Birdinground's letter?
- (2) Is Mr. Birdinground authorized to speak for the National Indian Health Board?
- (3) Is Mr. Birdinground connected in any way with the National Indian Health Board? If so, what is his connection with the NIHB?
- (4) What is "region ten" of the National Indian Health Board? If there is a "region ten" of the NIHB, please describe its geographic area of responsibility or otherwise describe the scope of its responsibilities, identify its organizational structure and provide me a telephone number for its principal office and the name of the NIHB staff person or other person in charge of that office.
- (5) Is Mr. Birdinground authorized to speak on behalf of "region ten" of the NIHB?
- (6) Is "region ten" of the NIHB authorized to speak for its members before the Washington Utilities and Transportation Commission?
- (7) Mr. Birdinground's letter represents that he has "[spoken] directly with our regional membership" and that the "regional membership" "decided unanimously" to support the position of Kleen Environmental Technologies, Inc. before the Washington Utilities and Transportation Commission. Can you identify the "regional membership" of region ten of the NIHB?
- (8) Is the NIHB a membership organization?
- (9) Attached to Mr. Birdinground's letter were two pages from a document entitled "2003 Health Clinic and Tribal Directory," listing names, addresses and phone numbers for Indian Tribes and tribal health clinics in Washington, Oregon and Idaho. Mr. Birdinground's letter states that "[t]his document represents our regional membership in its entirety," presumably the regional membership for which Mr. Birdingame purported to speak. Please advise (a) whether the tribes and tribal health clinics identified on these pages of the directory have any connection with "region ten" of the NIHB, (b) whether the listed tribes and clinics are "members" of region ten of the NIHB, (c) whether the NIHB or region ten of NIHB has been authorized to speak for or represent the views of these tribes and health clinics before the Washington Utilities and Transportation Commission and (d) whether Mr. Birdinground has been authorized to speak for or represent region ten of the NIHB before the Commission.

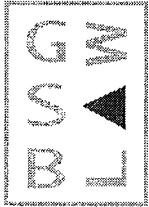
Because of law firm has represented and continues to represent a number of the tribes in Washington and

11/27/2004

Oregon identified by Mr. Birdinground as part of the "regional membership" on whose behalf he purported to write his letter, I will be separately contacting those tribes to determine whether Mr. Birdinground contacted them and was authorized by them to speak on their behalf.

Thank you for your assistance. If you have questions about this inquiry, please do not hesitate to telephone me at the telephone number set out below.

Best regards,



STEPHEN B. JOHNSON
sjohnson@gsblaw.com

GARVEY SCHUBERT BARER
GSBLAW.COM
eighteenth floor
1191 second avenue
seattle, washington 98101-2939
TEL 206 464 3939 FAX 206 464 0125
DIRECT 206 816 1309

Exhibit B

Steve Johnson

From: Steve Johnson
Sent: Thursday, October 14, 2004 11:00 AM
To: 'afoster@swinomish.nsn.us'
Subject: Letter to WUTC Purporting to Represent the Position of Swinomish Tribal Council and Swinomish Clinic

Dear Alix,

Attached is a copy of a letter submitted Tuesday, October 12 in an adjudicative proceeding before the Washington Utilities and Transportation Commission by someone purportedly connected with "region ten" of the National Indian Health Board. This letter purports to represent the position of the Swinomish Tribal Senate and the Swinomish Health Clinic on an application for medical waste collection authority pending before the Washington Utilities and Transportation Commission.

I am involved in the proceeding before the WUTC that is referenced in the letter.

Can you advise (a) whether anyone connected with the National Indian Health Board ("NIHB") ("region ten" or otherwise) has contacted either the Swinomish Tribal Senate or the Swinomish Health Clinic with respect to the subject of the letter; (b) whether the Swinomish Tribal Senate or the Swinomish Health Clinic authorized "region ten" of the NIHB or Mr. Lancing Birdinground to represent their views before the WUTC; and (c) whether the views reflected in Mr. Birdinground's letter to the WUTC reflect the views of the Swinomish Tribal Senate or the Swinomish Health Clinic with respect to the pending application of Kleen Environmental Technologies, Inc.

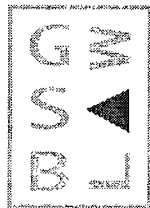
Your assistance will be greatly appreciated. Because the record of the WUTC proceeding will close at the end of next week, we would very much appreciate your response to this e-mail prior to October 20.

If you have questions, please do not hesitate to contact me by telephone at the numbers listed below.

Thank you!

Best regards,

Steve



STEPHEN B. JOHNSON

sjohnson@gsblaw.com

GARVEY SCHUBERT BARER

GSBLAW.COM

eighteenth floor

1191 second avenue

seattle, washington 98101-2939

TEL 206 464 3939 FAX 206 464 0125

DIRECT 206 816 1309

Exhibit C

Steve Johnson

From: Steve Johnson
Sent: Thursday, October 14, 2004 3:33 PM
To: 'efox@npaih.org'
Subject: Letter Representing Position of NIHB

Dear Mr. Fox,

I am a Seattle attorney. Our firm has represented and continues to represent a number of Indian Tribes in the Pacific Northwest.

A letter on the letterhead of the National Indian Health Board was recently submitted as evidence in a legal proceeding in which I am involved before the Washington Utilities and Transportation Commission ("WUTC" or "Commission").

The letter is dated October 12, 2004 and purports to be issued "on behalf of region ten of the National Indian Health Board." The letterhead is "National Indian Health Board" and the address in the footer is 15112 Constitution Ave., Kingston, Illinois 60145. The person who purportedly signed the letter is "Lancing Birdinground," identified as "Executive Regional Board Member." A copy of the letter is attached. The letter purports to represent the position of "region ten" of the NIHB on an application for medical waste collection authority pending before the WUTC.

Please advise me on the following:

- (1) Were you previously aware of Mr. Birdinground's letter?
- (2) Is Mr. Birdinground authorized to speak for the Northwest Portland Area Indian Health Board?
- (3) Is Mr. Birdinground connected in any way with the Northwest Portland Area Indian Health Board? If so, what is that connection?
- (4) What is "region ten" of the National Indian Health Board? If there is a "region ten" of the NIHB, please describe its geographic area of responsibility or otherwise describe the scope of its responsibilities, identify its organizational structure and provide me a telephone number for its principal office and the name of the NIHB staff person or other person in charge of that office. Is "region ten" of the NIHB the same as the the Northwest Portland Area Indian Health Board?
- (5) Is Mr. Birdinground authorized to speak on behalf of the Northwest Portland Area Indian Health Board?
- (6) Is the Northwest Portland Area Indian Health Board authorized to speak for its members before the Washington Utilities and Transportation Commission?
- (7) Attached to Mr. Birdinground's letter were two pages from a document entitled "2003 Health Clinic and Tribal Directory," listing names, addresses and phone numbers for Indian Tribes and tribal health clinics in Washington, Oregon and Idaho. Mr. Birdinground's letter states that "[t]his document represents our regional membership in its entirety," presumably the regional membership for which Mr. Birdingame purported to speak. Please advise (a) whether the tribes and tribal health clinics identified on these pages of the directory have authorized the the Northwest Portland Area Indian Health Board to speak for or represent the views of these tribes and health clinics before the Washington Utilities and Transportation Commission and (b) whether Mr. Birdinground has been authorized to speak for or represent the position of the Northwest Portland Area Indian Health Board before the Commission.
- (8) Does Mr. Birdinground's letter accurately reflect the position of the Northwest Portland Area Indian Health Board or the Tribes and tribal health clinics of Washington state with respect to the application of Kleen Environmental Technologies, Inc. that is now pending before the Washington Utilities and Transportation Commission?

12/3/2004

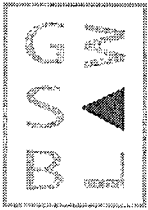
Because the administrative record of the Commission proceeding will close at the end of next week, we would very much appreciate a response to this e-mail prior to October 20.

Because our law firm has relationships with a number of the tribes in Washington identified by Mr. Birdinground as part of the "regional membership" on whose behalf he purported to write his letter, we are separately contacting a number of tribes to determine whether Mr. Birdinground contacted them and was authorized by them to represent their views to the Washington Utilities and Transportation Commission.

If you have questions about this inquiry, please do not hesitate to contact me by email or by telephone at the telephone numbers set out below.

Thank you for your assistance.

Best regards,



STEPHEN B. JOHNSON
sjohnson@gsblaw.com

GARVEY SCHUBERT BARER
GSBLAW.COM
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1191 second avenue
seattle, washington 98101-2939
TEL 206 464 3939 FAX 206 464 0125
DIRECT 206 816 1309

Exhibit D

Steve Johnson

From: Ed Fox [efox@npaihb.org]
Sent: Thursday, October 14, 2004 3:39 PM
To: Steve Johnson
Subject: RE: Letter Representing Position of NIHB

Hi,

Here is my quick response.

Thanks,

I am the Executive Director and have worked here for 9 years and 4 as ED.

ED

-----Original Message-----

From: Steve Johnson [mailto:SJohnson@gsblaw.com]
Sent: Thursday, October 14, 2004 3:33 PM
To: Ed Fox
Subject: Letter Representing Position of NIHB

Dear Mr. Fox,

I am a Seattle attorney. Our firm has represented and continues to represent a number of Indian Tribes in the Pacific Northwest.

A letter on the letterhead of the National Indian Health Board was recently submitted as evidence in a legal proceeding in which I am involved before the Washington Utilities and Transportation Commission ("WUTC" or "Commission").

The letter is dated October 12, 2004 and purports to be issued "on behalf of region ten of the National Indian Health Board." The letterhead is "National Indian Health Board" and the address in the footer is 15112 Constitution Ave., Kingston, Illinois 60145. The person who purportedly signed the letter is "Lancing Birdinground," identified as "Executive Regional Board Member." A copy of the letter is attached. The letter purports to represent the position of "region ten" of the NIHB on an application for medical waste collection authority pending before the WUTC.

Please advise me on the following:

- (1) Were you previously aware of Mr. Birdinground's letter?[Ed Fox] NO
- (2) Is Mr. Birdinground authorized to speak for the Northwest Portland Area Indian Health Board?[Ed Fox] NO
- (3) Is Mr. Birdinground connected in any way with the Northwest Portland Area Indian Health Board? If so, what is that connection?[Ed Fox] NO
- (4) What is "region ten" of the National Indian Health Board? If there is a "region ten" of the NIHB, please describe its geographic area of responsibility or otherwise describe the scope of its responsibilities, identify its organizational structure and provide me a telephone number for its principal office and the name of the NIHB staff person or other person in charge of that office. Is "region ten" of the NIHB the same as the the Northwest Portland Area Indian Health Board?[Ed Fox] Does not make sense to me, of course their is an HHS region ten ---see hhs.gov.

(5) Is Mr. Birdinground authorized to speak on behalf of the Northwest Portland Area Indian Health Board?
[Ed Fox] NO again see number 1

(6) Is the Northwest Portland Area Indian Health Board authorized to speak for its members before the Washington Utilities and Transportation Commission?[Ed Fox] I don't know; do they have a health care safety concern (seat belts)? We never have.

(7) Attached to Mr. Birdinground's letter were two pages from a document entitled "2003 Health Clinic and Tribal Directory," listing names, addresses and phone numbers for Indian Tribes and tribal health clinics in Washington, Oregon and Idaho. Mr. Birdinground's letter states that "[t]his document represents our regional membership in its entirety," presumably the regional membership for which Mr. Birdingame purported to speak. Please advise (a) whether the tribes and tribal health clinics identified on these pages of the directory have authorized the the Northwest Portland Area Indian Health Board to speak for or represent the views of these tribes and health clinics before the Washington Utilities and Transportation Commission and (b) whether Mr. Birdinground has been authorized to speak for or represent the position of the Northwest Portland Area Indian Health Board before the Commission.[Ed Fox] TO long to read right now.

(8) Does Mr. Birdinground's letter accurately reflect the position of the Northwest Portland Area Indian Health Board or the Tribes and tribal health clinics of Washington state with respect to the application of Kleen Environmental Technologies, Inc. that is now pending before the Washington Utilities and Transportation Commission? [Ed Fox] NO

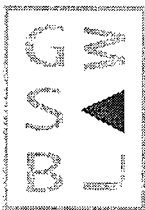
Because the administrative record of the Commission proceeding will close at the end of next week, we would very much appreciate a response to this e-mail prior to October 20.

Because our law firm has relationships with a number of the tribes in Washington identified by Mr. Birdinground as part of the "regional membership" on whose behalf he purported to write his letter, we are separately contacting a number of tribes to determine whether Mr. Birdinground contacted them and was authorized by them to represent their views to the Washington Utilities and Transportation Commission.

If you have questions about this inquiry, please do not hesitate to contact me by email or by telephone at the telephone numbers set out below.

Thank you for your assistance.

Best regards,



STEPHEN B. JOHNSON
sjohnson@gsblaw.com

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DIRECT 206 816 1309

Exhibit E



G A R V E Y S C H U B E R T B A R E R

MEMORANDUM

TO: File
FROM: Stephen Johnson
DATE: October 19, 2004
RE: Voice Message, 10/15/04, 10:23 a.m.
FILE NO.: 04833/01900

Hi Steve, this is Alix Foster from the Swinomish Tribe. Well, I think your suspicions with regard to that letter that you sent me were accurate. It's a bogus letter. Rebecca Johnson, who is with the American Indian Health Board and her phone number is 206-240-8194, has advised me of the following:

One, there is no National Indian Health Board in Kingston, Illinois. It is located in Washington, D.C. The executive director there is JT (as in "Tom") Petherick (that's P-E-T-H-E-R-I-C-K), area code 202-742-4262.

Secondly, she said the areas are not organized on a regional basis but on an area basis, and the area here is the Northwest Area and it's the Portland Northwest Indian Health Board, and of course it's located in Portland. They've never heard of this guy, Birdinground, and she did a Google search, couldn't find anything on him. Also, she tried calling him and just got a voicemail with no name. She then took it upon herself to call Kleen Environmental and spoke to the president, Robert-somebody-or-other, as well Allen McCloskey, and proceeded to tell them this.

So I just wanted you to know that she has done that. She's upset that somebody's using the National Indian Health Board and the Swinomish Tribe and others and their names in vain. At any rate, Kleen Environmental says they don't - they said that they didn't recall having a business relationship with Lancing Birdinground or - what - Birdinground, and that they were going to write a letter to the WUTC retracting the letter. At any rate, she also said that in order for something like this to be written, there would need to be a formal resolution and there was no such resolution.

She says that the directory attached to the letter appears to be real. She's never seen it really without - with all those contacts, but she says that the contacts appear to be a valid contact. She thinks that maybe they got it from the IHS, the Indian Health Service budget which is on the National Indian Health Board website.

Let's see, anyway I told her - that's Becky Johnston - that you may want to call her since she has now inserted herself, by making a phone call to Kleen Environmental, into your proceeding. I don't remember if I've given you her phone number. It's 206-240-8194. She also said, by the way, I meant to tell you, that the directory that was attached to the letter, she thought looked like a broadcast fax list. Anyway, that's what the information I have. My sense is that Becky Johnston would be the best person to talk to. Okay? Hope this is helpful and take care, bye.

Exhibit F

KLEEN ENVIRONMENTAL TECHNOLOGIES, INC.
"An Environmental Service Group"

FACSIMILE TRANSMITTAL SHEET

TO: BECKY JOHNSTON FROM: ALLEN McCLOSKEY
 COMPANY: DATE: 10/15/04
 FAX NUMBER: 509-461-4429 TOTAL NO. OF PAGES INCLUDING COVER: 2
 PHONE NUMBER:
 RE: LETTER IN QUESTION

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Kleen Environmental Technologies, Inc.

October 15, 2004

American Indian Health Commission
For Washington State
Attention: Becky Johnston
1752 NW Market Street, #104
Seattle, WA 98107

Dear Mrs. Johnston:

Thank you for the phone call regarding the letter in question issued by "Lancing Birdinground." I understand the concerns and reservations that you and your organization have regarding the nature of the letter and the fallacious statements that are made by this individual. Please note that we share in your concerns and we do have reservations of our own regarding the false manner in which this letter was issued. We are particularly concerned with this letter being issued given the nature of the public proceedings that our company is currently undergoing, proceedings that are very sensitive in nature.

As stated in our conversation this morning we are equally frustrated with this wiseacre and potential impact this person could have on the current proceedings. As agreed this morning I would personally be contacting Kleen's legal representative and instructing him to redact the record to not include this unauthorized correspondence. Additionally, I would ask you to inform the members of the American Indian Health Commission of Washington State at your up and coming meeting that Kleen Environmental had no knowledge of the nature of this correspondence nor did we at any time have direct contact with its author. We took the letter for what it was a "letter of support." In the future conduct of business and specifically proceedings such as these we will make a conscious, deliberate, and determined effort to perform due diligence and confirm the authenticity of any future correspondence.

Again, thank you for the courtesy call this morning, your call has and will continue to set into motion steps to withdraw this correspondence from the current proceeding. Please feel free to contact me should there be any additional concerns.

Sincerely,

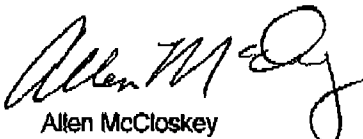

Allen McCloskey
For Kleen Environmental

Exhibit G

Steve Johnson

From: Greg W. Haffner [GWH@CurranMendoza.com]
Date: Friday, October 15, 2004 12:55 PM
To: Ann Rendahl; XTG-040221 & TG-040248 - External Mail Group
Cc: qaqc@kleenenvironmental.com
Subject: RE: Hearing Agenda for October 22 and Revised Exhibit List

Dear Judge Rendahl and counsel,

Please be advised that Kleen Environmental Technologies will be withdrawing the letter from the National Indian Health Board dated October 12, 2003, marked for identification as exhibit 203.

Thank you,

Greg Haffner

-----Original Message-----

From: Ann Rendahl [mailto:arendahl@wutc.wa.gov]
Sent: Friday, October 15, 2004 12:00 PM
To: XTG-040221 & TG-040248 - External Mail Group
Subject: Hearing Agenda for October 22 and Revised Exhibit List

Attached for your review and for our hearing scheduled for October 22 are a proposed hearing agenda and revised exhibit list.

(See attached file: HEARING AGENDA - 10-12-04.doc) (See attached file: Exhibit List - revised 10-13-04.doc)

Ann E. Rendahl
Administrative Law Judge
Washington Utilities and Transportation Commission
Tel: (360) 664-1144
Fax: (360) 664-2654

Exhibit H

Steve Johnson

From: Steve Johnson
Sent: Wednesday, October 20, 2004 9:34 AM
To: 'Ann Rendahl'
Cc: XTG-040221 & TG-040248 - External Mail Group
Subject: Apparent Fraudulent Submission by Kleen Environmental

Dear Judge Rendahl,

Attached is a copy of a letter to the Commission I received yesterday from J. T. Petherick, Executive Director of the National Indian Health Board. Mr. Petherick wrote this letter in response to my inquiry to him concerning a letter offered by Kleen Environmental Technologies, Inc. at the hearing on October 12, 2004 in support of its application for biomedical waste collection authority. The letter offered by Kleen was marked as Exhibit 203 but was not admitted into the record at that time.

Exhibit 203 is a letter apparently on the letterhead of the National Indian Health Board, dated October 12, 2004, and signed by a Mr. Lancing Birdinground. The letter purports to have been issued by "region ten" of the National Indian Health Board and states, among other things, "For the past eleven years our facilities have developed a successful and collegial acquaintance with the owners and staff of Kleen Environmental Technologies, Inc." A copy of Exhibit 203 is also attached.

Mr. Petherick states that the Birdinground letter is "fraudulent" and that the NIHB "has no association with Mr. Lancing Birdinground."

I have also made inquiries to a number of the Washington Indian tribes listed in the attachment to Exhibit 203 and several have confirmed to me (a) that they have no knowledge of the Kleen application proceeding and (b) that they have not authorized Mr. Lancing Birdinground to represent their views to the WUTC with respect to the Kleen application.

Although counsel for Kleen has recently indicated that Kleen would like to withdraw Exhibit 203, Kleen's attempt to withdraw the exhibit came after the validity of Exhibit 203 was challenged by an individual involved with Indian healthcare issues who contacted Kleen in an effort to follow up on my inquiries to Washington tribes and tribal clinics. In other words, Kleen's attempt to withdraw Exhibit 203 came after Kleen learned that the fraudulent character of the exhibit had been discovered.

I request that you schedule a telephone conference with counsel tomorrow morning, October 21, to explore how this matter should be addressed. I would like to examine all of the owners of Kleen Environmental Technologies, Inc. (Mr. Olson, Mr. Lee and Mr. Perrollaz) and Mr. Allen McCloskey concerning their knowledge of the Birdinground letter, if possible at the hearing scheduled for October 22, 2004. If that is not possible, then I would suggest that the October 22 hearing date be rescheduled to a time when these gentlemen would be available to testify concerning this matter.

The submission by Kleen of what appears to be a fraudulent letter in support of its application raises serious questions concerning Kleen's fitness to receive biomedical waste collection authority and is a matter that should be explored thoroughly.



STEPHEN B. JOHNSON
sjohnson@gsblaw.com

GARVEY SCHUBERT BARER
GSBLAW.COM
eighteenth floor
1191 second avenue

11/27/2004

seattle, washington 98101-2939
TEL 206 464 3939 FAX 206 464 0125
DIRECT 206 816 1309

Exhibit I

Steve Johnson

From: Greg W. Haffner [GWH@CurranMendoza.com]
Sent: Friday, November 12, 2004 2:14 PM
To: Steve Johnson; James Sells; Gregory J. Trautman (E-mail); jamesksells@yahoo.com
Subject: Kleen

Gentlemen,

Attached is the only document we could find in response to the pending records requisitions. The attached form letter is responsive to requisition number 6 which I believe asked for copies of the forms sent to generators for the generators to use as form letters to send to the Commission in support of the application.

<<ltr.pdf>>

Unfortunately, despite a thorough search of the offices of Kleen, including files left behind by Mr. McCloskey, and my own files, we could not find documents responsive to the following records requisitions, or more responsive to number 6 than the document provided above:

7. A list of recipients of such forms.
8. A list of the recipients of and emails sent by Mr. McCloskey or anyone at Kleen to determine the author of the Birdinground letter.
9. Proof that the original Birdinground letter was filed with the Commission. This is not able to be created because we could not find the original letter to file.

Greg W. Haffner
Curran Mendoza P.S.
555 West Smith Street
P. O. Box 140
Kent, WA 98035-0140
(253) 852-2345 Phone
(253) 852-2030 Fax
www.curranmendoza.com

YOUR LETTERHEAD LOGO HERE

Donna Berkel

February 12, 2004

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

To Whom It May Concern:

As the Senior Industrial Hygienist for BERLEX a major Medical Research and Development Corporation, one of my responsibilities is to ensure the Corporation is in compliance with all federal, state, county, local, and any applicable regulations pertaining to waste types generated by our facilities.

It is our understanding that Kleen Environmental Technologies, Inc. is in the process of obtaining a certificate of public convenience and necessity from the Washington Transportation and Utility Commission to collect and transport biomedical waste and related matters. Allow me to say on behalf of _____ that we support Kleen Environmental in their efforts to secure authority to operate as an Infection Waste Transporter in the State of Washington. Furthermore, we find their services to be extremely important to the healthcare industry, being that they offer innovative technologies and waste treatment methodologies not offered by current providers. The treatment and disposal methodologies offered by Kleen Environmental will play a significant role in limiting the environmental impact of disposal and decrease the quantity of waste disposed. For these reasons and the simple fact of preserving financial resources we support Kleen Environmental in their efforts before the Commission and we hereby voice a need for the services offered by Kleen.

It is my opinion after reviewing KET's efforts and after conversing with KET staffers that Kleen Environmental Technologies, Inc. as a Multi-Disciplinary Environmental Management Firm in its capacity as such and a Corporation with years of extensive experience and knowledge of the Environmental Industry would be a more proficient and capable entity to handle our "biomedical waste". Furthermore, because of Kleen Environmental's in-depth understanding of the various waste types, their constituencies, germane regulations, liability management, their ability to implement due-diligence, and because of their understanding of various other issues associated with regulated wastes we deem it appropriate to consider Kleen as a more proficient entity, capable of providing a more comprehensive service, including but not limited to, comprehensive manifests, certificates of destruction, Liability Management Programs, waste packaging, brokering, transportation, and a compliment of ancillary environmental management services.

On several occasions we have requested of our current provider that a "Certificate of Destruction" and appropriate manifests, and other disposal documentation be provided to our facility, a request that has not been addressed to date. As a generator of a "regulated waste" we find it imperative for the sake of eliminating liability, to have documentation that illustrates the disposal process from pick-up to final treatment/disposal.

- 2 -

February 12, 2004

Additionally, please note, that on several occasions and on an on going basis our current service provider has delivered to our facilities, dirty waste storage tubs (tubs containing traces of anatomical waste.) As a FDA/GMA licensed facility it is imperative that we receive storage tubs that have been properly sterilized according to industry standards. Furthermore, by delivering "dirty tubs" the current service provider puts our staff in a position to be exposed to "Infectious Waste", a liability that no Corporation cares to incur.

Furthermore, in our efforts to minimize administration costs, i.e., disposal accountability, fiscal consolidation, and recordkeeping, we deem it appropriate to include the handling, packaging, and disposal of our biomedical waste as a commodity "adjunct" to the services currently being provided by Kleen Environmental Technologies, Inc.

Thank you for your time and consideration in this matter. If you should require further amplification please feel free to contact me at () , so that we may arrange a mutually convenient time to begin a dialogue regarding this matter.

Sincerely,

Name
Title

[STREET ADDRESS] • [CITY/STATE] • [ZIP/POSTAL CODE]
PHONE: [PHONE NUMBER] • FAX: [FAX NUMBER]

Exhibit J

GARVEY SCHUBERT BARE R

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

eighteenth floor
1191 second avenue
seattle, washington 98101 - 2939
206 464 3939

Stericycle, Inc.
 Client ID: 04833
 Matter ID: 01900 – WUTC Application Proceedings

November 12, 2004
 INVOICE: 267168
 Page 5

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Waste.		
10/06/04	S. Johnson	Attend hearing on Kleen application. Menaul testimony. Stromerson testimony. McCloskey rebuttal. Review revised exhibits provided by N. Walker and revise.	10.00	3,300.00
10/07/04	S. Johnson	Prepare for cross examination of generator witnesses. Attend hearing on Kleen application. Generator witnesses Campbell (ICOS) and Carney (Pac. NW Research Institute).	10.00	3,300.00
10/07/04	C. Cottrell	Legal research regarding WUTC "fitness" requirement.	0.55	96.25
10/08/04	S. Johnson	Attend Kleen application hearing. Generator witnesses Smith (Zymo-Genetics) and Hoskins (Berlex). Rebuttal witness: Lee.	8.50	2,805.00
10/08/04	C. Cottrell	Legal research regarding status of fitness requirement of now-repealed WAC 480-70-160.	0.85	148.75
10/11/04	S. Johnson	Phone conferences with M. Philpott re rebuttal testimony, HSSA membership. Phone conference with Toxics Coalition. Review generator testimony and outline issues for rebuttal testimony. Conference call with M. Philpott, J. Norton and L. Batte re generator testimony. Phone conference with E. McMains re plant audits, respirators, logs. Review Morton plant visitor log. Review HSSA membership list.	6.80	2,244.00
10/11/04	C. Cottrell	Legal research regarding the amendment of WAC 480-70 in 2001 and the omission of 480-70-160 (Certificates, fitness).	0.80	140.00
10/12/04	S. Johnson	Attend Kleen application hearing. Generator witnesses: Knight, Rodgers, Radder.	8.00	2,640.00
11/13/04	S. Johnson	Research National Indian Health Board. Draft email correspondence to	4.50	1,485.00

GARVEY SCHUBERT BARE R - seattle, washington 98101-2939 - 206 464 3939

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Stericycle, Inc.
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Matter ID: 01900 – WUTC Application Proceedings

November 12, 2004
INVOICE: 267168
Page 6

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
	B	Executive Director of National Indian Health Board. Draft email correspondence to Muckleshoot, Quileute, Tulalip and Colville Tribes re letter submitted to WUTC on letterhead of the National Indian Health Board.		
1/14/04	S. Johnson	Draft email correspondence to National Indian Health Board, Washington Tribes (Tulalip, Lummi, Nooksack, Puyallup, Yakama, Colville, Suquamish) and Northwest/Portland Area Indian Health Board re Birdinground letter. Phone conferences with counsel for Tulalip, Yakama and Nisqually Tribes. Phone conference with M. Philpott re preparations for final day of hearings.	5.00 4.7	1,650.00
10/14/04	C. Cottrell	Office conference regarding production of post-hearing brief. Review prefiled testimony.	1.40	245.00
10/15/04	S. Johnson	Phone conference with E. Fox (Northwest Portland Area IHB) re NIHB letter. Phone conference with R. Johnston (American Indian Health Commission) re same. Phone conference with R. Otsea (Muckleshoot Tribe) re same. Draft letter to WUTC from NPAIHB.	1.80	594.00
10/19/04	S. Johnson	Phone conferences with J. T. Petherick (NIHB) and E. Fox (NPAIHB) re letters to WUTC exposing fabricated submission by Kleen Environmental. Draft email correspondence to tribal counsel and contacts re Birdinground letter. Conference with C. Cottrell re preparation of post-hearing brief.	5.20 4.6	1,716.00
10/19/04	C. Cottrell	Office conference regarding factual segment and legal arguments to be developed for post-hearing brief.	0.60	105.00
10/20/04	S. Johnson	Draft email correspondence to ALJ re apparent fraudulent submission by Kleen Environmental. Phone conference with M. Philpott re status, hearing testimony Friday. Phone conference with E. Jacobson re hearing testimony. Prepare for hearing.	6.50 2.0	2,145.00

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Stericycle, Inc.
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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
10/20/04	C. Cottrell	Review issues memorandum and pre-filed testimony for fact segment of final post-hearing brief.	0.55	96.25
10/21/04	S. Johnson B	Review issues for Stericycle rebuttal testimony. Conference with ALJ Rendahl and G. Haffner re hearing on issue of fraudulent document submitted by Kleen. Phone conference with J. Sells re same. Phone conferences with M. Philpott re NSL visitor log, % of med-waste transferred to NSL for incineration. Conference with M. Philpott, C. Stromerson, J. Norton and L. Batte re hearing testimony. Organize rebuttal exhibits for hearing.	10.80 1.0	3,564.00
10/21/04	C. Cottrell B	Continued review of prefiled testimony. Legal research regarding possible penalties or crimes implicated by presenting commission with false document. Research of possible ethical duties and violations regarding presentment of false document. Office conference regarding same.	4.40 4.0	770.00
10/21/04	D. Smith B	Conference re statues and regulations making it unlawful to submit a false document to the WUTC during an official proceeding.	0.15	43.50
10/22/04	S. Johnson B	Prepare for and attend Kleen application hearing: Stericycle rebuttal. Travel to Olympia and return. Phone conference with L. Birdinground re written statement. Phone conference (voice message) with R. Johnston re written statement. Draft email correspondence to R. Johnston re same.	11.00 2.0	3,630.00
10/22/04	C. Cottrell	Continue drafting post-hearing brief.	4.45	778.75
10/23/04	S. Johnson B	Draft written statement for L. Birdinground. Phone conference with K. Not Afraid re arrangements to fax draft written statement.	2.00	660.00
10/24/04	S. Johnson B	Revise draft written statement for L. Birdinground. Numerous efforts	4.50 3.0	1,485.00

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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
	B	to fax statement to Mr. Birdinground. Numerous phone calls and phone messages to L. Birdinground and K. Not Afraid re efforts to fax draft statement. Draft motion to strike rebuttal testimony of K. Lee and to exclude Exhibits 52 and 53. Internet research re McCloskey Enterprises, persons associated with McCloskey Enterprises and Kleen Environmental.		
10/24/04	S. Johnson	Phone conferences with L. Birdinground re dealings with Allen McCloskey and arrangements for review and execution of written statement.	0.30	99.00
10/25/04	S. Johnson	Revise Birdinground declaration re additional facts provided by Mr. Birdinground. Fax draft declaration to Mr. Birdinground. Phone conference with K. Not Afraid re receipt of fax and arrangements for review by Mr. Birdinground. Phone conference with L. Birdinground re declaration. Phone conference with R. Johnston re preparation of written declaration. Draft Johnston declaration. Phone conference with R. Johnston re same. Revise Johnston declaration. Internet research re McCloskey. Phone conference with Makah Tribe re McCloskey's prior work history. Phone conference with Yurok Tribe re McCloskey connections. Review McCloskey direct and rebuttal testimony. Assemble exhibits for cross examination of Olson and McCloskey.	10.00	3,300.00
10/25/04	C. Cottrell	Research regarding proper scope of rebuttal testimony. Draft reply in support of motion to strike rebuttal testimony of K. Lee.	3.30	577.50
10/26/04	S. Johnson	Travel to Olympia for Kleen hearing. Attend Kleen hearing: testimony and cross examination of R. Olson and A. McCloskey. Travel to Seattle.	8.00	2,640.00
10/26/04	K. Emigh	Research on-line database and directories to confirm address information on purported L. Birdinground letter and discussion with R. Susort re same. Draft declaration re same.	1.40	168.00

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November 12, 2004
INVOICE: 267168
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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
10/27/04	K. Emigh B	Discussion with C. Cottrell re background search for A. McCloskey. Draft search parameters summary for same. Telephone call to R. Winqvist re same.	0.45	54.00
10/27/04	S. Johnson B	Review emails from G. Haffner re McCloskey's medical condition and forward to M. Philpott. Phone conference with Humboldt State University re McCloskey. Draft proposed letter from Humboldt State re same. Phone conference with Makah contact re McCloskey identifying data.	0.60	198.00
10/27/04	C. Cottrell B	Office conference regarding background searches on McCloskey.	2.15	376.25
	B	Continue drafting post-hearing brief. Research regarding statutes, rules and case law applicable to Kleen's submittal of false document.	1.5	
10/28/04	S. Johnson B	Work on organizing hearing exhibits. Phone conference with Yurok Tribe re McCloskey data.	0.50	165.00
10/28/04	C. Cottrell B	Further legal research regarding Kleen's filing of false document. Office conference regarding potential perjury/tampering claim.	1.25	218.75
10/29/04	S. Johnson B	Phone conference with Yurok Tribe re McCloskey information request. Draft letter to H. McConnell, Chairman, Yurok Tribe, re same. Draft letter to Humboldt State University re McCloskey information request. Phone conference with L. Adams (counsel for Yurok Tribe) re McCloskey data.	2.50	825.00
10/29/04	C. Cottrell	Continue drafting post-hearing brief.	3.50	612.50

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Stericycle, Inc.
Client ID: 04833

December 3, 2004
INVOICE: 269123
Page 4

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
11/01/04	A. Sherbrooke	Office consultation re antitrust issues related to potential settlement of application.	0.20	66.00
11/01/04	S. Johnson B	Review email correspondence from G. Haffner and A. Rendahl re Allen McCloskey. Phone conference with M. Philpott re same. Phone conference with J. Sells re same. Conference call with M. Philpott, J. Wilson and D. Ginetti re same. Review hearing transcripts to assess effects of McCloskey testimony. Research possible claims against Kleen. Phone conference with A. Sherbrooke re antitrust issues.	5.00 <u>4.7</u>	1,650.00
11/01/04	C. Cottrell B	Continue drafting final brief. Office conference regarding legal research to be done on CR II application to APA proceeding and possible sanctions.	1.90 <u>.5</u>	332.50
11/02/04	S. Johnson B	Review hearing transcript in preparation for status conference. Draft email correspondence to J. Wilson, D. Ginetti and M. Philpott re Kleen settlement proposal.	4.00 <u>3.0</u>	1,320.00
11/02/04	C. Cottrell B	Legal research regarding possible ramifications of McCloskey forged documents upon McCloskey testimony, Kleen application, and attorneys' fees recovery. Research regarding ability to tie court rule requirements to administrative action.	<u>6.35</u>	1,111.25
11/03/04	S. Johnson B B	Review hearing transcript in preparation for status conference. Conference with C. Cottrell re legal theories for recovery of attorneys fees. Phone conference with G. Haffner re proposed settlement. Phone conference with M. Philpott re status. Phone conference with J. Sells re strategy for status conference.	5.00 <u>4.8</u>	1,650.00
11/03/04	C. Cottrell B	Legal research regarding imposition of sanction for filing of false	<u>6.40</u>	1,120.00

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206 464 3939

Stericycle, Inc.
 Client ID: 04833

December 3, 2004
 INVOICE: 269123
 Page 5

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
	B	documents or testimony, and what type of sanctions, under either court rules or by inherent power of court. Office conference regarding research results and case strategy.		
11/04/04	S. Johnson	Phone conference with M. Kaech (WUTC) re use of bridge line for status conference in Kleen application case. Phone conference with M. Philpott re status conference. Prepare for status conference. Outline issues for status conference. Participate in status conference in Kleen application case.	1.30	429.00
	B			
11/04/04	C. Cottrell	Conference regarding dismissal of application and drafting of motion for attorneys' fees. Further legal research regarding right to attorneys' fees.	0.55	96.25
11/06/04	C. Cottrell	Legal research regarding assessment of sanction in the case of contempt, fraud on the court.	2.15	376.25
11/08/04	C. Cottrell	Further legal research regarding power of decision maker to sanction offending party. Draft communication to S. Johnson regarding proposed brief outline.	1.15	201.25
11/09/04	C. Cottrell	Continued legal research regarding possible sanctions for fraud on the tribunal. Office conference regarding same.	1.45	253.75
11/09/04	J. Allyn	Research for C. Cottrell. Locate cases using Westlaw key numbers in all states database.	0.30	46.50
11/10/04	C. Cottrell	Legal research regarding sanctions for contempt in APA.	0.40	70.00
11/11/04	C. Cottrell	Further legal research regarding agency's ability to levy sanctions in proceedings before it.	0.75	131.25
11/04	C. Cottrell	Further legal research regarding power of administrative agency to	8.50	1,487.50

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Exhibit K

GARVEY SCHUBERT BARER

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eighteenth floor
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seattle, washington 98101 - 2939
206 464 3939

Stericycle, Inc.
 Client ID: 04833

September 13, 2004
 INVOICE: 260973
 Page 6

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
08/02/04	S. Johnson	Phone conference with M. Philpott and C. Stromerson re supplemental responses to Kleen discovery requests. Review email correspondence from M. Philpott re same.	0.30	99.00
3/04	S. Johnson	Draft letter to ALJ Rendahl re issues for prehearing conference call. Review LeMay and Kleen responses to discovery. Draft email correspondence to N. Walker re LeMay financial data. Participate in prehearing conference call with ALJ Rendahl re deadline for prefiled testimony, disclosure of shipper witnesses. Phone conference with M. Philpott re LeMay financial data and outcome of prehearing conference. Review email correspondence from M. Philpott and revise supplemental response to Kleen discovery requests.	6.00	1,980.00
08/06/04	C. Cottrell	Office conference regarding upcoming applicant pre-filing and anticipated review and analysis.	0.40	70.00
08/09/04	S. Johnson	Finalize supplemental responses to Kleen's discovery requests. Email correspondence with M. Philpott re same. Phone conference with M. Philpott re same.	1.00	330.00
08/11/04	S. Johnson	Review prehearing order re disclosure of witnesses.	0.20	66.00
08/12/04	S. Johnson	Review LeMay prefiled testimony. Draft email correspondence to M. Philpott re same.	0.50	165.00
08/12/04	S. Johnson	Review Kleen responses to discovery requests for possible motion to compel. Review prefiled testimony of LeMay. Assemble Kleen financial data for review by N. Walker.	2.00	660.00
08/13/04	S. Johnson	Review responses of Kleen and LeMay to Stericycle data requests.	6.50	2,145.00

4.5

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Stericycle, Inc.
 Client ID: 04833

September 13, 2004
 INVOICE: 260973
 Page 7

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Review Kleen prefiled testimony. Phone conference with M. Philpott re development of Stericycle rebuttal testimony. Draft email correspondence to M. Philpott re same.		
08/16/04	C. Cottrell	Discussion regarding anticipated work and upcoming meetings with expert witness and staff.	0.20	35.00
6/04	S. Johnson	Phone conferences with N. Walker, M. Philpott and C. Stromerson re preparation of prefiled testimony, critique of prefiled testimony filed by Kleen and LeMay. Draft prefiled testimony of M. Philpott.	8.00 4.0	2,640.00
08/17/04	C. Cottrell	Conference regarding upcoming expert witness meetings, hearing dates and filing deadlines, research regarding "cream skimming" rulings. Review memorandum to clients and cases re skimming question.	0.95	166.25
08/17/04	S. Johnson	<u>Draft Philpott testimony</u> Review Kleen and LeMay responses to discovery and prefiled testimony re financial projections. Draft outline of financial issues for analysis by N. Walker.	7.20 5.0	2,376.00
08/18/04	C. Cottrell	Review case law on "cream skimming" question. Attend meeting with N. Walker.	2.95	516.25
08/18/04	S. Johnson	Review issues for discussion with N. Walker. Conference with N. Walker and C. Cottrell re financial analysis, testimony for hearing. Draft email correspondence to M. Philpott, J. Clesen and N. Walker re financial analysis required to prepare hearing testimony.	5.50	1,815.00
08/19/04	C. Cottrell	Research presentment of Stericycle clientele by region and type. Meeting with C. Stromerson. Office conference regarding preparation of affirmative testimony.	3.50	612.50
08/19/04	S. Johnson	<u>Phone conference with D. Wilson re meeting schedule, analysis of Kleen prefiled testimony.</u> Draft email correspondence to J. Clesen re	4.50 1.0	1,485.00

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Client ID: 04833

September 13, 2004
INVOICE: 260973
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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		data needs. Conference with C. Stromerson re review of Kleen, LeMay financials, operating plans/policies and Stericycle compliance activities. Draft email correspondence to C. Stromerson requesting his review of LeMay shipping manifest, certificate of destruction.		
20/04	S. Johnson	Phone conferences with N. Walker and D. Wilson re critique of Kleen financial projections. Draft email correspondence to J. Clesen re same. Draft email correspondence to J. Sells (LeMay) and G. Haffner (Kleen) re missing data from discovery responses. Review email correspondence from N. Walker re organization of Stericycle financial data by region. Review email correspondence from D. Wilson re Kleen projections. Draft email correspondence to C. Stromerson re regulatory issues, cost estimates. Draft email correspondence to D. Wilson re development of operational critique of Kleen financial projections, costs of hydroclave disposal, comparison of hydroclave process with ETD and steam autoclave.	6.50	2,145.00
08/20/04	J. Allyn	Research for C. Cottrell. Locate cases and articles on cream-skimming as it applies to transportation contracts.	0.40	62.00
08/22/04	S. Johnson	Work on Philpott written testimony. Draft email correspondence to C. Stromerson re Stromerson written testimony.	4.00 3.5	1,320.00
08/23/04	S. Johnson	Draft Philpott testimony. Phone conferences with Trautman and Sells re deadline for prefiled testimony. Conference call with Philpott, Clesen and N. Walker re analysis of Kleen projections. Draft letter to Judge Rendahl requesting telephone conference, extension of deadline for prefiled testimony.	4.80 2.5	1,584.00
08/24/04	C. Cottrell	Review correspondence and additional prefilng material. Work on allocation of Stericycle customers by zip code.	3.50	612.50
24/04	S. Johnson	Telephone conference with ALJ Rendahl and counsel re request for	0.75	247.50

GARVEY SCHUBERT BARER - seattle, washington 98101-2939 - 206 464 3939

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GARVEY SCHUBERT BARER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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206 464 3939

Stericycle, Inc.
 Client ID: 04833

October 12, 2004
 INVOICE: 264590
 Page 6

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
09/01/04	K. Emigh	Research S. Silva, D. Howard and T. Rude current locations.	1.10	132.00
09/02/04	K. Emigh	Finalize research and draft memorandum re research into location of three witnesses.	0.50	60.00
09/02/04	C. Cottrell	Review Stromerson compliance documents.	1.15	201.25
09/03/04	C. Cottrell	Review Stromerson compliance docs.	2.85	498.75
09/03/04	S. Johnson	Review Kleen and LeMay prefiled testimony and outline issues for response. Review issues for Stericycle direct testimony. Review materials/analysis prepared by N. Walker, M. Philpott and C. Stromerson. Conference with C. Cottrell re preparation of Stromerson direct testimony. Review Shiner write-up re hydroclave/autoclave comparison.	6.40 <u>3.0</u>	2,112.00
09/04/04	C. Cottrell	Further review of Stromerson compliance documents and critique of Kleen and LeMay applications.	0.95	166.25
09/05/04	S. Johnson	Review Kleen and LeMay prefiled testimony. Review comments, responsive materials provided by N. Walker, M. Philpott, C. Stromerson and D. Wilson. Outline issues for Stericycle's responsive testimony.	4.00 <u>3.0</u>	1,320.00
09/07/04	C. Cottrell	Continue review of Stericycle documents, state and federal regulation, and draft Stromerson testimony.	3.05	533.75
09/07/04	S. Johnson	Phone conferences with M. Philpott re issues for Stericycle testimony. Phone conference with N. Walker re analysis of Kleen financial projections, additional work needed to permit preparation of testimony.	7.00 <u>6.0</u>	2,310.00

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Stericycle, Inc.
Client ID: 04833

October 12, 2004
INVOICE: 264590
Page 7

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Phone conference with J. Sells re outstanding discovery requests. Draft email correspondence to S. Shiner re hydroclave technology. Phone conference with D. Compton re efficacy criteria, testing for ETD and autoclave. Draft email correspondence to D. Compton, E. McMains and C. Stromerson re criteria, process for establishing processing efficacy. Phone conference with Laura and Melia re Biotrack process. Revise Philpott testimony.		
08/08/04	C. Cottrell	Continued work on Stromerson testimony. Revision of county generator list.	5.85	1,023.75
09/08/04	S. Johnson	Work on Philpott testimony. Draft email correspondence to M. Philpott and J. Clesen re data on Stericycle customers, volumes. Phone conference with Tara re same. Conference with C. Cottrell re allocation of customer data by county.	6.00 3.8	1,980.00
09/09/04	C. Cottrell	Continue drafting of Stromerson testimony.	1.30	227.50
09/09/04	S. Johnson	Phone conference with J. Sells re withdrawal of LeMay application. Phone conference with M. Philpott re same. Phone conference with D. Wilson re vehicle operation costs. Phone conference with N. Walker re revenue analysis, data needs. Draft email correspondence to Tara and J. Clesen re data needs. Review county-by-county analysis of Stericycle customer distribution. Draft Philpott testimony.	7.80 3.0	2,574.00
09/10/04	C. Cottrell	Continue drafting Stromerson testimony.	1.70	297.50
09/10/04	S. Johnson	Review email correspondence from N. Walker re financial analysis of Kleen projections. Phone conference with N. Walker re same. Review and respond to email correspondence from T. Bender re Stericycle data. Review email correspondence from S. Shiner re hydroclave processing technology. Draft Philpott testimony.	7.80 3.4	2,574.00

GARVEY SCHUBERT BARER - seattle, washington 98101-2939 - 206 464 3939

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Stericycle, Inc.
Client ID: 04833

October 12, 2004
INVOICE: 264590
Page 8

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
09/12/04	S. Johnson	Work on Philpott testimony, disposal issues, HSS, Covanta. Review transportation cost data and draft email correspondence to D. Wilson re same. Draft email correspondence to N. Walker re financial analysis.	8.20 6.0	2,706.00
09/13/04	S. Johnson	Work on Philpott testimony. Phone conference with N. Walker re financial analysis. Review D. Wilson email re transportation costs. Phone conference with S. Shiner. Draft S. Shiner testimony. Draft email correspondence to S. Shiner.	8.20 6.0	2,706.00
09/13/04	C. Cottrell	Draft Stromerson testimony.	6.85	1,198.75
09/14/04	S. Johnson	Draft email correspondence to M. Philpott requesting additional data. Work on Philpott testimony. Review N. Walker revised financial analysis. Phone conferences with N. Walker re financial analysis. Conference with C. Cottrell re Stromerson testimony.	8.50 4.0	2,805.00
09/14/04	C. Cottrell	Review Stromerson and Philpott commentary and Kleen application materials. Continue to draft Stromerson testimony. Office conference regarding Stromerson and Philpott testimony and cross examination topics.	4.40	770.00
09/15/04	S. Johnson	Draft email correspondence to M. Philpott re schedule for final review, signing of written testimony. Phone conferences with M. Philpott re additional cost data requested. Phone conference with Kibble & Prentice re insurance costs. Phone conference with L. McHugh (HubbardOne) re cost of developing interactive web site for posting of documents, data. Draft N. Walker testimony. Email correspondence with S. Shiner re his testimony. Phone conferences with N. Walker. Phone conferences with M. Philpott.	12.00 4.0	3,960.00
09/15/04	C. Cottrell	Further revision of Stromerson testimony. Telephone conversation with Stromerson regarding draft testimony. Office conference regarding Stromerson testimony, hearing schedule.	2.75	481.25

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Stericycle, Inc.
 Client ID: 04833

October 12, 2004
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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
09/16/04	S. Johnson	Revise Philpott testimony. Revise N. Walker testimony. Phone conferences with M. Philpott and N. Walker re various issues. Assemble exhibits.	12.00 4.0	3,960.00
09/17/04	S. Johnson	Finalize written hearing testimony. Conference with M. Philpott and C. Stromerson re review and execution of prefiled testimony. Revise "cash required" exhibit to N. Walker testimony. Revise N. Walker testimony per her input. Phone conference with N. Walker re revised exhibits and final text of testimony. Review data list to ensure coverage in Philpott testimony. Arrange service and filing.	7.50 3.5	2,475.00
09/17/04	C. Cottrell	Revision of Stromerson testimony and attachments. Office conference regarding Stromerson testimony.	0.95	166.25
09/19/04	S. Johnson	Review email correspondence from G. Haffner re electronic service of prefiled testimony. Re-send electronic filings to G. Haffner.	0.50	165.00
09/20/04	S. Johnson	Phone conferences with R. Menaul (exchange voice messages). Phone conference with P. Rourke re insurance quotes. Phone conference with A. Rendahl (voice message) re hearing dates.	0.30	99.00
09/21/04	S. Johnson	Phone conference with R. Menaul. Phone conference with M. Philpott re review of testimony. Menaul testimony. Phone conference with ALJ Rendahl (voice message). Review and revise notice to Commission re exhibits, witnesses, time required for cross-examination.	2.00 1.0	660.00
09/22/04	S. Johnson	Review and revise notice of exhibits, order of witnesses, etc. Review and revise list of proposed cross-examination exhibits for submission to ALJ. Review proposed exhibit lists filed by LeMay, et al., and Kleen. Review and respond to email correspondence from ALJ Rendahl re prehearing conference.	2.30	759.00

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Stericycle, Inc.
Client ID: 04833

October 12, 2004
INVOICE: 264590
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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
09/23/04	S. Johnson	Review schedule of hearing, witness schedule and exhibit list. Participate in prehearing conference with ALJ and counsel re hearing schedule and procedures. Phone conference with N. Walker re Philpott testimony, related issues. Email correspondence with G. Haffner (Kleen) re witness schedule.	3.00 1.0	990.00
4/04	S. Johnson	Draft email correspondence to ALJ and counsel re hearing schedule, schedule of witnesses. Review Kleen "rebuttal" proforma and forward by email to N. Walker for review. Draft email correspondence to M. Philpott re hearing schedule. Phone conference with M. Philpott re hearing schedule, plan for hearing. Plan cross examination. Draft Menaul/WSHA statement.	5.30 .3	1,749.00
09/24/04	C. Zielinski	Prepare documents for attorney review.	4.60	276.00
09/25/04	S. Johnson	Prepare Kleen cross-examination. Review Kleen prefiled testimony. Review comments of Stericycle personnel re same.	6.00	1,980.00
09/26/04	S. Johnson	Inspect Kleen office/transportation facility and make photographs. Arrange printing of relevant photographs of Kleen facility. Prepare Kleen cross-examination. Review DOT and WUTC regulations.	9.00 8.0	2,970.00
09/26/04	C. Cottrell	Office conference regarding issues arising out of Kleen's possible use of Seattle property as solid waste handling facility. Research Seattle municipal code regarding zoning and permitting issues.	0.70	122.50
09/27/04	S. Johnson	Attend Kleen application hearing. Cross examination of Olsen, McCloskey.	8.00 6.0	2,640.00
09/27/04	K. Emigh	Run credit searches on Experian and Dun & Bradstreet databases for Kleen Environmental Tech. Inc., and review results.	0.50	60.00
09/27/04	C. Cottrell	Visit to Seattle department of planning and development to ascertain	2.30	402.50

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Stericycle, Inc.
Client ID: 04833

October 12, 2004
INVOICE: 264590
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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		zoning of Kleen property in Seattle and permissible activities within zone. Office conference regarding results of research.		
09/28/04	S. Johnson	Prepare for Perrollaz cross examination. Review Menaul statement . Phone conference with N. Walker re hearing arrangements. Attend Kleen application hearing. <u>Cross examination of McCloskey, Perrollaz.</u>	9.50 <u>5.0</u>	3,135.00
09/29/04	S. Johnson	Confrence with M. Philpott and N. Walker to prepare for cross examination. <u>Attend Kleen application hearing.</u> Cross examination of Perrollaz, Lee.	9.00 <u>2.0</u>	2,970.00
09/29/04	C. Cottrell	Telephone conversation with J. Torhimovich at King County Public Health regarding permitting of biomedical waste storage sites. Communication to S. Johnson regarding her answer.	0.80	140.00
09/30/04	S. Johnson	<u>Attend Kleen application hearing. Testimony of N. Walker, M. Philpott.</u>	8.00 <u>4.0</u>	2,640.00
09/30/04	C. Cottrell	Telephone conversation with J. Trohimovich (King County) re permitting issues.	0.25	43.75
TOTAL FEES FOR SERVICES RENDERED:				\$59,040.75

GARVEY SCHUBERT BARER - seattle, washington 98101-2939 - 206 464 3939

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Stericycle, Inc.
 Client ID: 04833
 Matter ID: 01900 – WUTC Application Proceedings

November 12, 2004
 INVOICE: 267168
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Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
10/01/04	S. Johnson	Work on witness statement for R. Menaul. Email correspondence with M. Philpott and J. Norton re shipper witnesses. Review email correspondence from J. Norton re same.	1.50	495.00
10/03/04	S. Johnson	Draft generator witness statement. Draft email correspondence to M. Philpott re possible commercial R/E broker witness. Draft email correspondence to M. Philpott, E. Jacobson and J. Norton re generator witness statements, Vancouver hearing, related matters.	2.20	726.00
10/04/04	S. Johnson	Draft disclosure of rebuttal witnesses, exhibits. Phone conference with M. Philpott re same. Phone conference with J. Sells re same. Phone conferences with potential generator witnesses. Draft email correspondence to Q. Phillip (SW Medical) re same. Review ALJ Bench Request and forward to M. Philpott with email explanation. Review rebuttal witness lists and exhibits filed by Kleen and WRRRA.	5.50	1,815.00
10/04/04	C. Cottrell	Legal research on regulatory change removing language re applicant's fitness and ability from code.	0.45	78.75
10/05/04	S. Johnson	Work on contacts with potential generator witnesses. Draft variants of the generator witness statement. Draft correspondence to potential generator witnesses. Phone conferences with M. Philpott re facility lease/property issues. Phone conference with M. Philpott, E. Jacobson and J. Norton re generator witness issues.	6.50	2,145.00
10/05/04	J. Allyn	Locate copy of Canadian-US agreement on the transborder shipping of hazardous or medical waste.	0.20	31.00
10/05/04	C. Cottrell	Research regarding existence of King County medical waste reduction program. Telephone call to J. Trohimovich at King County Solid	0.75	131.25

GARVEY SCHUBERT BARER - seattle, washington 98101-2939 - 206 464 3939

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Stericycle, Inc.
Client ID: 04833
Matter ID: 01900 – WUTC Application Proceedings

November 12, 2004
INVOICE: 267168
Page 5

Services Rendered for: 01900 WUTC Application Proceedings

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Waste.		
10/06/04	S. Johnson	Attend hearing on Kleen application. Menaul testimony. Stromerson testimony. <u>McCloskey rebuttal</u> . Review revised exhibits provided by N. Walker and revise.	10.00 <u>4.0</u>	3,300.00
10/07/04	S. Johnson	Prepare for cross examination of generator witnesses. Attend hearing on Kleen application. Generator witnesses Campbell (ICOS) and Carney (Pac. NW Research Institute).	10.00	3,300.00
10/07/04	C. Cottrell	Legal research regarding WUTC "fitness" requirement.	0.55	96.25
10/08/04	S. Johnson	Attend Kleen application hearing. Generator witnesses Smith (Zymo-Genetics) and Hoskins (Berlex). Rebuttal witness: Lee.	8.50	2,805.00
10/08/04	C. Cottrell	Legal research regarding status of fitness requirement of now-repealed WAC 480-70-160.	0.85	148.75
10/11/04	S. Johnson	Phone conferences with M. Philpott re rebuttal testimony, HSSA membership. Phone conference with Toxics Coalition. Review generator testimony and outline issues for rebuttal testimony. Conference call with M. Philpott, J. Norton and L. Batte re generator testimony. Phone conference with E. McMains re plant audits, respirators, logs. Review Morton plant visitor log. Review HSSA membership list.	6.80	2,244.00
10/11/04	C. Cottrell	Legal research regarding the amendment of WAC 480-70 in 2001 and the omission of 480-70-160 (Certificates, fitness).	0.80	140.00
10/12/04	S. Johnson	Attend Kleen application hearing. Generator witnesses: Knight, Rodgers, Radder.	8.00	2,640.00
10/13/04	S. Johnson	Research National Indian Health Board. Draft email correspondence to	4.50	1,485.00

GARVEY SCHUBERT BAREER - seattle, washington 98101-2939 - 206 464 3939

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04 DEC -3 PM 3:53

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In Re Application No. GA-079254 of

KLEEN ENVIRONMENTAL
TECHNOLOGIES, INC.

For a Certificate of Public Convenience and
Necessity

DOCKET NO. TG-040248

**DECLARATION OF LANSING
BIRDINGROUND**

ORIGINAL

DECLARATION OF LANSING BIRDINGROUND

1. My name is Lansing Birdinground. I am a member of the Crow Indian Tribe. I live near Crow Agency, Montana. I am employed by the roads department of the U.S. Department of the Interior, Bureau of Indian Affairs ("BIA"), working out of the BIA's Crow Agency offices.
2. "Birdinground" is a Crow Indian name. All of the Birdingrounds are members of the same family, descendants of a single Crow Indian man whose Indian name was translated into English usage as "Bird-in-Ground" or "Birdinground" at the time he was registered as a member of the Crow Indian Tribe by the U.S. government authorities.
3. I have reviewed a copy of a letter dated October 12, 2004 on the letterhead of the National Indian Health Board, purportedly signed by a person named "Lancing Birdinground" as "Executive Regional Board Member" of the National Indian Health Board (the "October 12 letter"). A copy of this one-page letter and an attached list of Washington, Oregon and Idaho Indian tribes and tribal health clinics was faxed to me by Mr. Stephen B. Johnson on October 25, 2004.
4. I am the only member of the Birdinground family with a name similar to "Lancing" Birdinground. There is no other member of the Birdinground family with a first name similar to mine. It appears that whoever made the October 12 letter intended to use my name but misspelled my first name.
5. I did not write or sign the October 12 letter or authorize anyone to sign my name to that letter. The signature on that letter is not my signature. I had no knowledge of the October 12 letter before I received a copy of it from Mr. Johnson on October 25, 2004. I had nothing to do with the preparation of the letter.
6. I do not have and have never had any connection with the National Indian Health Board ("NIHB"). I have never been an "Executive Regional Board Member" of the NIHB. I have never had an office or address in Kingston, Illinois. As far as I know, I have never been to Kingston, Illinois.
7. I have never had any business relationship with Kleen Environmental Technologies, Inc. and have no knowledge of that company. I have no idea why anyone would use my name to submit a letter in support of Kleen Environmental Technologies, Inc. to the Washington Utilities and Transportation Commission.
8. I do know Mr. Allen McCloskey.
9. In 2001, my father, Clifford Birdinground, was the chairman of the Crow Indian Tribe and I was a member of the Crow Tribe's gaming commission. For a couple of months in

the summer of 2001, I was also the manager of the Little Big Horn Casino, a casino owned by the Crow Indian Tribe near Crow Agency in Montana.

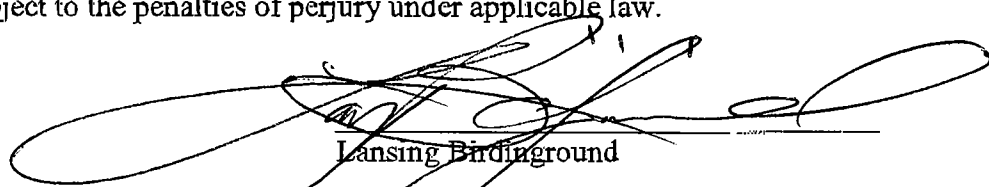
10. I met Allen McCloskey in 2001. At that time, Allen McCloskey was associated with a company called McCloskey Enterprises. The Little Big Horn Casino received a brochure in the mail from McCloskey Enterprises advertising consulting services for tribal casinos. I contacted Allen McCloskey and expressed potential interest in hiring his company to provide consulting services to the Little Big Horn Casino. Mr. McCloskey and another gentleman from his company visited the Little Big Horn Casino at their own expense in July 2001 and stayed in our area for about a week. During that time, Mr. McCloskey stayed at my home and ate meals with my family. I met with Mr. McCloskey every day. Some days he observed the operations of the Little Big Horn Casino and some days I took him to visit nearby tourist sites. In addition to his interest in providing consulting services to the Crow Tribe, Mr. McCloskey expressed interest in possibly investing in a destination casino-resort in our area.

11. I remember Allen McCloskey vcrly well. He seemed to be well informed on Indian gaming issues. He was a nice guy. He was young.

12. Since his visit to our area in 2001, I have had no contact with Allen McCloskey.

13. I understand that a copy of the October 12 letter signed in my name was submitted to the Washington Utilities and Transportation Commission by Allen McCloskey in connection with legal proccdings pending before the Commission. I have authorized the submission of this statement to the Commission to confirm that the October 12 letter is fraudulent, that I did not sign it and that I had no prior knowledge of it.

Signed subject to the penalties of perjury under applicable law.


Lansing Birdinground
Date: 10-25-04

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In Re Application No. GA-079254 of

KLEEN ENVIRONMENTAL
TECHNOLOGIES, INC.

For a Certificate of Public Convenience and
Necessity

DOCKET NO. TG-040248

DECLARATION OF DENNIS HEIN

ORIGINAL

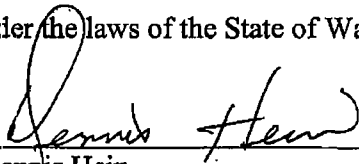
**DECLARATION OF
DENNIS HEIN**

Dennis Hein declares and states:

1. I am Director of the Spokane Regional Solid Waste System, a subdivision of the City of Spokane's Department of Public Works. In that capacity, I supervise the Spokane Regional Waste-to-Energy Facility, a solid waste incinerator owned by the City of Spokane. This facility is located in an area known as Airway Heights.

2. The personnel of the Spokane Regional Waste-to-Energy Facility have never represented to Kleen Environmental Technologies, Inc. that we would accept untreated biomedical waste from that company.

Signed subject to penalty of perjury under the laws of the State of Washington.



Dennis Hein

Date: 12-02-04

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94 DEC -3 PM 3:54

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In Re Application No. GA-079254 of

KLEEN ENVIRONMENTAL
TECHNOLOGIES, INC.

For a Certificate of Public Convenience and
Necessity

DOCKET NO. TG-040248

**DECLARATION OF REBECCA
JOHNSTON**

ORIGINAL

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1. My name is Rebecca Johnston. I serve as Director of the American Indian Health Commission for Washington State ("AIHC"), a 501(c)(3) organization that works to improve the health of American Indians and Alaska Natives in Washington State through increased tribal-state collaboration. Our membership consists of delegates appointed by the tribal leadership of 26 of the 29 federally recognized tribal governments in Washington, as well as the two urban Indian health clinics located in Washington.

2. As Director of the AIHC, I am familiar with the organizations representing Native Americans nationally on healthcare matters, including the National Indian Health Board ("NIHB"). I am also familiar with the people and organizations representing Washington Indian tribes on healthcare matters.

3. I received a call on the morning of Friday, October 15, 2004, from Leon John, a member of the Swinomish Tribal Senate and the Swinomish Tribe's delegate to the AIHC, asking me if I knew anything about Kleen Environmental Technologies and its pending application before the Washington Utilities and Transportation Commission ("WUTC"). He specifically wanted to know if I was familiar with a Mr. Lancing Birdinground and whether Mr. Birdinground was affiliated with the National Indian Health Board. I told him that I was unfamiliar with any of these matters. At that time, he forwarded a copy of the October 12, 2004 letter to the Utilities and Transportation Commission signed by Mr. Birdinground on what purported to be National Indian Health Board ("NIHB") letterhead but with an address in Kingston, Illinois. When I received the letter, I called Mr. John back and told him that I would look into the matter because the NIHB does not have an office in Kingston, Illinois, there is no "regional" structure at the NIHB, and Mr. Birdinground is not an NIHB delegate representing any tribe in the Northwest, nor is he authorized to unilaterally represent the views of Washington's sovereign tribal governments.

4. To learn more about the matter, I attempted to phone Mr. Birdinground at the telephone number listed on the October 12 letter, but was placed into a voice mailbox that did not have any identifying information. I left a brief message, which has not been returned.

5. I then phoned Kleen Environmental Technologies, Inc. ("Kleen") directly. Mr. Robert Olson answered the phone. I told him who I was and why I was calling. He said that Mr. Allen McCloskey knew about the matter and transferred the call to Mr. McCloskey.

6. I then spoke with Mr. McCloskey. I identified myself, explained the AIHC's organizational structure, and expressed my concerns about the validity of the letter from Mr. Birdinground. Mr. McCloskey replied that a widespread call for letters of support had been issued and that Kleen had received a stack of letters, including the one signed by Mr. Birdinground. He said that he did not know Mr. Birdinground and was not

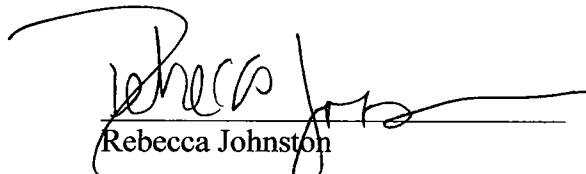
familiar with the NIHB's location or structure. He apologized for not conducting due diligence to verify its authenticity and stated that it was one of many letters of support Kleen had received.

7. I asked Mr. McCloskey about the statement in Mr. Birdinground's letter in which he said that he had had a long business relationship with Kleen and Mr. McCloskey replied that this statement was not true. Mr. McCloskey said that he was sorry that the letter made it into the WUTC record because it would make Kleen look bad while they are working on a sensitive matter. He said that he would contact Kleen's attorney and request that the letter be removed from the record and that he would send the Commission a follow-up letter regarding the matter.

8. I received a letter signed by Mr. McCloskey later that day by fax. In this letter, Mr. Closkey requested that I inform the members of the AIHC that Kleen had no knowledge of Mr. Birdinground's letter and that Kleen had never been in contact with Mr. Birdinground.

9. On Tuesday, October 19, I received a telephone call from Mr. McCloskey asking me if I had received his letter and requesting that I provide him with a statement that would acknowledge the steps taken by Kleen to remove the letter from the record of the WUTC proceeding and acknowledge that Kleen did not have any knowledge of or contact with Mr. Birdinground. I told him that, because I did not know anyone at Kleen nor did I know Mr. Birdinground, I was not comfortable making any statement about the origins of the letter. I did send him a follow-up e-mail thanking him for his quick response to the concerns I raised.

Signed at Seattle, Washington subject to penalties of perjury under the laws of the State of Washington.



Rebecca Johnston
Date: 10-25-2004