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August 5, 1992

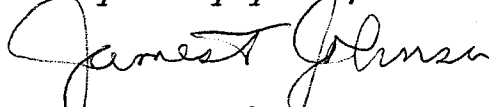
Mr. Paul Curl, Secretary  
Washington Utilities & Transportation Commission  
1300 South Evergreen Park Drive S.W.  
Olympia, Washington 98504

Re: Enoch Rowland d/b/a Kleenwell Biohazard  
Docket No. TG920304

Dear Secretary Curl:

Enclosed please find the original and three (3) copies of the  
Reply Brief in this matter.

Very truly yours,



James T. Johnson

cc: Lisa Anderl  
Enoch Rowland  
Steven W. Smith  
Richard A. Finnigan  
James Sells  
Boyd Hartman  
David Wiley  
Cindy Horenstein

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1 interest purportedly served by the certificate requirement is the  
2 assumption that the public health and safety will be endangered if  
3 state-wide transportation services cannot be compelled. However,  
4 as in Medigen the state and the intervenors offer scant evidence of  
5 how the requirement protects the public health, safety and welfare.

6 We rely, as did the plaintiffs in Medigen, on Buck v.  
7 Kuykendall, 267 U.S. 307 (1925), and George W. Bush & Sons v.  
8 Malloy, 267 U.S. 317 (1925), for the proposition that states cannot  
9 require interstate carriers to obtain certificates of convenience  
10 and necessity before operating solely in interstate commerce. The  
11 state's primary purpose is not regulation with a view to safety or  
12 to conservation of the highways, but the prohibition of  
13 competition.

14 Before and after Buck and Bush, it has been consistently held  
15 that a state may not require a certificate of convenience and  
16 necessity from a carrier engaged exclusively in interstate commerce  
17 before it can operate within the state's borders. E.g., Sprout v.  
18 South Bend, 277 U.S. 163, 171 (1928).

19 The privilege of engaging in interstate commerce is one which  
20 a state cannot deny. Interstate Buses Corp. v. Holyoak St. Ry.  
21 Co., 273 U.S. 45, 51 (1927).

22 A state statute which does not regulate "the manner of use,  
23 but the persons by whom the highways may be used. . .is forbidden  
24 by the Commerce Clause."

25 As to whether or not Kleenwell is engaged in interstate  
26 commerce, we need to look to CCH federal carriers cases. Federal

1 Carriers Reporter, ¶67 wherein it is stated:  
2

3 Section 10521(a)(1)(A) and (B) of the Act gives the  
4 Interstate Commerce Commission jurisdiction over  
5 transportation by motor carrier of passengers and  
6 property and that procurement of that transportation  
7 between a place in a state and a place in another state  
8 or between places in a state through another state.

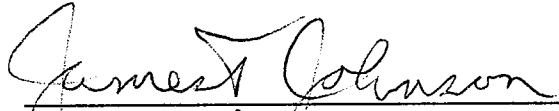
9 The commission's jurisdiction over the transportation of a  
10 shipment in interstate commerce begins when the shipment has  
11 started on its course of transportation to another state, or has  
12 been delivered to a carrier for such transportation, and ends when  
13 the shipment reaches the ultimate destination intended by the  
14 parties who control the movement. In determining whether a  
15 particular movement is interstate or intrastate, the shipper's  
16 fixed and persistent intent existing at the time of the movement  
17 starts governs the character of the commerce.

18 Whether transportation is interstate or intrastate is  
19 determined by the essential character by the commerce, manifested  
20 by the shipper's fixed and persisting transportation intent at the  
21 time of the shipment, and is ascertained from all the facts and  
22 circumstances surrounding the transportation. Southern Pacific  
23 Transportation v. ICC, 565 F.2d 615, 1978 Federal Carriers Cases  
24 ¶82,740.

25 In the instant case, the intent has always been that the  
26 medical waste in question moved to a storage facility until a  
sufficient quantity has been accumulated and then traffic moves  
from the storage facility to the out-of-state destination. Every  
portion of this trip is in interstate commerce.

1 Giving the Medigen case the deference it is due, the decision  
2 must be that the certificate requirement cannot be applied to the  
3 activities of Kleenwell.

4 DATED this 5<sup>th</sup> day of August, 1992.

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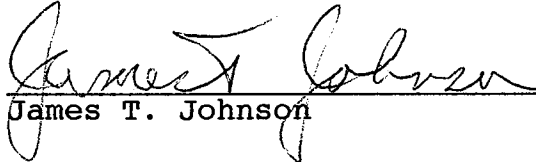
7 James T. Johnson  
8 Attorney for Kleenwell Biohazard  
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CERTIFICATE OF SERVICE

I, James T. Johnson, counsel for Enoch Rowland and Kleenwell Biohazard, do hereby certify that I have served a copy of the foregoing Reply Brief on each party of record, mailing by first class mail properly addressed with postage prepaid on the 5th day of August, 1992.

DATED this 5<sup>th</sup> day of August, 1992.

  
James T. Johnson