

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
October 23, 1990

In Re: A-00108155

(See letter of 6/20/90)

Application of Central Transport, Inc.
A Corporation of the State of North Carolina, for the right to transport, as a common carrier, property, in bulk, in tank and hopper-type vehicles, between points in Pennsylvania.

TELEPHONIC PREHEARING CONFERENCE NOTICE

TELEPHONE HEARING DATE: Tuesday, November 6, 1990

TIME OF TELEPHONE HEARING: 10:00 a.m.

A formal telephonic hearing will be held in this proceeding. At the above date and time, the Judge will contact the parties as follows:

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- William A. Chestnut, Esq. (717) 237-5252
- Christian V. Graf, Esq. (717) 236-9318
- Henry M. Wick, Esq. (412) 765-1600
- Kenneth A. Olsen, Esq. (201) 234-0301
- Ronald W. Malin, Esq. (716) 664-5210
- Raymond A. Thistle, Esq. (215) 576-0131
- Louis J. Carter, Esq. (215) 879-8665
- James W. Patterson, Esq. (215) 931-0692
- William J. Lavelle, Esq. (412) 471-1800
- William J. O'Kane, Esq. (215) 363-4212

PRESIDING OFFICER: Administrative Law Judge Michael Schnierle
P.O. Box 3265, Harrisburg, Pennsylvania
17120; telephone (717) 783-5452.

Additionally, further hearings are now scheduled for Tuesday and Wednesday, December 4 and 5, 1990, at 10:00 a.m., in Harrisburg.

- cc: Judge Schnierle
- Mr. Bramson
- Mrs. Kelly
- Mrs. Howell
- File Room

114



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

October 26, 1990

IN REPLY PLEASE
REFER TO OUR FILE

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All Parties:

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SECRETARY'S OFFICE
Public Utility Commission

RE: Application of Central Transport, Inc.
Docket No. A-00108155

By order adopted on August 16, 1990 and entered on August 23, 1990, the Commission granted the Petition to Reopen the Record filed by Matlack in this proceeding. The Commission remanded the case to the Office of Administrative Law Judge "for the limited purpose of obtaining testimony and evidence regarding Central Transport's Clean Water Act violations and, any other environmental or safety violations occurring or becoming known since the close of the evidentiary record in this proceeding, and the issuance of a supplemental initial decision." (Opinion and Order at 9-10). In accordance with the Commission's remand, this case has been set for a telephonic prehearing conference on Tuesday, November 6, 1990, at 10:00 a.m. and for further hearing on December 4 and 5, 1990.

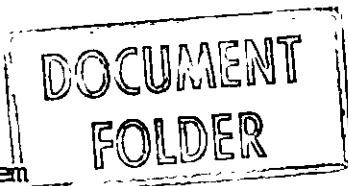
The purpose of this letter is to determine which of the remaining protestants continue to have an interest in this proceeding and, accordingly, wish to participate in the prehearing conference. To avoid the necessity of connecting a conference call with 10 participants in addition to the presiding officer, I am requesting that counsel for each of the protestants notify my office by mail or telephone no later than Thursday, November 1, 1990, whether they wish to participate in the prehearing conference scheduled for November 6. With your cooperation, the Office of ALJ can avoid contacting counsel for parties who have no further interest in this proceeding.

Your continued cooperation in the efficient litigation of this proceeding is appreciated.

Very truly yours,

Michael C. Schnierle

MICHAEL C. SCHNIERLE
Administrative Law Judge



MCS:mem

A-108155 - Parties of Record:

William A. Chesnutt, Esquire
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Christian V. Graf, Esquire
David H. Radcliff, Esquire
Graf, Andrews & Radcliff, P.C.
407 North Front Street
Harrisburg, PA 17101

Henry M. Wick, Jr., Esquire
Wick, Streiff, Meyer, Metz & O'Boyle
1450 Two Chatham Center
Pittsburgh, PA 15219

Kenneth A. Olsen, Esquire
P.O. Box 357
Gladstone, NJ 07934

Ronald W. Malin, Esquire
Johnson, Peterson, Tener & Anderson
Key Bank Building, Fourth Floor
Jamestown, NY 14701

Louis J. Carter, Esquire
7300 City Line Avenue
Suite 120
Philadelphia, PA 19151-2291

James W. Patterson, Esquire
Rubin, Quinn & Moss
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, PA 19106

William J. Lavelle, Esquire
Vuono, Lavelle & Gray
2310 Grant Building
Pittsburgh, PA 15219

William J. O'Kane, Esquire
Chemical Leaman Tank Lines, Inc.
102 Pickering Way
Exton, PA 19341-0200

cc: New Filing
Mr. Bramson
Chief ALJ/Pappas/Scheduler

LAW OFFICES
LOUIS J. CARTER
7300 CITY LINE AVENUE
PHILADELPHIA, PA. 19151-2291
(215) 879-8665

LOUIS J. CARTER*
JOEL E. MAZOR**
JILL EISEMAN BRONSON***

TELECOPIER # (215) 877-0955

IN REPLY PLEASE
REFER TO FILE NO.

* PENNA. & D.C. BAR
** PENNA. & N.Y. BAR
***NEW YORK BAR ONLY

October 29, 1990

Hon. Michael C. Schnierle
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

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OFFICE OF A.L.J.
SECRETARY'S OFFICE
Public Utility Commission

Re: Application of Central Transport, Inc. A.00108155
(Protest of American Eagle Express, Inc.)

Dear Judge Schnierle:

In response to your letter of October 26, 1990 concerning the prehearing conference for Tuesday, November 6, 1990, I take this opportunity to advise you that American Eagle Express, Inc., protestant does not desire to participate in the prehearing conference.

Sincerely,

Lou J. Carter
LOUIS J. CARTER

LJC/kmd
cc: American Eagle Express, Inc.

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Admitted to Practice In:

New Jersey

Pennsylvania

Kenneth A. Olsen .

Attorney at Law

P. O. Box 357

Gladstone, New Jersey 07934-0357

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SECRETARY'S OFFICE
Public Utility Commission

October 30, 1990

Hon. Michael C. Schnierle, ALJ
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

Dear Sir:

Re: Application of Central Transport, Inc.
No. A-00108155

As your records will indicate, I represent Protestant, Marshall Service, Inc., in the above captioned proceeding. Pursuant to your letter dated October 26, 1990, please be advised my client has informed me that it does not desire to participate in the prehearing conference scheduled for November 6, 1990 and in the further hearings on December 4 and 5, 1990, scheduled only for the limited purposes set forth in Ordering Paragraph No. 3 of the Commission's Opinion and Order Adopted August 16, 1990 and Entered August 23, 1990. However, I, on behalf of my client, still desire to remain a party of record for the purpose of receiving any Commission Decision, Order, etc.

Kindly acknowledge receipt on the duplicate of this letter attached. A self-addressed stamped envelope is enclosed for your convenience.

Your cooperation and understanding are greatly appreciated.

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FOLDER

Very truly yours,

Kenneth A. Olsen
Kenneth A. Olsen

KAO:jmf

Encl.

cc with encl.: Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

All Parties of Record

Marshall Service, Inc.

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KJR

LAW OFFICES

VUONO, LAVELLE & GRAY

(412) 471-1800

2310 GRANT BUILDING

PITTSBURGH, PA. 15219-2383

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUONO *
RICHARD R. WILSON
DENNIS J. KUSTURISS
CHRISTINE M. DOLFI
PAUL J. STELIOTES

TELECOPIER
(412) 471-4477

October 30, 1990

* ALSO MEMBER OF FLORIDA BAR

Re: Central Transport, Inc. (N.C.)
Docket No. A-00108155

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OFFICE OF A.L.J.
HARRISBURG

Honorable Michael C. Schnierle
Administrative Law Judge
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

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SECRETARY'S OFFICE
Public Utility Commission

Dear Judge Schnierle:

In response to your letter of October 26, 1990 concerning the telephonic prehearing conference to be held on Tuesday, November 6, 1990 at 10:00 a.m., please be advised that we are no longer actively participating in the case for Dart Trucking Company, Inc. and it will not be necessary to include us in the prehearing conference. We had withdrawn the Dart protest on November 1, 1988 at the first hearing in Harrisburg. This letter will confirm the telephone information I left with your secretary on October 29, 1990.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle
William J. Lavelle

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DO NOT
FORGET

APPEARANCE SHEET

KJR

ALJ HEARING REPORT

DOCKET NO. A-00108155

CASE NAME Central Transport, Inc.

HEARING LOCATION Harrisburg, PA.

HEARING DATE November 6, 1990

ALJ Schnierle

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO

Testimony taken YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days Already scheduled

RECORD CLOSED YES NO
Date

Briefs to be filed YES NO
Date

BENCH DECISION YES NO

REMARKS: _____

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Office of A. L. J.
Public Utility Commission

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
William A. Chesnutt McNees, Wallace + Nurick Telephone No. ()	100 Pine St. P.O. Box 1166 City State Zip Harrisburg PA 17108-1166	Central Transport, Inc.
James W. Patterson Rubin, Quinn + Moss Telephone No. ()	1800 Penn Mutual Tower 510 Walnut St. City State Zip Phila. PA 19106	Matlack, Inc
Ronald W. Malin Johnson, Peterson, Tener + Anderson Telephone No. ()	Key Bank Bldg. 4th Floor City State Zip Jamestown NY 14701	Crossett Inc.

CHECK THIS BOX IF ADDITIONAL PARTIES
OR COUNSEL OF RECORD APPEAR ON BACK.



Monta E. Gentile
Reporter
Commonwealth Reporting Co.

Andrew Isman
Pepper, Hamilton +
Scheetz

Telephone No. ()

Address

235 Westlakes Dr.

City

Berwin

State

PA

Zip

19312

Chemical Leaman
Tank Lines, Inc.

Telephone No. ()

Telephone No. ()

Telephone No. ()

Telephone No. ()

Telephone No. ()

Telephone No. ()

Telephone No. ()

Telephone No. ()

Telephone No. ()



CHEMICAL LEAMAN CORPORATION

102 Pickering Way • Exton, Pennsylvania 19341-0200 • 215-363-4200

KJA

November 8, 1990

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**SECRETARY'S OFFICE
Public Utility Commission**

Hon. Michael C. Schnierle, ALJ
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120

Re: Application of Central Transport, Inc.
No. A-00108155

Dear Sir:

As you will recall from our discussion at the prehearing conference on November 6, 1990, I am outside counsel for Chemical Leaman Tank Lines, Inc. Please be advised that Chemical Leaman has decided to not participate in the hearing scheduled for December 4 and 5, 1990 for the limited purposes set forth in Ordering Paragraph No. 3 of the Commission's Opinion and Order adopted August 16, 1990 and entered August 23, 1990.

I would request that I, on behalf of Chemical Leaman, remain a party of record in this matter.

Thank you very much for your consideration in this matter.

Very truly yours,

Andrew B. Eisman
Andrew B. Eisman

cc: Mr. Jerry Rich, Secretary
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA

All parties of record

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**DOCUMENT
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MCNEES, WALLACE & NURICK

ATTORNEYS AT LAW

100 PINE STREET

P. O. BOX 1166

HARRISBURG, PA. 17108-1166

TELEPHONE (717) 232-8000

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OF COUNSEL
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THOMAS C. HERWEG
EXECUTIVE DIRECTOR

F. MURRAY BRYAN
STEPHEN A. MOORE
DANA S. SCADUTO
ELIZABETH A. DOUGHERTY
ALAN R. BOYNTON, JR.
BRUCE D. BAGLEY
MICHAEL G. JARMAN
GARY F. YENKOWSKI
DIANE M. TOKARSKY
BERNARD A. LABUSKES, JR.
JOHN M. ABEL
DAVID M. WATTS, JR.
LAWANA M. JOHNS
WILLIAM G. PRINS
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STEVEN J. WEINGARTEN
DONALD B. KAUFMAN
ABIGAIL A. TIERNEY

ROBERT B. ARMOUR
MARKIAN R. SLOBODIAN
DONNA J. LONG
P. NICHOLAS GUARNESCHELLI
LESLIE A. L. JOHNSON
MARK M. VAN BLARGAN
JONATHAN H. RUDD
ROBERT F. YOUNG
CAROL A. STEINOUR
JEFFREY L. KODROFF

FRANCIS B. HAAS, JR.
G. THOMAS MILLER
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RICHARD R. LEFEVER
CLYDE W. MCINTYRE
S. BERNE SMITH
ROD J. PERA
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W. JEFFREY JAMOUNEAU
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DAVID E. LEHMAN
NORMAN I. WHITE
RICHARD W. STEVENSON
WILLIAM A. CHESNUTT
HENRY R. MACNICHOLAS
WILLIAM M. YOUNG, JR.
ROBERT M. CHERRY

DAVID B. DISNEY
H. LEE ROUSSEL
MAURICE A. FRATER
C. GRAINGER BOWMAN
BURTON H. SNYDER
JOHN S. OYLER
DELANO M. LANTZ
HARVEY FREEDENBERG
JASON S. SHAPIRO
ERIC L. BROSSMAN
ROBERT D. STETS
TERRY R. BOSSERT
MARY JANE FORBES
JEFFREY B. CLAY
DAVID M. KLEPPINGER
NEAL S. WEST
FRANKLIN A. MILES, JR.
MICHAEL A. DOCTROW

November 9, 1990

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
New Filing Section, Room B-18
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

HAND DELIVERY

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SECRETARYS OFFICE
Public Utility Commission

Re: Application of Central Transport, Inc.
PA PUC Docket No. A.00108155
Our File: 12558-0001

Dear Secretary Rich:


Enclosed for filing with the Commission please find an original and two (2) copies of Motion of Applicant Central Transport, Inc. to Take Official Notice of Facts in the above-referenced proceeding.

Copies have also been served on all parties of record as indicated by the attached Certificate of Service.

Please kindly date stamp the additional copy of this letter of transmittal for return to my office verifying your receipt of these documents.

Respectfully submitted,

MCNEES, WALLACE & NURICK

By 
William A. Chesnutt
Counsel for Applicant
Central Transport, Inc.

WAC/law

Enclosures

cc: Attached Certificate of Service (w/enclosures)
W. David Fesperman (w/enclosures)
John Doyle, Esquire (w/enclosures)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARYS OFFICE
Public Utility Commission

In re: Application of :
Central Transport, Inc. : Docket No. A-108155

MOTION OF APPLICANT CENTRAL TRANSPORT, INC.
TO TAKE OFFICIAL NOTICE OF FACTS

Pursuant to 52 Pa. Code §5.103 and §5.408, applicant Central Transport, Inc., moves the Administrative Law Judge to take official notice of the fact that on March 29, 1990, protestant Matlack, Inc. was named a defendant in a complaint filed in the United States District Court, District of New Jersey, in which the United States, on behalf of the Administrator of the United States Environmental Protection Agency (EPA), seeks recovery of response costs, declaratory relief for future costs against Matlack and also seeks, with respect to Matlack, the imposition of civil penalties and punitive damages owing to its failure to comply with EPA orders previously issued. The details concerning the action against Matlack, Inc. are contained in a 17-page Complaint, a copy of which is attached to this Motion as Appendix A. At the reopened hearing scheduled to commence in this matter December 4, 1990, counsel for applicant Central Transport, Inc. will introduce for receipt into evidence a certified copy of the Complaint.

In support of its motion for taking of official notice, applicant states as follows:

1. The Opinion and Order by the Commission adopted August 16, and entered August 23, 1990, provides in pertinent part

that this proceeding be, and hereby is, remanded to the Office of Administrative Law Judge, for the

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limited purpose of obtaining testimony and evidence regarding...any other environmental or safety violations occurring or becoming known since the close of the evidentiary record in this proceeding....

(Opinion and Order, pp. 9-10)

2. The Complaint filed by the United States, on behalf of the EPA, against Matlack was lodged in the United States District Court, District of New Jersey on March 29, 1990, which is "since the close of the evidentiary record in this proceeding".

3. The allegations in the Complaint against Matlack concern "environmental violations" within the meaning of the Commission's order. In summary, the Complaint against Matlack in Federal District Court in New Jersey relates to 3.6 acres of land known as the Scientific Chemical Processing Site (SCP Site). The EPA determined that hazardous substances had spilled at the site and that the site drained through storm sewers into Newark Bay. It is further alleged that a significant potential for fire or explosion existed at the site which could have resulted in the formation of a toxic cloud threatening three major arterial highways, a residential population of about 25,000 people within one mile of the site and approximately 200 people who worked within 1,500 feet of the site. The Complaint states:

Defendant Matlack accepted hazardous substances for transport to the SCP Site, selected by Matlack and/or by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Matlack, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances

were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such hazardous substances were located at the Site and were released or were threatened to be released from the Site.

By order issued April 3, 1985 Matlack was required to undertake immediate corrective actions at the SCP Site. That order was issued to and received by Matlack. Matlack failed and/or refused to comply with the terms of the April 3, 1985 order without sufficient cause. Civil penalties are sought against Matlack for "up to \$5,000 per day beginning April 13, 1985 through October 17, 1986 for each and every day that...Defendant failed and/or refused to comply with the EPA order." In addition penalties are sought against Matlack for "up to \$25,000 per day beginning October 18, 1986 until completion of the removal action on April 7, 1987 for each and every day that...Defendant failed and/or refused to comply with the EPA orders." Finally, punitive damages are sought against Matlack "in an amount at least equal to and not more than three times the amount of costs incurred and to be incurred by the Superfund as a result of...failure to take proper removal actions as required by EPA orders."

3. The Administrative Law Judge presiding in this matter has already ruled that "violations of...environmental...laws and regulations" by protestant carriers are relevant and pertinent to the issues in this proceeding, and that evidence concerning such violations is admissible. (See, Initial Decision dated March 5, 1990, pp. 138-139).

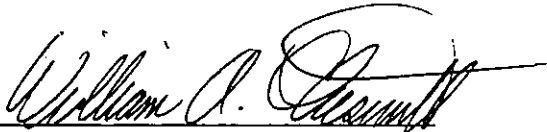
4. Even though the Complaint brought by the United States on behalf of EPA against Matlack at Civil Action No. 90-1279(HLS) in the United States District Court, District of New Jersey has not been finally adjudicated, the Commission is nevertheless required "to give proper consideration to allegations" of such serious misconduct. Limelight Limousine, Inc. v. PA PUC, ___ Pa. Commw. Ct. ___, 580 A.2d 472 (1990).

CONCLUSION

WHEREFORE, applicant Central Transport, Inc. urges the Administrative Law Judge to take official notice of the filing and content of the Complaint by the United States on behalf of EPA against Matlack, and direct that, if Matlack desires to present further evidence concerning that matter, that it do so at the hearings scheduled for December 4 and 5. Such a directive would conform with the Judge's admonition at the telephonic prehearing conference that the hearings scheduled for those dates be used fully to complete the evidentiary presentation in this matter.

Respectfully submitted,

McNEES, WALLACE & NURICK

By 

William A. Chesnutt
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Counsel for Applicant
Central Transport, Inc.

Dated: November 9, 1990

PAUL G. SHAPIRO
 Assistant United States Attorney
 970 Broad Street
 Newark, New Jersey 07102
 (201) 621-2939

RICHARD H. BOOTE
 Senior Attorney
 U.S. Department of Justice
 Land and Natural Resources Division
 10th Street and Pennsylvania Ave.
 Washington, D.C. 20530
 (202) 633-2128

FILED

MAR 29 1990
 AT 8:30 443 P M
 WILLIAM T. WALSH
 CLERK.

UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY

_____	:	
UNITED STATES OF AMERICA,	:	HON.
	:	
Plaintiff,	:	Civil Action No.
	:	
v.	:	
	:	<u>COMPLAINT</u>
AUTOMATION COMPONENTS,	:	
INCORPORATED, DELAWARE CONTAINER	:	
COMPANY, INCORPORATED,	:	
ENVIRONMENTAL WASTE RESOURCES,	:	
INCORPORATED, MATLACK SYSTEMS,	:	
INCORPORATED, MAAS & WALDSTEIN	:	
COMPANY, DOMINICK PRESTO,	:	
RANDOLPH PRODUCTS COMPANY,	:	
SETON COMPANY	:	
SIGMOND & PRESTO (a partnership),	:	
	:	
Defendants.	:	
_____	:	

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), for its complaint says:

NATURE OF THE CASE

1. This is a civil action for recovery of response costs and declaratory relief for future costs brought against all of the named defendants by the United States pursuant to §§ 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(g); and also is brought against four of the named defendants for the imposition of civil penalties and punitive damages pursuant to Sections 106(b) and 107(c)(3) of CERCLA, §§ 9606(b) and 9607(c)(3) due to their failure to comply with EPA Orders issued pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The United States seeks to recover costs incurred for response, remedial and investigative activities undertaken as a result of the release or threatened release of hazardous substances at an approximately 3.6 acres of land at 411 Wilson Avenue, Newark, Essex County, New Jersey known as the Scientific Chemical Processing Site ("SCP Site" or "Site"). The United States also seeks the imposition of penalties and punitive damages upon persons who failed to comply with EPA orders to abate the release and threat of release of hazardous substances at the Site.

JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1345 and 1355 and pursuant to 42 U.S.C. §§ 9606(b) and 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. 9613(b), because the release or threat of release of hazardous substances occurred within this judicial district. Each of the defendants either reside or do business or have resided or have done business within this district at some or all time(s) between 1975 and the present.

THE DEFENDANTS

4. Automation Components, Incorporated ("Automation"), is a Pennsylvania corporation whose principal place of business is 1 Short Avenue, Pecksville, Pennsylvania. Automation is sued for response costs.

5. Delaware Container Company, Incorporated ("Delaware Container"), is a Pennsylvania corporation whose principal place of business is West 11th Avenue and Valley Road, Coatsville, Pennsylvania. Delaware Container is sued for response costs, penalties, and punitive damages.

6. Environmental Waste Resources, Incorporated a/k/a Environmental Waste Removal ("Environmental Waste"), is a Connecticut corporation whose principal place of business is 130 Freight Street, Waterbury, Connecticut. Environmental Waste is sued for response costs.

7. Maas & Waldstein Company ("Maas & Waldstein"), is a New Jersey corporation whose principal place of business is 2121 McCarter Highway, Newark, New Jersey. Maas & Waldstein is sued for response costs, penalties and punitive damages.

8. Matlack, Incorporated ("Matlack"), is a Pennsylvania corporation whose principal place of business is One Rollins Plaza, Wilmington, Delaware. Matlack is sued for response costs penalties, and punitive damages.

9. Dominick Presto ("Presto") is an individual who resides at 18 Glen Road, Rutherford, New Jersey. He is an attorney at law and is admitted to practice in the State of New Jersey. Dominick Presto is sued for response costs.

10. Randolph Products Company, Incorporated ("Randolph"), is a New Jersey corporation whose principal place of business is Park Place East, Carlstadt, New Jersey. Randolph is sued for response costs, penalties and punitive damages.

11. Seton Company ("Seton"), is a New Jersey corporation whose principal place of business is 2500 Monroe Boulevard, Norristown, Pennsylvania. Seton is sued for response costs.

12. Sigmond & Presto is a partnership formed by Dominick Presto and Leif Sigmond with its principal address at 18 Glen Road, Rutherford, New Jersey. Sigmond & Presto is sued for response costs.

13. Each of the named defendants is a "person" as defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

14. The SCP Site is located in an industrial neighborhood and, in 1984, included a two-story brick main building, which contained a laboratory, and a smaller one-story brick building.

15. On or about January 10, 1984, the New Jersey Department of Environmental Protection ("NJDEP") requested that EPA conduct a Removal Action at the SCP Site.

16. At that time, approximately 4,868 55-gallon drums, 53 tanks and 9 tank-trucks of solvent mixtures, sludges and other chemical wastes were located on the SCP Site. At the Site there were also several hundred glass sample jars with various chemical contents and about 100 large carboys of waste etching-acid solutions.

17. Approximately 3049 of the 55-gallon drums at the Site were stored outdoors exposed to the elements. These drums, stacked two high, were spread throughout the yard and contained, inter alia, paint and sludges, chlorinated hydrocarbons, solvent mixtures, acid/alcohol/water mixtures, ink pastes, and labpacks. A "labpack" contains an amalgamation of laboratory chemicals.

18. The tanks and tank-wagons in the yard contained fuel, Polychlorinated Biphenyl ("PCB") waste and fuel/water, alcohol/water mixtures.

19. Identification of substances and analysis of samples taken from drums, lab-packs, tanks and tank-trucks at the SCP disclosed that there were hazardous substances present including but not limited to PCBs, toluene, benzene, xylene, trichloroethylene, tetrachloroethylene, perchloroethylene, arsenic, cadmium, chromium, lead and selenium.

20. At the time NJDEP requested that EPA undertake a removal action at the Site, many of the drums, transfer lines for

the tanks and drums, and many of the tanks and tank-trucks were leaking. Other drums, not leaking, had deteriorated significantly. EPA determined that hazardous substances had spilled at the Site, contaminating the soil as well as the pallets upon which drums were stored. The SCP Site drains, through storm sewers, into Newark Bay.

21. Much of the waste material stored at the Site at the commencement of EPA's response action had a low flash point. There was, therefore, a significant potential for fire or explosion. A fire or explosion at the Site could have resulted in the formation of a toxic cloud threatening three major arterial highways, a residential population of about 25,000 people within one mile of the Site, and approximately 200 people who worked within 1500 feet of the Site.

22. The United States has incurred and will continue to incur response costs in connection with the SCP Site. These response costs include money spent and to be spent for sampling, inspection, photography, report preparation and enforcement. To date these costs are in excess of \$222,000.00.

FIRST CLAIM FOR RELIEF - RESPONSE COSTS

23. The allegations of paragraphs 1-22 of this Complaint are incorporated by reference herein as if fully set forth below.

24. Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), provides, in pertinent part:

- (1) the owner and operator of a vessel or a facility,

- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities . . . or sites selected by such person . . .

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan

25. The SCP Site is a facility within the meaning of § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. At all times relevant there were releases and the threat of releases of hazardous substances into the environment at the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

27. Hazardous substances, within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the SCP Site. Such hazardous substances were found at the Site at the time EPA commenced its response actions at the Site.

28. At all times relevant, there have been releases and/or substantial threats of releases of hazardous substances from the

SCP Site into the environment within the meaning of § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

29. The actions taken, and costs incurred, by the United States at the SCP Site constitute response actions and costs pursuant to § 101(25) of CERCLA, 42 U.S.C. § 9601(25).

30. The response costs incurred for the removal actions taken by the United States were not and are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

31. Defendants Dominick Presto and the partnership of Sigmund & Presto were and/or are owners and/or operators of the SCP Site within the meaning of § 101(20) of CERCLA, 42 U.S.C. § 9601(20), at the time of disposal of hazardous substances at the Site.

32. Beginning in about 1975 and continuing until about 1980 Defendant Presto accepted, stored and/or disposed of drummed liquid and solid chemical wastes, including hazardous substances as defined in § 101(14) of CERCLA, 42 U.S.C. § 9601(14), at the SCP Site.

33. Beginning in about 1975 and continuing until about 1980 Defendant Sigmund & Presto accepted, stored and/or disposed of drummed liquid and solid chemical wastes, including hazardous substances as defined in § 101(14) of CERCLA, 42 U.S.C. § 9601(14), at the SCP Site.

34. Defendant Automation by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous

substances owned or possessed by Automation, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such hazardous substances were located at the Site and were released or were threatened to be released from the Site.

35. Defendant Delaware Container by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Delaware Container, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such hazardous substances were located at the Site and were released or were threatened to be released from the Site.

36. Defendant Environmental Waste by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Environmental Waste, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such

hazardous substances were located at the Site and were released or were threatened to be released from the Site.

37. Defendant Maas & Waldstein by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Maas & Waldstein, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such hazardous substances were located at the Site and were released or were threatened to be released from the Site.

38. Defendant Matlack accepted hazardous substances for transport to the SCP Site, selected by Matlack and/or by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Matlack, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such hazardous substances were located at the Site and were released or were threatened to be released from the Site.

39. Defendant Randolph by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous

substances owned or possessed by Randolph, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such hazardous substances were located at the Site and were released or were threatened to be released from the Site.

40. Defendant Seton by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Seton, or owned or possessed by another party or entity, at the SCP Site. These hazardous substances were disposed of or treated at the SCP Site. Prior to EPA undertaking response actions at the SCP Site and until the removal action was completed, such hazardous substances were located at the Site and were released or were threatened to be released from the Site.

41. Each defendant is jointly and severally liable to the United States for all its response costs associated with response actions at the SCP Site, including the costs of removal, remedial actions, enforcement and prejudgment interest.

SECOND CLAIM FOR RELIEF - PENALTIES

42. The allegations of paragraphs 1- of this Complaint are incorporated by reference herein as if fully set forth below.

43. Section CERCLA 106(b)(1) of CERCLA, 42 U.S.C. Section 9606(b), before amendment by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), provides that any person who willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues.

44. Section 106(b)(1) of CERCLA, 42 U.S.C. Section 9606(b), as amended on October 17, 1986 by the Superfund Amendments and Reauthorization Act of 1986 provides that any person who, without sufficient cause, willfully violates, or fails to refuses to comply with any order of the President under section 106(a) of CERCLA may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

45. On or before March 29, 1985, EPA determined that there had been an actual or threatened release of hazardous substances from the SCP Site which posed an imminent and substantial endangerment to the public health, welfare and the environment.

46. On April 3, 1985, EPA issued to forty-two respondents Administrative Order Index No. II-CERCLA-50109 pursuant to the authority of § 106(a) of CERCLA, 42 U.S.C. § 9606(a).

47. The April 3, 1985 Order was issued pursuant to a finding that there was "an imminent and substantial endangerment to the public health, welfare and the environment within the meaning of §106(a) of CERCLA, 42 U.S.C. §9606(a)." That Order required each respondent identified in its caption to, inter alia, undertake immediate corrective actions at the SCP Site in accordance with the directives and schedule specified therein.

48. The April 3, 1985 Order was issued to and was received by Defendants Delaware Container, Matlack, and Randolph.

49. Defendants Delaware Container, Matlack, and Randolph failed and/or refused to comply with the terms of the April 3, 1985 order without sufficient cause.

50. On December 23, 1985, EPA issued to twenty-nine respondents Administrative Order Index No. II-CERCLA-60103 pursuant to the authority of § 106(a) of CERCLA, 42 U.S.C. § 9606(a).

51. The December 23, 1985 Order was issued pursuant to a finding that there was "an imminent and substantial endangerment to the public health, welfare and the environment within the meaning of §106(a) of CERCLA, 42 U.S.C. §9606(a)." That Order required each respondent identified in the caption to, inter alia, undertake corrective actions at the SCP Site in accordance with the directives and schedule specified therein, and in cooperation with the respondents from prior orders who were already acting to clean up the Site.

52. The December 23, 1985 order named as a respondent, was issued to, was received by, and was consented to by, inter alia, Defendant Maas & Waldstein.

53. Defendant Maas & Waldstein failed and/or refused to comply with the terms of the December 23, 1985 order without sufficient cause.

54. Defendants Delaware Container, Matlack, Randolph, and Maas & Waldstein are subject to civil penalties pursuant to § 106(b) of CERCLA, 42 U.S.C. § 9606(b).

THIRD CLAIM FOR RELIEF - PUNITIVE DAMAGES

55. The allegations of paragraphs 1-54 of this Complaint are incorporated by reference herein as if fully set forth below.

56. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provides that any person who is liable for a release or threat of release of a hazardous substance who fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 106 of CERCLA may be liable to the United States for punitive damages of an amount at least equal to, and not more than three times, the amount of any costs incurred by the Superfund as a result of such failure to take proper action.

57. Defendants Delaware Container, Matlack, and Randolph have, without sufficient cause, failed to properly undertake the corrective actions including removal or remedial action required by Administrative Order Index No. II-CERCLA-50109 issued by EPA

pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), and are therefore liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of costs incurred and to be incurred by the Superfund as a result of their failure to take proper action.

58. Defendant Maas & Waldstein has, without sufficient cause, failed to properly undertake the corrective actions including removal or remedial action required by Administrative Order Index No. II-CERCLA-60103 issued by EPA pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), and is therefore liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of costs incurred and to be incurred by the Superfund as a result of its failure to take proper action.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. Enter judgment in favor of plaintiff and against all of the defendants, jointly and severally, for all response costs, including interest, incurred and to be incurred by the United States in connection with the response actions at the SCP Site;

2. Enter judgment in favor of plaintiff and against defendants Delaware Container, Matlack, and Randolph for penalties of up to \$5000.00 per day beginning April 13, 1985

through October 17, 1986 for each and every day that each defendant failed and/or refused to comply with the EPA Order.

3. Enter judgment in favor of plaintiff and against defendant Maas & Waldstein for penalties of up to \$5000.00 per day beginning January 2, 1986 through October 17, 1986 for each and every day that it failed and/or refused to comply with the EPA Order.

4. Enter judgment in favor of plaintiff and against defendants Delaware Container, Matlack, Randolph, and Maas & Waldstein for penalties of up to \$25,000.00 per day beginning October 18, 1986 until completion of the removal action on April 7, 1987 for each and every day that each defendant failed and/or refused to comply with the EPA Orders.

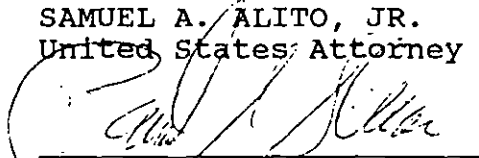
5. Enter judgment in favor of plaintiff and against Defendants Delaware Container, Matlack, Randolph & Maas & Waldstein for punitive damages in an amount at least equal to and not more than three times the amount of costs incurred and to be incurred by the Superfund as a result of their failure to take proper removal actions as required by EPA Orders;

6. Award plaintiff its costs of this action; and
7. Grant such other and further relief as the Court deems just and appropriate.

Dated: 1990
Newark, New Jersey

Respectfully submitted,

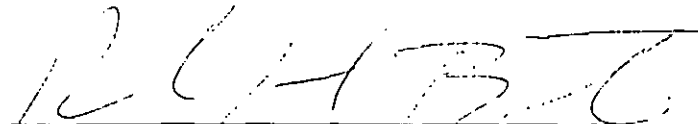
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CERTIFICATE OF SERVICE

I hereby certify that I have served by first-class mail, postage prepaid, the foregoing document on behalf of Applicant Central Transport, Inc. on the following counsel of record:

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Counsel for Applicant
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Dated this 9th day of November, 1990, at Harrisburg, Pennsylvania.

*Denotes Hand Delivery

ORIGINAL

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November 16, 1990

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RECEIVED
NOV 16 1990
SECRETARYS OFFICE
Public Utility Commission

Re: Application of Central Transport, Inc.
Docket No. A-108155

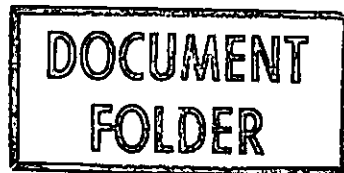
Dear Secretary Rich:

Enclosed please find the original and two (2) copies of the Reply of Matlack, Inc. to the Motion of Central Transport, Inc. To Take Official Notice of Facts.

Copies of the enclosed are being served upon Administration Law Judge Michael C. Schnierle and all active parties of record.

Very truly yours,

James W. Patterson
JAMES W. PATTERSON



JWP/jal
enclosures

cc: Michael C. Schnierle, ALJ
William A. Chesnutt, Esquire
Ronald Malin, Esquire
Henry Wick, Jr., Esquire
Kenneth Olsen, Esquire
Christian V. Graf, Esquire
William O'Kane, Esquire
Gerard Trippitelli, President
J. Carlisle Peet, III, Esquire, General Counsel

ORIGINAL

Before the

Pennsylvania Public Utility Commission

APPLICATION OF:

CENTRAL TRANSPORT, INC.

Docket No.

A-108155

RECEIVED

NOV 16 1990

SECRETARYS OFFICE
Public Utility Commission

Reply

**OF MATLACK, INC. TO
MOTION OF CENTRAL TRANSPORT, INC.
TO TAKE OFFICIAL NOTICE OF FACTS**

DOCKETED

NOV 27 1990

MATLACK, INC.

**By: JAMES W. PATTERSON, ESQUIRE
EDWARD L. CIEMNIECKI, ESQUIRE**

OF COUNSEL:

RUBIN QUINN MOSS HEANEY & PATTERSON
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, PA 19106
(215) 925-8300



REPLY OF MATLACK, INC. TO
MOTION OF CENTRAL TRANSPORT, INC.
TO TAKE OFFICIAL NOTICE OF FACTS

COMES NOW, Matlack, Inc., through its attorneys and files this Reply to the Motion of Central Transport, Inc. ("Central") to Take Official Notice of Facts:

I. STATEMENT OF THE CASE

By application published in the Pennsylvania Bulletin on June 11, 1988 Central requested common carrier authority to transport property in bulk, in tank and hopper type vehicles, between points in Pennsylvania. The application was subsequently amended to eliminate the transportation of certain specified commodities. Despite the amendment six protestants remained active in opposing the grant of authority to Central.

Nine (9) hearings were held before Administrative Law Judge Michael Schnierle. At the conclusion of the hearings, Judge Schnierle directed the parties to file Briefs in sequential order. Central filed a Main Brief and Responding Briefs were filed by four (4) of the remaining six (6) protestants.

By Initial Decision dated March 5, 1990 Judge Schnierle granted Central authority to serve seven (7) of its eight (8) supporting shippers to and/or from certain specifically-identified facilities.

Exceptions and Replies to Exceptions were filed by Central, Matlack, and two other protestants. No Commission Order disposing of the Exceptions has yet been adopted or entered.

On May 29, 1990 Matlack filed a Petition to Reopen Record seeking to reopen the evidentiary record in this proceeding to allow for the introduction of newly-discovered evidence relating Central's guilty plea in connection with certain environmental crimes. A Reply to Matlack's Petition was submitted by Central.

By Opinion and Order entered August 23, 1990 ("Opinion and Order") the Commission granted Matlack's Petition to Reopen and remanded the proceeding to the Office of Administrative Law Judge for the limited purpose of obtaining evidence regarding environmental and safety violations of Central which have occurred or become known since the close of the evidentiary record in this proceeding. In accordance with the Opinion and Order, further hearings have been scheduled for December 4 and 5, 1990.

On November 9, 1990 Central filed a Motion To Take Official Notice Of Facts requesting that the Commission take Official Notice of the filing and content of the Complaint filed in the United States District Court, District of New Jersey on behalf of the Environmental Protection Agency ("EPA") naming Matlack and several others as defendants.

This Reply responds to Central's Motion.

II. ARGUMENT IN REPLY

A. The Evidence Sought To Be Introduced By Central Is Beyond The Scope Of The Commission's Order Reopening The Record

Central's Motion seeks to introduce into this record via official notice a Complaint filed in the United States District Court, District of New Jersey, in which Matlack is a named

defendant.¹

Central's Motion seeks to inject evidence beyond the scope of the Commission's Opinion and Order directing that the evidentiary record be reopened for a "limited purpose". Central's Motion must therefore be denied.

The Commission's Opinion and Order is quite specific regarding the purposes for which the record in this proceeding is to be reopened. The Opinion and Order directs

1. That the Petition to Open Record filed by Matlack, Inc. on May 31, 1990, be, and hereby is, granted consistent with this Opinion and Order.²

. . . .

3. That this proceeding be, and hereby is remanded to the Office of Administrative Law Judge, for the limited purpose of obtaining testimony and evidence regarding Central Transport, Inc. Clean Water Act violations, and any other environmental or safety violations occurring or becoming known since the close of the evidentiary record in this proceeding, and the issuance of a Supplemental Initial Decision.³ Opinion and Order, pp. 9-10 (emphasis added).

Matlack's Petition seeking a reopening of this record referred to violations committed by Central - those

¹ Central also indicated its intention to introduce into evidence a certified copy of the Complaint at the further hearing to be held in this matter on December 4, 1990.

² Paragraph 2 of the ordering portion of the Opinion and Order denies Matlack's Motion to Strike Portion of the Reply to Petition to Reopen Record. It is irrelevant to the issues addressed in this Reply.

³ In quoting this paragraph in its Motion, Central omits the phrase "Central Transport, Inc. Clean Water Act violations, and", thereby altering the context and import of the Commission's Order.

violations were the "newly discovered evidence" referred to by the Commission in reopening this proceeding. Opinion and Order, p.8. The subject matter dealt with by the Commission in deciding to reopen related to Central's fitness. Matlack's Petition requested that this proceeding be reopened in order to, inter alia, 1. require Central to introduce evidence regarding its violations of the Clean Water Act; 2. determine the manner in which Central's violations impact upon its Pennsylvania operations and its fitness to hold Pennsylvania intrastate authority; 3. allow Central to present evidence regarding mitigating circumstances that may have been present at the time of the Clean Water Act violations; and 4. permit protestants to introduce testimony and evidence regarding Central's Clean Water Act violations and any other environmental or safety violations occurring or becoming known since the close of the evidentiary record in this proceeding.

Since Matlack's Petition to Reopen sought reopening for the receipt of evidence relating to Central's violations, the Commission's grant of said Petition and its directive that additional evidence be received could logically only apply to the taking of evidence relating to violations committed by Central. The 'ordering' paragraphs must be read within the context of the whole Opinion and Order.

The Discussion section of the Opinion and Order addresses solely the Clean Water Act violations to which Central admitted guilt and the manner in which evidence relating to those violations constitutes newly-discovered evidence justifying a

reopening of the record. The Commission concludes its discussion of the merits of Matlack's Petition to Reopen with the following:

We find that the evidence sought to be introduced by Matlack has significant and far reaching public safety implications. Furthermore, we deem the newly discussed (sic) [discovered] evidence to be in accord with the standards enunciated in the Duick Case, cited supra. For all of the foregoing reasons, we shall grant Matlack's Petition to Reopen the Record in the instant proceeding. Opinion and Order, p.8.

The evidence "sought to be introduced by Matlack" - that which has "far reaching public safety implications" - was Central's environmental violations. Considered within the context of the entire Opinion and Order and, in particular, the above-quoted language, the clear intent of the Commission in remanding this matter and reopening the record was for the receipt of testimony and evidence regarding Central's Clean Water Act violations, Central's environmental violations and Central's safety violations that occurred or became known since the close of the evidentiary record.⁴ Central's Motion is a "crimson herring" - an attempt to divert attention from its own problems. Matlack is not the applicant whose fitness is in question; Central is. The limited purpose for which this matter has been reopened circumscribes the evidence admissible. Central seeks to go beyond. Its Motion should be denied.

⁴ In point of fact, no party has ever requested a reopening of this record for a purpose other than for the receipt of evidence regarding environmental or safety violations committed by Central. The Opinion and Order can not be read to extend beyond the specific relief sought by Matlack's Petition to Reopen.

B. Central Has Purposefully Misread The Limited Purpose Of Reopening


Although Central may be uncomfortable in the bright light shed by its difficulties, that is no warrant for misreading the Commission's Opinion and Order and endeavoring to direct attention to one of the protestants by mentioning that there are allegations pending against it.

To reason that evidence of a lawsuit involving Matlack is relevant to the limited purpose for which this record was reopened would require that the Order's phrase ". . . and any other environmental or safety violations . . ." be divorced from its Central Transport context. Divorced from that context the phrase is without parameters; without the modifier, environmental or safety violations committed by any entity would then be viewed as admissible. Whose violations? Central's? The protestants? All other carriers operating in Pennsylvania? Central's interpretation is untenable and plainly contrary to the whole purpose of the reopening.

The evidence and testimony to be produced at the reopened proceeding should be limited to that which bears on Central's safety and environmental problems. Nothing could be clearer than that the Commission is interested in whether to certificate Central and wants additional background on Central's environmental and safety behavior - not Matlack's behavior or that of any other carrier, protestant or not. The testimony and evidence taken in this re-opened matter should be so limited.

WHEREFORE, Matlack, Inc. requests the issuance of an Order denying the Motion of Central Transport, Inc. and directing that the evidence to be presented at the further hearings in this matter be limited to that relating to (1) Clean Water Act, (2) safety, or (3) environmental violations of Central occurring or becoming known after June 28, 1989.

Respectfully submitted,



JAMES W. PATTERSON
EDWARD L. CIEMNIECKI
Attorneys for Matlack, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Reply of Matlack, Inc. To Motion of Central Transport, Inc., were served upon the following by United States mail, postage prepaid.

Dated at Philadelphia, Pennsylvania this 16th day of November, 1990.

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