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

KJR

ISSUED: August 16, 1991

IN REPLY PLEASE
REFER TO OUR FILE

A-00108155

WILLIAM A CHESTNUT ESQUIRE
100 PINE STREET
PO BOX 1166
HARRISBURG PA 17108

Application of Central Transport, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision On Remand of Administrative Law Judge Michael C. Schnierle. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc:ALJ Schnierle/Office of ALJ/S&C/Trans./Law Bureau/Mr.Bramson/OSA/Chairman Commissioners/Correspondence/OUR FILE

Very truly yours,

smk
Encls.
Certified Mail
Receipt Requested

Allison K. Turner
Chief Administrative Law Judge

SIMILAR LETTER LIST ATTACHED:

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

INITIAL DECISION ON REMAND

History of the Proceedings

On March 21, 1988, Central Transport, Inc. (Central or Applicant) filed an application seeking Commission authorization to transport:

> Property, in bulk, in tank and hopper-type vehicles, between points in Pennsylvania.

Central subsequently filed several restrictive amendments which resulted in the withdrawal of all but six of the protestants. As amended, the application seeks the following authority:

> Property, in bulk, in tank and hopper-type vehicles, between points in Pennsylvania.
>
> Provided that no right, power, or privilege is granted to transport asphalt, cement, cement mill waste, dolomitic limestone and dolomitic limestone products, dry litharge, fly ash, limestone and limestone products, mill scale, roofing granules, salt, sand, scrap metal and stack dust.
>
> Provided that no right, power or privilege is granted to transport aviation gasoline, butane, diesel fuel, fuel oil (grades 2, 4, 5 and 6), gasoline, kerosene, motor fuel, propane, turbo fuel, cryogenic liquids, dispersants and refrigerant gases.
>
> Provided that no right, power or privilege is granted to transport corn syrup and blends of corn syrup, flour, honey, milk and milk

products, molasses, sugar and sugar substitutes.

Provided that no right, power or privilege is granted to perform transportation in dump vehicles.

Provided that no right, power or privilege is granted to provide services from the facilities of PENNWALT Corporation, located in the county of Philadelphia, or in the county of Bucks, to points in Pennsylvania and vice versa.

(Applicant's Supplemental Exhibit 5).

After several days of hearing, and the filing of briefs by several parties, I issued an Initial Decision on March 16, 1990, in which I granted the application in part. Exceptions and reply exceptions were filed to the Initial Decision. Also filed by Matlack, Inc., a protestant, was a petition to reopen the record. Central opposed the petition.

By order adopted on August 16, 1990, and entered on August 23, 1990, Matlack's petition to reopen was granted. The Commission directed that the proceeding be 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." (Slip Op. at 9-10). By letter dated October 23, 1990, the Office of Administrative Law Judge

notified the parties that a telephonic prehearing conference would be held on November 6, 1990, and that further hearings would be held on December 4 and 5, 1990.

On November 9, 1990, Central filed a Motion To Take Official Notice Of Facts. By its motion, Central requested me to take official notice of certain evidence regarding environmental violations on the part of protestant Matlack which became known after the close of the evidentiary record. On November 16, 1990, Matlack filed a Reply to Central's Motion To Take Official Notice Of Facts. In its Reply, Matlack maintained that the evidence sought to be introduced by Central was beyond the scope of the Commission's remand order.

By Order dated November 28, 1990, I ruled that the evidence proffered by Central, while relevant, was beyond the scope of the Commission's remand order. By separate Order on that same date, I certified my ruling to the Commission as a material question. After receiving briefs from the concerned parties, the Commission adopted an order on January 31, 1991, confirming my interpretation of the remand order.

A hearing was held to receive evidence as directed in the remand order on December 4, 1990. That hearing resulted in a record upon remand of 75 pages of recorded testimony and eight exhibits; one additional exhibit, offered by Central, was not

admitted into the record. Central, Matlack and Crossett (another protestant) filed briefs.

Summary of the Evidence

Matlack introduced into the record seven exhibits pertaining to environmental violations on the part of Central.

Exhibit MR-1 is a list of docket entries in the proceeding The United States of America v. Central Transport, Inc., Docket No. C-CR-90-27. The docket entries indicate that a Bill of Information was filed on March 5, 1990. Central waived arraignment on the same date and entered into a plea agreement whereby it agreed to plead guilty to the three counts contained in the Bill of Information. A Judgment and Commitment Order also was issued on March 5, 1990 and filed on March 8, 1990.

Exhibit MR-2 is the Bill of Information which sets forth the allegations against Central and alleges that Central knowingly introduced into the public sewer system pollutants which it knew or reasonably should have known could cause personal injury or property damage. The Information contains three separate counts which alleged that such violations occurred on April 28-29, 1987, April 30-May 1, 1987 and May 4-5, 1987.

Exhibit MR-3 is the Judgment and Commitment Order affirming that Central entered a plea of guilty and assessing certain monetary fines and other penalties against Central for its violations.

Exhibit MR-4 is the Plea Agreement whereby Central acknowledged its guilt for the violations contained in the Bill of Information and agreed to the fines and penalties set forth in the Judgment and Commitment Order.

Exhibits MR-5, MR-6 and MR-7 are Notices of Non-Compliance dated May 31, 1990, August 24, 1990, and September 18, 1990, respectively, relating to tests conducted at Central's Charlotte facility indicating that unacceptable levels of certain contaminants were found in waste water discharged by Central.

John Doyle is an attorney whose firm has represented Central in a number of litigation matters. He first became aware of the federal investigation of Central's operations on or about May 13, 1987, when he received a telephone call from officials at Central's Charlotte, North Carolina terminal. He received a call indicating that the Federal Bureau of Investigation (FBI) had served a search warrant at the facility. (Tr. 708-710).

Central maintains a terminal in Charlotte. As part of that terminal Central has a tank wash where the trailers are cleaned after use. The subject of the search warrant was an allegation that Central had been dumping untreated waste water into the Charlotte-Mecklenburg sewer system. (Tr. 710-711). After receiving the search warrant, Mr. Doyle met with FBI representatives, and initiated his own investigation on behalf of Central to determine whether there was any substance to the

allegations. Mr. Doyle pursued his investigation by conducting interviews of employees at the Charlotte facility and at High Point to determine whether, in fact, untreated waste water had been discharged into the Charlotte-Mecklenburg sewer system. He also reviewed records and documents that were subpoenaed by the FBI, and had periodic discussions with the FBI agent in charge of the case. (Tr. 711). Based largely on the interviews that Mr. Doyle conducted, he determined that, for at least an undetermined period of time, there had been dumping of waste water into the Charlotte-Mecklenburg sewer system. (Tr. 711-712).

It was the FBI's belief that top management officials in the company knew of and had authorized the dumping of waste water at Charlotte. On the basis of the interviews conducted by Mr. Doyle, he determined that there were persons at the Charlotte facility who were aware of it, that the practice was confined to the Charlotte facility and did not exist at the other waste treatment facilities operated by Central, and that the top management officials in High Point, including Gary Honbarrier, and his father, and the Vice-President of Operations, Cliff James, did not know about and had not authorized the dumping. (Tr. 712). The investigation by the FBI covered approximately two and one-half years. Mr. Doyle participated in the investigation over that time span, as did other counsel in Washington, D.C., who assisted him in the matter. (Tr. 713).

When the subpoena was served, there was an enormous amount of media activity. The FBI investigation became the subject of widespread media reports over the next several weeks. The investigation had been triggered, at least in part, by a report of one of Central's Charlotte employees. That employee was on the six o'clock news flying over the terminal in a helicopter, pointing out where various activities had occurred. It was a lead story on the local news for a couple of weeks. (Tr. 713).

As a result of the FBI investigation, no officers, directors, or employees of Central were prosecuted. (Tr. 714). The investigation culminated in the execution of a plea agreement on March 5, 1990. (Tr. 714; Exh. MR-4).

During the investigation, federal prosecutors and the FBI agent in charge informed Central that they were going to seek indictments of the top management officials of the company. Mr. Doyle testified that such indictments were not brought because there was no evidence to support them. (Tr. 715). The plea agreement contains language indicating that Central knowingly violated environmental statutes. Mr. Doyle testified that under the law, if any employee of Central knew that it was dumping waste water that was untreated, then there has been a "knowing" violation by the company whether or not it was authorized or approved by management officials of Central. (Tr. 715-716).

Central became aware of the FBI investigation in mid-May, 1987. By early to mid-June, Mr. Doyle's investigation had determined that there had been dumping of untreated waste water. Shortly after that, the president of the company, Mr. Honbarrier, relieved the individual who was responsible for the environmental affairs of the company of those responsibilities. Mr. Honbarrier assumed personal responsibility for all environmental matters in the company. In late June or early July of 1987, Central engaged the services of an engineering consulting firm, O'Brien & Gere, to conduct environmental audits at Charlotte, as well as at all other Central facilities, for the purpose of insuring that Central was in compliance with all applicable environmental laws and regulations at all of its facilities. Sometime later, Central also retained the services of a Director of Environmental Affairs, an expert with the technical background and training to manage, direct and oversee all of Central's environmental affairs. Central also has retained the services of a consulting firm to assist it in developing more effective communications to its employees to ensure that all employees are properly trained and thoroughly aware of applicable environmental laws, and to ensure that the employees understand that Central complies with all environmental procedures. (Tr. 716-718).

Mr. Doyle cited as mitigating circumstances regarding the dumping violations the facts that the environmental violations at Charlotte were confined to that facility, and that Central, in essence, first disclosed those violations. (Tr. 718-719). With respect to the first mitigating circumstance, Mr. Doyle noted that the dumping was confined to the Charlotte facility. It was not a practice throughout the Central organization. Top management officials neither knew about nor authorized the dumping. Mr. Doyle noted that despite a lengthy investigation by the FBI, the federal government apparently reached the same conclusion. (Tr. 719).

With respect to the second mitigating circumstance, Mr. Doyle testified that he first learned of this situation in April, 1987. He received a call from Central because a Central employee, who later turned out to be the FBI informant, had been demoted. The employee, Gary Belk, had been a long-term Central employee. Belk approached a management official from High Point, Ron Perryman, who was visiting the Charlotte terminal and said that he knew about illegal dumping at the terminal and if he was not promoted, he would turn Central over to the FBI. (Tr. 719-720). Central called Mr. Doyle, and subsequently notified the local Department of Environmental Health to report what Belk had said to Mr. Perryman. (Tr. 720). Central's Vice-President of Operations, Cliff James, notified the Department of

Environmental Health in Charlotte. He spoke to two or three different individuals to whom he was referred, but nothing came of it. Mr. James repeatedly contacted the fellow to whom he was finally referred, and after leaving three or four phone messages over a four or five day period, the Health Department employee contacted James and told him that the Health Department was aware of the problem but had to notify the state about the illegal dumping. Over several weeks, no word was received from either the Department of Health or any agency of the state. In early May, Mr. James wrote to the state reciting the facts and offering to cooperate in investigating the matter. (Tr. 720-721). Approximately ten days later, the FBI appeared with its subpoena. (Tr. 721). Mr. Belk was not promoted. Apparently when he realized that Central would not promote him, he went to the FBI. The FBI told the state not to respond to Central's request because it needed time to set up traps on the line to establish whether there were pollutants being discharged into the system. For several weeks, the FBI was running traps on the sewer discharges to see if there were any violations. When the violations were confirmed, the search warrant was served. (Tr. 721). Mr. Doyle opined that Central's prompt reporting of the situation to the local and state health authorities should be considered a mitigating circumstance in its favor. (Tr. 721).

Mr. Doyle identified for the record as Exhibit AR-1 a letter dated October 17, 1980, from the North Carolina Department of Environment, Health and Natural Resources, Division of Environmental Management to the Environmental Director of Central. (Tr. 722). The subject of the letter is a Notice of Violation pertaining to Central's Aurora Terminal in Beaufort County, NC. Exh. AR-1 also includes a letter dated October 31, 1990 from Mr. Doyle responding to the Notice of Violation on behalf of Central. The Notice of Violation concerns a new terminal at Aurora. Central is serving a customer in eastern North Carolina and needed to establish a small facility there. Central sought to set up a tank wash, similar to the one in Charlotte but smaller in scale, to treat the residue of the material hauled for the customer being served from the new terminal. Central applied for a permit to discharge its waste water to the nearby town of Aurora. The permit was denied because the town was not able to accommodate Central's request. Central then sought to dispose of the waste water at an environmentally approved site at Harleyville, South Carolina. In order to dispose of the material at Harleyville, it was necessary to generate some waste water to determine its chemical constituents. Harleyville cannot accept any waste unless its chemical constituents have been identified. It is necessary to conduct a wash operation, collect the waste water and send it to

a lab for analysis. Central was in the middle of that process when North Carolina took the position that Central was operating an unlicensed waste water collection system. North Carolina also took the position that Central would need a permit if it were going to haul the waste water. As soon as Central received the Notice, it stopped the wash and contacted Mr. Doyle. He wrote to the author of the Notice of Violation setting forth Central's position. Mr. Doyle opined that the statute cited in the state's Notice does not govern the activities at issue. He opined that there is nothing in North Carolina's statutes or regulations that requires a permit for the type of activity engaged in by Central at Aurora. He set forth that position to the state agency and asked them to cite contrary authority. As of the date of the hearing in this matter, Central had not received a response to Mr. Doyle's letter, and the state had not proposed any kind of penalty or taken any other action. (Tr. 724-725; Exh. AR-1).

On cross-examination, Mr. Doyle testified that Mr. Belk first brought the illegal dumping to Central's attention in the first week of April, 1987. Judging by the affidavit filed by the FBI in the proceeding, it was approximately one week to ten days later that Mr. Belk informed the FBI. (Tr. 726-727). According to the documents filed with the plea agreement in the case, dumping of untreated waste water occurred between April 28 and May 5, 1987. (Tr. 728; Exh. MR-4).

Mr. Doyle was consulted by Central's attorney in this application proceeding regarding information concerning certain safety and environmental violations. He provided some information of that nature to Central's attorney in this proceeding. (Tr. 730). As of the last quarter of 1988, the only documents which Central had received from the government agencies regarding this matter were federal grand jury subpoenas and the search warrant issued and executed on or about May 13. Central had received no notice of claim, complaint or citation. (Tr. 736-737).

Prior to Mr. Belk's approach to Mr. Perryman to attempt to be promoted, Central was not aware that there was an illegal dumping problem at the Charlotte terminal. (Tr. 737). To Mr. Doyle's knowledge, there was no investigation of illegal dumping at the Charlotte terminal prior to Mr. Belk's report. (Tr. 738). Although the negotiated plea agreement recites that the federal government's investigation encompassed a period from 1985 through January 31, 1990, the government had not started an investigation in 1985. The government investigation began in April, 1987, but the government reviewed records extending back to 1985. (Tr. 737-738; Exh. MR-4).

Mr. Doyle was uncertain as to the period of time during which the illegal dumping had occurred. Some employees said it had been occurring for a couple of months prior to the FBI

investigation; at least one employee said it had been going on for a couple of years. (Tr. 739).

During the course of the federal investigation, the prosecution showed Central's attorneys a mock indictment of Central's top management officials, apparently in an effort to bring pressure upon Central. The government never suggested indictment of any persons alleged to be responsible for the dumping. (Tr. 739-741).

The incidence described in Exh. AR-1 is the only environmental complaint for which Mr. Doyle has represented Central since the plea agreement regarding the Charlotte matter. (Tr. 741-742). Mr. Doyle is aware of the Notices of Non-Compliance set forth in Exhibits MR-5, MR-6 and MR-7. He has not represented Central in connection with those notices. (Tr. 742-743).

Pursuant to questioning from the undersigned, Mr. Doyle described in some detail how the illegal dumping occurred. Central's Charlotte facility originally piped fluid from the tank wash operation to lagoons or settling ponds. The ponds are concrete lined, clay-based ponds. The waste water was permitted to remain in the ponds to permit any materials to settle to the bottom. They represented "the state of the art" in the 1970's for waste water treatment for such an operation. (Tr. 745). In the early 1980's, and again in the mid-1980's, Central upgraded

the facility. A waste treatment facility was installed to pretreat the water before it was discharged into the public sewer system, which is a permitted activity. The purpose of the waste treatment facility is to remove solids from the waste water and to alter its PH level. (Tr. 746-747). There are discharge standards that the waste water must meet in order to be placed into the sewer system. After the new facility was installed, there were some old sewer lines or pipes still in place which could be configured to permit the waste water to bypass the treatment system and go directly into the sewer system. The pipe used to bypass the waste treatment system was buried and not visible. (Tr. 746-747). No employee ever admitted authorizing the connection. Several employees at the terminal admitted knowing about the bypass. Some employees indicated that a terminal manager in Charlotte had authorized it, but that individual denied having done so. (Tr. 748).

Regarding the situation at the Aurora terminal which is the subject of Exh. AR-1, Doyle testified that the wash was conducted for no more than two or three weeks. It generated enough wash water to fill a tank trailer and perhaps part of another. The wash water is still at the site. Central is waiting for the state of North Carolina to respond to Mr. Doyle's letter to see if there is a legal basis to require Central to get

a permit before it transports the waste water to the disposal site in South Carolina. (Tr. 748-750).

Mr. Doyle testified that there was no savings to be realized through dumping the untreated waste water at the Charlotte facility. The employees stated that they did it because the waste treatment facility was running close to full capacity, and they had periods when the tank wash generated more fluid than the system could handle. Rather than put the excess in a tank trailer and hold it until it could be processed through the system, the employees simply dumped it. (Tr. 750). There was no cost savings because the investment in the waste treatment facility at Charlotte already had been made. (Tr. 751).

Glen Simpson is the Environmental Director for Central. He started in that position on March 14, 1988. He reports directly to the president of Central. (Tr. 752-753). Prior to being employed by Central, he had approximately eight years of environmental research experience with North Carolina State University. He has Bachelor and Master's Degrees from the University of Wisconsin and North Carolina State University. (Tr. 753). His major responsibility at Central is to ensure environmental compliance, and to see that environmental operations are conducted in a sound manner. (Tr. 753).

Central treats waste water at a number of its terminals or facilities. Mr. Simpson has responsibility to ensure that the

process is operational and in compliance. His duties include collection of samples for analysis and submission of monitoring data to appropriate sewer authorities, and discussion with those authorities on an as-needed basis. (Tr. 754). Mr. Simpson visits Central's waste water treatment facility at its Karns City, Pennsylvania, terminal at least four times per year. During each such visit, Mr. Simpson spends approximately a week at that facility. (Tr. 754). Mr. Simpson visits other Central terminals on a similar basis. (Tr. 759). During these visits, Mr. Simpson checks monitoring data and records, the functioning of equipment, and general environmental compliance. He also plans for upcoming regulatory changes that will require changes in the operations. (Tr. 760).

Mr. Simpson was familiar with the Notices of Non-Compliance entered into the record as Exh. MR-5, MR-6 and MR-7. (Tr. 760-761). Central collects eight samples of its waste water each year. The city sewer authority also collects eight samples per year as an independent audit. The samples are analyzed, and if the results indicate that any of the chemical constituents in the waste water exceed the permitted discharge limitation, a Notice of Non-Compliance for that constituent is issued. When one of these is received, Central is required to collect additional samples for analysis, and the results have to be submitted to the sewer authority within a certain time period

in order to demonstrate that Central's waste water is again in compliance with the permitted discharge limitations. (Tr. 761, 769-770).

The third paragraph of each Notice of Non-Compliance indicates that if subsequent analyses indicate continued violations, other penalties and limitations may be imposed. No such additional steps have been taken with respect to any of the Notices of Non-Compliance set forth in Exh. MR-5, MR-6 and MR-7. (Tr. 761-762). Central has responded to these Notices of Non-Compliance by making improvements in its waste water treatment process through various means. Central has added an additional pre-treatment chemical to the process to remove additional solids from the waste water and has made a physical modification to its pre-treatment equipment to improve its efficiency and performance. (Tr. 762).

During Mr. Simpson's direct testimony, Central's counsel attempted to elicit testimony regarding recent activities at its Karns City, PA terminal. Upon objection, I refused to allow the introduction of such testimony as beyond the scope of the remand order. Central made an offer of proof of such testimony and evidence, including an exhibit which was marked for identification as AR-2. (Tr. 754-759, 763-764).

On cross-examination, Mr. Simpson testified that Central has received no Notices of Non-Compliance or similar

documents from other industrial waste departments where its other terminals have tank cleaning operations. Exhibits MR-5, MR-6 and MR-7 are the only such notices or similar documents which Central has received since the close of the record in this proceeding on June 28, 1989. (Tr. 765-766). The physical modification made to the pre-treatment equipment at the Charlotte terminal in response to the Notices of Non-Compliance embodied in Exh. MR-5, MR-6 and MR-7 is unique to that terminal, because the pre-treatment equipment at Charlotte is unique to that terminal. The same modifications would not be required or appropriate at other Central facilities. (Tr. 766-767).

In his position as Environmental Director for Central, Mr. Simpson would be aware of any environmental violations occurring or becoming known since June 28, 1989. There have been none other than those described in the record of this proceeding. (Tr. 767). Environmental matters do not include occupational safety and health rules and regulations. (Tr. 768-769).

Mr. Simpson's role at Central includes both regulatory compliance and engineering responsibilities. (Tr. 770).

The physical modifications to Central's treatment facility at Charlotte, which were made in response to the Notices of Non-Compliance embodied in Exh. MR-5, MR-6 and MR-7 were made approximately six weeks prior to the remand hearing in this proceeding. At that time, although samples had been taken, it

was not known whether the modifications were successful in reducing the excessive chemical constituents in the discharged waste water. (Tr. 771).

Mr. Simpson's responsibilities include responsibility for spill cleanup if a tank truck spills its load. His responsibilities do not extend to employee safety and health matters involving the cleaning of tank trailers. (Tr. 772-773).

Findings of Fact

In its Brief After Remand, Central supplied requested findings of fact. I have carefully compared those requested findings to the evidence submitted in the hearing after remand, and I find that most are both relevant and supported by the record in this proceeding. Accordingly, I have adopted many of those findings, with some modifications, as my own.

1. On March 5, 1990, Central pleaded guilty to three separate counts of an information alleging that between April 28 and May 5, 1987, it knowingly introduced into the Charlotte-Mecklenburg public sewer system certain pollutants, which Central knew or reasonably should have known could cause personal injury or property damage in violation of 33 U.S.C. §1319(c)(2)(B). (Exh. MR-2, 3).

2. Central stipulated with the United States, as prosecutor, that a factual basis existed "in support of every

element of each crime" to which Central pleaded guilty. (Exh. MR-4).

3. An independent investigation by Central's counsel in the criminal proceedings caused him to conclude that for an undetermined period of time, there had been dumping of untreated waste water into the Charlotte-Mecklenburg sewer system. (Tr. 710-712).

4. The investigation of Central's counsel in the criminal proceeding also established that there were persons at the Charlotte facility who were aware of the dumping, that the practice was confined to the Charlotte facility and did not exist at the other waste treatment facilities that Central operated, and that Central's top management officials did not know about and had not authorized this activity. (Tr. 712).

5. The United States, as prosecutor in the criminal proceeding, acknowledged that Central cooperated fully in the conduct of the government's investigation of the activities involved in the Plea Agreement. (Exh. MR-4).

6. There was no prosecution by the federal government of any officer, director, or employee of Central. (Tr. 714).

7. When Central's top management became aware of an allegation that illegal dumping had been occurring at the Charlotte terminal, the Vice President of Operations immediately

notified the County Department of Environmental Health. (Tr. 719-720).

8. In 1987, once counsel for Central determined that there had been a dumping of untreated waste water, the president of Central, Mr. Gary Honbarrier, relieved the individual who was responsible for environmental affairs of his responsibilities, and assumed personal responsibility for all environmental matters in the company. (Tr. 716, 718).

9. Also, in 1987, Central engaged the services of an engineering consulting firm to conduct environmental audits not only at Charlotte but at all other facilities for the purpose of insuring that Central was in compliance with all applicable environmental laws and regulations at all of its sites. (Tr. 717, 718).

10. Also, in 1987, Central retained the services of a consulting firm to assist it in developing more effective communications to its employees to ensure that all of the employees in the company were properly trained and thoroughly aware of applicable environmental laws and to ensure that the employees got the message that Central complied with all environmental procedures. (Tr. 717).

11. In early 1988, Central employed a new Director of Environmental Affairs who has the technical background and

training to manage, direct and oversee all of the environmental affairs of the company. (Tr. 717, 718).

12. As part of the ongoing process of monitoring the discharge of treated waste water at the Charlotte facility, Central and the city sewer authority collect samples of that waste water, and have those samples analyzed; the analytical results are reviewed by the city sewer authority. If a chemical analysis of the waste water indicates that any of the chemical constituents exceed the permitted discharge limitation, then a Notice of Non-Compliance is issued concerning the parameter that has been exceeded. (Tr. 760-762).

13. On May 31, August 24 and September 18, 1990, the Industrial Waste Division of the Charlotte-Mecklenburg Utility Department issued Notices of Non-Compliance to Central. Those Notices required Central to monitor certain indicated parameters. (Exh. MR-5, MR-6, MR-7). When a Notice of Non-Compliance is issued, if the subsequent analysis indicates continued violations of permit limitations, other actions may be taken against Central. (Exh. MR-5, MR-6, MR-7). No further action has been taken in regards to any of the Notices received by Central. (Tr. 762).

14. As a response to the three Notices of Non-Compliance, Central has added another pre-treatment chemical to the process for the purpose of removing additional solids from

the waste water. Central also has made a physical modification to its pre-treatment equipment at the Charlotte terminal to improve efficiency and performance. (Tr. 762).

15. In the fall of 1990, Central established a new, small terminal facility at Aurora, North Carolina to serve a customer shipping phosphoric acid. Central intended to establish at the Aurora facility a tank wash, similar to the one in Charlotte but smaller in scale, for the purpose of treating the residue left in tank trailers utilized to transport the phosphoric acid. (Tr. 724).

16. Central applied for a permit to discharge the waste water from the Aurora tank wash, after appropriate treatment, into the sewage system of the nearby town of Aurora. (Tr. 724, 748). The application for permit was not granted because the town's system was unable to accommodate the request. (Tr. 724). As an alternative, Central then sought to dispose of the waste water at an environmentally approved site in Harleyville, South Carolina. Acceptance of treated waste water at Harleyville is dependent upon laboratory testing and an evaluation of the chemical constituents of the waste water. (Tr. 724). Central conducted a limited tank wash operation at Aurora for no more than three weeks, generating enough waste water to fill one tank trailer and part of another, from which samples were to be taken for chemical evaluation. (Tr. 724, 749).

17. Based on an investigation conducted on October 15, 1990, the Division of Environmental Management of the State of North Carolina's Department of Environment, Health and Natural Resources issued a Notice of Violation alleging that Central was conducting a waste water collection system and that a "pump and haul permit" was required. (Tr. 725; Exh. AR-1). As soon as the Notice was received, Central contacted its environmental law counsel, and terminated wash operations. As of December 4, 1990, no wash operations were being conducted at Aurora. (Tr. 725, 749).

18. On October 31, 1990, Central's counsel responded to the Notice of Violation. Counsel contended, contrary to the allegation of the Division of Environmental Management, that the collecting and storing of waste water at the Aurora facility did not constitute operation of a "sewer system, treatment works or disposal system". (Tr. 725, Exh. AR-1). Counsel also challenged the claim that a permit was needed from the North Carolina Environmental Management Commission in order for Central to conduct "pump and haul activities" at the Aurora terminal. The Division of Environmental Management was requested to furnish authority that would contradict either of the assertions made on behalf of Central. (Exh. AR-1).

19. As of December 4, 1990, the waste water remained at the Aurora site awaiting a response from the State of North

Carolina concerning whether a permit is required before transporting the waste water to an approved disposal site in South Carolina. (Tr. 749). As of December 4, 1990, the state had not responded to the October 31, 1990, letter from counsel for Central, had not proposed any kind of penalty, and had not taken any other action. The statute under which the state was proceeding calls for the issuance of a proposed penalty in connection with the issuance of a violation notice. No such issuance of proposed penalty had occurred as of December 4, 1990. (Tr. 725).

20. Other than the environmental violations described in this record, Central's Director of Environmental Affairs was aware of no environmental violations by Central occurring or becoming known after June 28, 1989. (Tr. 767).

Discussion

For the following reasons, I conclude that the evidence presented during the course of the hearing after remand in this proceeding is insufficient to alter my conclusion in my Initial Decision dated March 5, 1990, that Central's application should be granted. However, I do conclude that the certificate issued to Central should be further conditioned upon Central's continued compliance with applicable environmental laws and regulations.

In reaching my decision in this matter, I have not considered the evidence proffered by Central in its offer of

proof. (Tr. 754-759, 763-764). Although Central alluded to such evidence at page 10 of its Brief After Remand, that evidence was not admitted into the record of this proceeding and cannot be considered in reaching a decision.

Central argues that the record developed in the hearing after remand shows that the illegal dumping violations to which Central pleaded guilty occurred almost four years ago, were isolated in number, and confined to a single facility not in Pennsylvania. Central further argues that the violations involved a few individuals whose actions were neither authorized nor condoned by top management officials of Central, against whom the federal government never brought indictments. Central further argues that upon learning of the violations, top management officials at Central acted responsibly by immediately notifying local officials, relieving the individual in charge of environmental affairs at the time of the violations of his responsibilities, obtaining expert environmental engineering expertise, and cooperating fully with the federal government in its investigation of the matter. Central argues that this evidence does not support a conclusion that it lacks the propensity to operate safely and legally. For the most part, I agree with the position taken by Central with respect to the evidence presented at the hearing after remand.

I do disagree with Central's position on one point. Central emphasizes that the violations described during the hearing after remand did not occur in Pennsylvania; for this reason, Central suggests that those violations should be discounted. I disagree. On the contrary, if such violations occur in North Carolina, the location of Central's headquarters, what can the Commonwealth of Pennsylvania expect from Central's operation here? One can readily ask whether we can expect Central to take better care of the waters of Pennsylvania, where Central is only a guest, then it has taken of the waters of North Carolina, where Central is at home.

Generally, I find little, if any, merit in the arguments offered by the protestants. While I agree that the violations to which Central pleaded guilty are indeed serious, I cannot agree with the claims of the protestants that Central did not respond in a prudent and reasonable manner as soon as it learned of the violations.

Central argues that the actions of top management officials ultimately determine the propensity of the corporation. Central further argues that because its top officials, upon learning of the waste water dumping, initiated and pursued a program of positive actions to achieve strict compliance with the environmental regulations, Central has been shown to have a propensity to operate legally and safely. (Central Brief After

Remand at 8-9). The protestants have responded to this argument by noting that Central should not be able to escape accountability for such violations simply because its top management personnel isolate themselves from day-to-day operations and remain ignorant of unlawful activities by terminal employees. (Matlack Brief After Remand at 4-5). Protestants argue that a company's top management has an affirmative duty to make certain that the company consistently maintains safe and legal operating procedures. (Crossett Brief at 7). While I agree in principle with the position of the protestants on this point, the evidence in this record simply does not support their argument.

Matlack argues: "[h]ow were Central's employees able to engage in unlawful activities for months or even years without management personnel becoming aware?" Matlack then suggests that there are only two possible answers: either management actually was aware of the unlawful activities and ignored them, or Central lacked sufficient administrative controls to ensure that such violations did not occur. (Matlack Brief After Remand at 5). Matlack's first "answer" is simply not supported by the record. There is absolutely no evidence in the record to support Matlack's premise that the dumping of waste water continued for "months or even years". The FBI conducted a criminal investigation lasting two and a half years and brought no charges

other than those set forth in the Information entered into the record of this proceeding as Exh. MR-2. (Tr. 713-714). There is simply no basis in this record on which to conclude that Central's management was aware of these violations.

Matlack's second "answer" ignores the fact that Central has put into place procedures to avoid another incident of this nature. To the extent that Central may have lacked sufficient administrative controls to ensure that such violations did not occur, Central has attempted to put such controls into place, starting with the discharge of the individual who was responsible for environmental affairs, and continuing with the employment of a Director of Environmental Affairs who has the technical background and training to manage and oversee all of the environmental affairs of the company. (Tr. 716-718). As I have stressed in my original Initial Decision, the purpose of the fitness criteria is to protect the public, Brinks, Inc. v. Pa. Public Utility Commission, 500 Pa. 387, 456 A.2d 1342 (1983), and not to punish the carrier; thus, I do not find it fatal to Central's application that the violation of dumping waste water may have occurred due to insufficient administrative controls, because Central appears to have corrected that deficiency in its operation.

Matlack also argues that the evidence indicates that Central was initially alerted to unlawful dumping activities

during the first week of April, 1987. Matlack argues that Central, despite this knowledge, apparently did nothing at the Charlotte terminal to stop the unlawful activity until after the FBI had taken samples of waste water during the period April 28, 1987 to May 5, 1987, three to four weeks after Central first became aware of the allegations of illegality. Matlack further argues that no evidence in the record indicates that Central took any steps toward eliminating the unlawful dumping up to the date Central was served with search warrants by the FBI on May 13, 1987. Matlack argues that Central took remedial measures only after it was caught by the FBI. I do not find Matlack's argument persuasive in light of the entire record. Central's top officials first learned of this dumping when one was approached by a disgruntled employee with a threat to disclose the existence of such "illegal dumping" unless he was promoted. (Tr. 719-720). A prudent company official might reasonably question the credibility of such an individual and initiate an investigation prior to taking any specific action. Furthermore, the dumping was accomplished through the use of a buried pipe which was not immediately evident from an inspection of the facility. (Tr. 746-747). Most importantly, Central's action in immediately reporting the allegation to the state and local authorities is wholly inconsistent with a determination to resist corrective measures until Central was caught. (Tr. 719-720).

The protestants also argue that Central's continuing problems at its Charlotte facility cast doubt upon its ability to comply with environmental laws elsewhere. (Matlack Brief After Remand at 7-8). I disagree. The three violations evidenced by the Notices of Non-Compliance contained in Exh. MR-5, MR-6 and MR-7 are of a different quality entirely than the violation to which Central pleaded guilty. The violation which was the subject of the guilty plea was a deliberate bypassing of the waste treatment system. The Notices of Non-Compliance set forth in Exh. MR-5, MR-6 and MR-7 pertain to violations of Central's waste treatment permit which, apparently, arise from relatively minor technical deficiencies in its treatment equipment. These Notices of Non-Compliance are obviously in the nature of warnings from the responsible agency. The evidence of record indicates that neither the agency that issued the Notices nor any other agency has seen fit to bring any further action against Central while Central attempts to resolve the problem through modifications to its treatment facility. Finally, there is no evidence in the record, despite the considerable efforts of the protestants, to show that Central has had similar problems at any of its other facilities, including its Karns City, PA terminal. I am not persuaded that these Notices support a finding that Central lacks the propensity to operate legally and safely, or

even that it lacks the technical capability to carry on the operation which it proposes in this application.

Matlack also argues that the violations of which evidence was produced in the hearing after remand, when considered with the violations for which evidence was presented at the initial set of hearings, lead to a conclusion that Central lacks the propensity to operate legally and safely. As I noted in my Initial Decision in this proceeding, during the same period of time covered by Central's violations, several of the other carriers involved in this proceeding were cited for similar violations. (Initial Decision dated March 5, 1990, at 135-150). In particular, Refiners Transport was fined for discharging inadequately treated waste water from its Oil City tank cleaning facility into Oil Creek, for transporting on several occasions hazardous waste for which it did not have a license, and for accepting hazardous waste for transport without a completed manifest. (Central Exhibits 30 and 31). As I noted there, in terms of the severity of violations, Central's are similar to those of other companies. The additional violations shown in the course of the hearing after remand do not alter my conclusion that Central's record in this regard is no better and no worse than one might expect. Moreover, because the fitness criteria is intended to protect the public and not to punish the carrier, Brinks, 500 Pa. at 392, Footnote 3, the corrective actions taken

by Central with respect to these violations must be weighed in Central's favor.

Crossett, in its Brief After Remand, has raised two issues which must be addressed. Crossett argues that the record in this proceeding is insufficient to support a finding that the top management officials of Central did not know about, or authorize, the unlawful discharge of waste water at the Charlotte terminal. Crossett argues that none of Central's top management officials testified at the Commission's hearing in this proceeding on December 4, 1990. Crossett further argues that any finding that these individuals did not know about or authorize the activity at the Charlotte terminal is predicated solely upon the testimony of Central's counsel and that such testimony is hearsay. Crossett urges that Central's requested findings of fact pertaining to this issue be rejected as based upon hearsay. (Crossett Brief After Remand at 6-7). Crossett's argument on this point is ill-timed. At no time during the course of the hearing on December 4, 1990, did Crossett raise a hearsay objection to the testimony of Mr. Doyle. Had Crossett done so at that time, it would have afforded Central's counsel an opportunity to respond, and an opportunity to provide the testimony of Central's officials, if he so desired. By waiting to make this argument until it had filed its Brief, Crossett has denied Central the opportunity to respond to the argument by

producing additional witnesses. Under these circumstances, Crossett's hearsay objection is untimely. I also note that the finding that Central's top officials were unaware of and did not authorize the unlawful waste water discharge can be drawn from the fact that the federal government failed to indict those officials. Thus that finding does not rest upon only the testimony of Mr. Doyle.

Crossett also makes the following argument:

> Although the violations did occur four (4) years ago, during 1987, the facts were not earlier revealed to the Commission even though Central Transport's top management was fully aware of the violations in 1987 (Tr. 716-718). There was ample time for Central Transport to disclose the facts and circumstances surrounding these violations during the hearings held from November 1, 1988 through June 28, 1989 (either voluntarily or in response to Matlack's Interrogatories). The argument that the violations occurred four (4) years ago, when such facts were not brought to the attention of the Commission in Pennsylvania until 1990 (and then only through the efforts of Protestant, Matlack, upon remand), should not result in discounting the seriousness of the violations.

(Crossett Brief After Remand at 6).

By this argument Crossett seems to suggest that Central had an obligation to bring this to the attention of the Commission during the original hearings in this case, and failed to do so. Crossett's argument is without merit.

The issue regarding Central's environmental violations arose early in these proceedings. At the hearing held on November 1, 1988, Central's witness was asked the following question on cross-examination:

> Q. Are you aware of any investigations by the Federal Bureau of Investigation with respect to hazardous substances violations or alleged violations?

(Tr. 14).

After a relevancy objection by Central's counsel, followed by extended argument on the objection, as well as argument regarding a related interrogatory, the following exchange took place:

BY MR. PATTERSON:

> Q. Mr. Fesperman, are you aware of any FBI investigation of Central Transport with respect to violations of any hazardous substances laws since January 1 of 1986?
>
> A. Yes, sir.
>
> Q. What violations or alleged violations did the FBI investigation deal with?
>
> A. You are talking about specific allegations?
>
> Q. Yes, sir.
>
> A. I do not know.
>
> Q. Are you aware of any investigations

involving Central's Charlotte, North Carolina terminal?

A. Yes, sir.

Q. Are you aware of whether that investigation had to do with the alleged dumping of hazardous substances into a local stream or body of water?

A. Excuse me. Would you repeat the last portion of the question?

MR. PATTERSON: May I ask the reporter to read it back, Your Honor?

JUDGE SCHNIERLE: Yes.

(The question was read by the Court Reporter.)

THE WITNESS: No, sir.

BY MR. CHESNUTT:

Q. In Charlotte?

A. No, sir.

Q. Are you aware of any investigations by the North Carolina Division of Environmental Affairs or Bureau of Environmental Issues -- I forget the exact name -- involving the Charlotte terminal?

A. No, sir.

Q. Are you aware of any deaths occurring at the Charlotte terminal as a result or in some manner connected with hazardous materials violations?

MR. CHESNUTT: Let me object to that question. Hazardous materials regulations in what respect? How

would deaths occur because of --

MR. PATTERSON: That's what I'm asking. I'm not here to testify. I'm here to ask questions. If he doesn't know, he doesn't know. I have asked him about is the deaths at the Charolettetown terminal in some manner related to hazardous material violation. If he knows, he knows.

THE WITNESS: Deaths resulting today by hazardous material violations?

MR. CHESNUTT: Are you aware?

THE WITNESS: Not connected, no, sir -- not connected to hazardous material violations. I don't know.

BY MR. PATTERSON:

Q. Are you aware of any FBI investigation of the dumping of hazardous waste at the Charlotte terminal into the sewer system?

A. Alleged dumping?

Q. Yes, sir.

A. Yes, sir.

Q. I'm sorry. I consider the sewer system a body of water. I guess maybe it isn't.

JUDGE SCHNIERLE: During what period of time are we talking about here?

MR. PATTERSON: All my questions are conditioned since January 1 of 1986. I beg your pardon.

BY MR. PATTERSON:

Q. Would your answer be the same with that condition, sir? That is it's since January of 1986?

A. To the allegations involving the sewage system?

Q. Yes, sir.

A. Yes, sir. That's correct.

Q. Are you aware of any similar investigations by the Pennsylvania Department of Environmental Affairs or the D.E.R. --

JUDGE SCHNIERLE: Environmental Resources.

MR. PATTERSON: I beg your pardon.

BY MR. PATTERSON:

Q. With respect to the Karns City, Pennsylvania terminal?

A. No, sir, I'm not.

(Tr. 26-29).

Thus, Central did not fail to disclose the existence of the investigation. Had Crossett wished to pursue the matter, it could have done so.

Central subsequently was asked to answer an interrogatory pertaining to safety and environmental violations. The interrogatory read, in pertinent part, as follows:

> Since January 1, 1986, has Applicant [Central] received any complaints, warnings, or notices of claim from, or been cited by, the Pennsylvania Public Utility Commission, the Pennsylvania Department of Environmental Resources, the United States Environmental Protection Agency, the United States Department of Transportation, the Federal Bureau of Investigation, the North Carolina Division of Environmental Management, or other federal governmental agencies, or

> governmental agencies in the States of North Carolina and Pennsylvania, in connection with alleged violations involving or affecting transportation? If so, give the following information for each instance:
>
> ....

(Tr. 732).

Matlack and Central stipulated that the term "involving or affecting transportation" meant incidents and occurrences during the operation of vehicles on the public highways, and at or adjacent to terminals, and during the process of repair or cleaning of vehicles. (Tr. 733). Because Central had received, as of the last quarter of 1988, no claim, warning, complaint or citation from the federal government, as a result of the illegal dumping at Charlotte, but only a search warrant and grand jury subpoenas (Tr. 736-737), Central did not fail to answer the interrogatory by failing to provide additional information regarding the investigation. While it may have been a more prudent course for Central to disclose additional information regarding the Charlotte incident, Central's failure to do so did not amount to a failure to answer the interrogatory. I also note that at the time that this interrogatory was under discussion among the parties, I expressed reservations about inquiring into

open investigations, as opposed to violations for which there had been convictions and guilty pleas. (Tr. 25).[1]

Finally, Matlack argues that the questions regarding Central's fitness raised by the evidence presented in the hearing upon remand should result in any grant of authority to Central being modified to reduce the number of shippers to be served and/or the geographical territory within which Central may operate. Matlack argues that such a modification will enable Central to initiate operations on a smaller scale in order to develop a track record in Pennsylvania operations. While I agree with Matlack that the evidence in this proceeding justifies further modification of the grant of authority to Central, I do not agree with the modifications suggested by Matlack.

The grant of authority to Central is already limited to seven named shippers. Furthermore, in some cases, the grant does not even permit vice-versa operation. In my opinion, it would be pointless to further reduce the scope of authority in order to have Central initiate operations on a small scale. For example, by comparison to the seven shippers for whom Central would be authorized to render service, Refiners, a protestant in this

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[1] Subsequent to the Commission's Remand Order in this case (adopted August 16, 1990, entered August 23, 1990), Commonwealth Court ruled that violations of law that had not yet resulted in convictions could be considered by the Commission in determining an applicant's fitness. Limelight Limousine, Inc. v. Pa. Public Utility Commission,_____ Pa. Commonwealth Ct._____, 580 A.2d 472 (1990). This appears to have been a case of first impression.

case, serves approximately 150 shippers in intrastate commerce in Pennsylvania for commodities involved in Central's application. (Tr. 576-577).

In my Initial Decision in this proceeding, I conditioned Central's certificate upon two conditions pertaining to the institution and maintenance of a respiratory protection program and a confined space entry program at its Karns City tank cleaning facility. Having heard the evidence presented in the remand hearing, it is my opinion that it would be prudent to similarly condition the grant of authority upon Central's compliance with applicable federal and Pennsylvania environmental laws and regulations.

It is important to recall that Central will be using the Karns City facility for transportation in interstate commerce regardless of whether the Commission issues the authority which Central seeks in this proceeding. While DER has primary responsibility for enforcement of clean water laws and regulations at the Karns City facility, conditioning Central's authority upon continued compliance with those regulations serves two purposes. First, it is a reasonable and measured response to the evidence submitted in the hearing after remand regarding Central's problems with environmental law compliance at its Charlotte facility. So conditioning the grant of authority recognizes that while Central has had problems in the past, the

fitness criteria is forward-looking and not punitive in nature. The purpose of the fitness criteria is to ensure that the carrier will comply in the future with the applicable laws and regulations; which leads to the second purpose of imposing such a requirement. While DER can take punitive action against Central should Central fail to comply with applicable clean water laws and regulations at its Karns City facility, by conditioning the grant of its Pennsylvania intrastate authority on such compliance, the Commission provides an incentive to Central which DER itself cannot provide -- a "carrot" to accompany DER's "stick". This incentive recognizes that Central will be operating its Karns City facility regardless of whether it receives any intrastate authority. Conditioning Central's intrastate authority on compliance with environmental laws and regulations should act as a further incentive to Central to operate in a responsible manner. Accordingly, I will modify my original Initial Decision by modifying ordering paragraph 5 to provide that Central must comply with applicable clean water regulations with respect to its tank cleaning facility at Karns City.

Conclusions of Law

All of the conclusions of law set forth in my Initial Decision of March 5, 1990, are adopted. Conclusion of Law No. 3 from that Initial Decision is modified to read as follows:

3. Central has demonstrated that it possesses the requisite financial and technical fitness to provide the proposed service subject to the conditions that Central institute and maintain confined space entry and respiratory protection programs at its Karns City tank cleaning facility, and that Central comply with applicable federal and Pennsylvania state statutes and regulations pertaining to the discharge of waste water.

Order

THEREFORE, IT IS ORDERED:

1. That ordering Paragraph No. 5 of my Initial Decision of March 5, 1990, is amended to read as follows:

5. That the certificate holder shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect or as may hereafter be prescribed by the Commission. Additionally, the certificate holder shall maintain the respiratory protection program described in ordering Paragraph No. 2 herein, and a confined space entry program which shall be in accordance with ordering Paragraph No. 3 herein until such time as the Occupational Safety and Health Administration of the United States Department of Labor adopts final regulations for such a program, at which time Central shall comply with OSHA's final regulations. Additionally, the certificate holder shall comply with all applicable federal and Pennsylvania state

statutes and regulations pertaining to the discharge of waste water. Failure to comply shall be sufficient cause to suspend, or revoke or rescind the rights and privileges which are conferred by the certificate.

2. Except as otherwise modified by this Initial Decision On Remand, my Initial Decision dated March 5, 1990, in this proceeding is adopted.

Michael C. Schnierle

MICHAEL C. SCHNIERLE
Administrative Law Judge

Dated: Aug. 2, 1991

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KJR

Act 294

Case Identification: A-00108155; Application of Central Transport, Inc.

Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: August 30, 1991

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ _____
Commissioner Date

I do not want full Commission review of this decision.

William H. Smith 9-20-91
Commissioner Date

KJR

Act 294

Case Identification:	A-00108155; Application of Central Transport, Inc.
Initial Decision By:	ALJ Michael C. Schnierle
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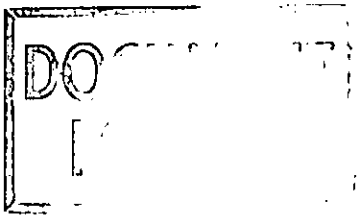

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_____ Commissioner

_____ Date

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x Joseph Rhodes, Jr. Commissioner

8/22/91 Date

KJR

Act 294

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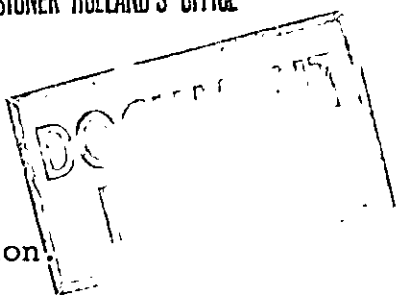

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_____ _____
Commissioner Date

I do not want full Commission review of this decision.

Kendall F. Holland 9/4/91
Commissioner Date

KJR

Act 294

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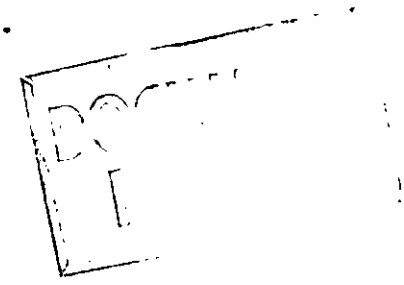

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Commissioner Date

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Dan Rolka 8-22-91

Commissioner Date