

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

REC'D

-----X

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.

:
:
: Docket No.
: A-00108155
: **RECEIVED**
: **DEC 26 1990**
: **SECRETARY'S OFFICE**
: **Public Utility Commission**

Further Hearings

-----X

Pages 702 through 777

Hearing Room No. 1
North Office Building
Harrisburg, Pennsylvania
Tuesday, December 4, 1990

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

MICHAEL SCHNIERLE, Administrative Law Judge

APPEARANCES:

WILLIAM A. CHESNUTT, Esquire
McNees, Wallace & Nurick
P.O. Box 1166
Harrisburg, Pennsylvania 17108-1166
(For the Applicant)

JAMES W. PATTERSON, Esquire
Rubin, Quinn, Moss, Heaney & Patterson
1800 Penn Mutual Tower
Philadelphia, Pennsylvania 19106
(For Matlack, Inc.)

DOCKETED
DOCKETED
FILED

DOCKETED
JAN 2 1991

Commonwealth Reporting Company, Inc.
700 Lisburn Road
Camp Hill, Pennsylvania 17011

APPEARANCES (Continued):

HENRY M. WICK, Esquire
Wick, Streiff, Mexer, Mete & O'Boyle
1450 Two Chatham Center
Pittsburgh, Pennsylvania 15219
(For Refiners Transport and Terminal Corp.)

RONALD W. MALIN, Esquire
Johnson, Peterson, Tener & Anderson
Key Bank Building
P.O. Box 1379
Jamestown, New York 14701
(For Crossett, Inc.)

Commonwealth Reporting Company, Inc.

700 Lisburn Road
Camp Hill, Pennsylvania 17011

C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
John Doyle				
By Mr. Chesnutt	708	---	---	---
By Mr. Patterson	---	726	---	---
	---	750	---	---
By Mr. Malin	---	744	---	---
Glen Simpson				
By Mr. Chesnutt	752	---	---	---
By Mr. Patterson	---	765	---	---
By Mr. Malin	---	768	---	---

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>Matlack Remand</u>		
✓ 1 (Docket Entries)	706	708
✓ 2 (Bill of Information)	706	708
✓ 3 (Judgment and Probation/ Commitment Order)	707	708
✓ 4 (Negotiated Plea Agreement)	707	708
✓ 5 (Notice of Non-Compliance-5/31/90)	744	752
✓ 6 (Notice of Non-Compliance-8/24/90)	744	752
✓ 7 (Notice of Non Compliance-9/18/90)	744	752
<u>Applicant's Remand</u>		
✓ 1 (Notice of violation-10/17/90)	722	752
2 (REJECTED-Page 764)	763	---

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MICHAEL SCHNIERLE: Let's
3 go on the record.

4 This is the time and place set for a further
5 hearing in accordance with the Commission's remand order
6 in the matter of Central Transport, Incorporated,
7 Docket No. A-00108155. My name is Michael Schnierle. I
8 am the Presiding Officer assigned to this case.

9 I note the appearances of William Chesnutt for
10 Central Transport, Incorporated, James Patterson for
11 Matlack, Incorporated, Henry M. Wick for Refiners Transport
12 and Terminal Corporation, and Ronald W. Malin for
13 Crossett, Incorporated.

14 It is my understanding that the purpose of today's
15 hearing is to receive testimony regarding certain
16 environmental and/or safety violations pertaining to
17 Central Transport, occurring or becoming known since the
18 close of the evidentiary record in this proceeding.

19 Is there any preliminary matter we need to dis-
20 cuss today, Mr. Chesnutt?

21 MR. CHESNUTT: I don't think we have a pre-
22 liminary matter. I have communicated, and I hope the
23 Judge has received a copy of a letter, in accordance with
24 your directive, indicating what issues would be brought
25 before the hearing today.

1 Has Your Honor received a copy of that?

2 JUDGE SCHNIERLE: Yes, I have.

3 MR. CHESNUTT: I believe all counsel of record have
4 also received it. I know Mr. Patterson has.

5 MR. PATTERSON: Yes, indeed.

6 MR. WICK: Yes, sir.

7 MR. MALIN: Yes.

8 JUDGE SCHNIERLE: Does anyone else have anything
9 we need to discuss before we call the first witness?

10 MR. CHESNUTT: It's my understanding that
11 Mr. Patterson intends to introduce the plea agreement
12 that was attached to his motion to reopen. That would be
13 the subject of the first witness' testimony.

14 MR. PATTERSON: It will be.

15 MR. CHESNUTT: The witness, John Doyle, is seated
16 at the witness table. He will be the witness discussing
17 the plea agreement.

18 JUDGE SCHNIERLE: Mr. Patterson.

19 MR. PATTERSON: Well, Your Honor, I think then it
20 is appropriate that we do that now.

21 I have it, Your Honor, in four parts, all of
22 which are attached to the petition to reopen. I would
23 propose to introduce the four parts as separate exhibits,
24 if Your Honor wishes. I don't know what you want to call
25 these things, so I'm pleased to ask you to identify them

1 as anything you would like to identify them as. I don't
2 know whether they are counsel exhibits, Matlack exhibits,
3 Central exhibits, or what they are.

4 JUDGE SCHNIERLE: Let's identify them as Matlack
5 exhibits, but I was thinking, I don't have the prior
6 exhibit numbers, and in any event I think we might want
7 to -- instead of making them M-1, make it MR-1 for
8 Matlack Remand, and, similarly, Central exhibits will be
9 AR, so that we will be clear on which exhibits were intro-
10 duced pursuant to the remand order.

11 MR. PATTERSON: Very well, Your Honor.

12 JUDGE SCHNIERLE: So why don't we mark those MR-1
13 through MR-4.

14 MR. PATTERSON: Your Honor, as MR-1, a two-page
15 document consisting of copies of the docket entries in
16 the matter of United States versus Central Transport, Inc.

17 (Whereupon, the document was marked
18 as Matlack Remand Exhibit No. 1 for
identification.)

19 MR. PATTERSON: As MR-2, a multi-page document
20 consisting of a bill of information in that same case
21 stamped as filed March 5, 1990.

22 JUDGE SCHNIERLE: It may be so marked.

23 (Whereupon, the document was marked
24 as Matlack Remand Exhibit No. 2 for
identification.)

25 MR. PATTERSON: As MR-3, a single-page document

1 headed "Judgment and Probation/Commitment Order" in that
2 same matter.

3 JUDGE SCHNIERLE: It may be so marked.

4 (Whereupon, the document was marked
5 as Matlack Remand Exhibit No. 3 for
6 identification.)

7 MR. PATTERSON: And as MR-4, a multi-page document,
8 with attachments, the same attachments that were attached
9 to the original as filed with the Commission accompanying
10 the petition to reopen, entitled "Negotiated Plea Agreement,"
11 in that same matter in the Western District of North
12 Carolina.

13 JUDGE SCHNIERLE: It may be so marked.

14 (Whereupon, the document was marked
15 as Matlack Remand Exhibit No. 4 for
16 identification.)

17 MR. PATTERSON: Since there is a witness from
18 Central Transport on the stand, Your Honor, I guess that
19 fulfills my function for the moment.

20 JUDGE SCHNIERLE: Do you move for admission of
21 these documents?

22 MR. PATTERSON: Yes, Your Honor.

23 JUDGE SCHNIERLE: Mr. Chesnutt.

24 MR. CHESNUTT: No objection.

25 JUDGE SCHNIERLE: Exhibits MR-1 through MR-4 are
admitted into evidence.

1 (Whereupon, the documents marked as
2 Matlack Remand Exhibits Nos. 1 through
4 were received in evidence.)

3 JUDGE SCHNIERLE: Mr. Chesnutt.

4 MR. CHESNUTT: Do you wish to have the witness
5 stand and be sworn?

6 JUDGE SCHNIERLE: Yes.

7 Whereupon,

8 JOHN DOYLE

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CHESNUTT:

12 Q Would you state your name and business address,
13 sir?

14 A John Doyle. The business address is 1100 South
15 Tryon Street in Charlotte, North Carolina.

16 Q Mr. Doyle, what is your occupation?

17 A I'm an attorney.

18 Q What educational background do you have con-
19 cerning your occupation as an attorney?

20 A I'm a graduate of the University of North
21 Carolina, both undergraduate and law school.

22 Q How long have you been in private law practice?

23 A I have been in private practice since 1970. I
24 have been licensed since 1966.

25 Q What prior experience did you have before

1 private practice?

2 A After law school, after leaving the University
3 of North Carolina at Chapel Hill, I served with the
4 Federal Bureau of Investigation. I was a Special Agent
5 with the FBI for three years, from 1967 until 1970.

6 Q What relationship do you have with the appli-
7 cant, Central Transport, Inc.?

8 A Since approximately 1980, I and my firm have
9 served as counsel for Central Transport in a number of
10 litigation matters.

11 Q You've been furnished with a copy of a series
12 of documents marked for identification and received into
13 evidence as MR Exhibits Nos. 1 through 4., Are you familiar
14 with those documents, Mr. Doyle?

15 A Actually, I'm familiar with Exhibits MR-2 and
16 MR-4. I have not seen before today MR-1 or MR-3.

17 Q MR-2 and MR-4 concern an action brought by
18 the United States of America against Central Transport in
19 the United States District Court for the Western District
20 of North Carolina. Was that action the result of any
21 federal investigation?

22 A Yes, sir, it was.

23 Q When did you first become aware of that
24 investigation?

25 A On or about May 13, 1987.

1 Q How did you become aware of it?

2 A I received a call from officials at the
3 Charlotte, North Carolina terminal. Central Transport has
4 a terminal facility in Charlotte. I received a call
5 indicating that the Federal Bureau of Investigation, my
6 alma mater, had paid them a visit, had served a search
7 warrant at the premises, and that started it.

8 Q What sort of facilities does Central have at
9 the Charlotte terminal, with specific reference, I would
10 think, to what the focus of the investigation by the
11 Federal Bureau of Investigation was?

12 A As you know, and I'm sure as the record
13 established, Central is a bulk carrier, and they have a
14 terminal in Charlotte. As part of that terminal they
15 have a tank wash, what they call a tank wash. This is
16 where the trailers are cleaned after use. That was the
17 operation in question which was the subject of this
18 investigation.

19 Q What did the government want to know or learn
20 about the tank washing activities at the Central Transport
21 facility at Charlotte?

22 A I reviewed a search warrant that had been
23 served, and the subject of the search warrant were allega-
24 tions that the company had been dumping wastewater, un-
25 treated wastewater, into the Charlotte-Mecklenburg sewer

1 system.

2 Q As counsel for Central Transport, what did
3 you do with respect to responding or reacting to that
4 search warrant?

5 A I did a number of things. We met with the
6 FBI representatives, Mr. Burleson, who confirmed what was
7 in the search warrant, and subsequent to that I initiated
8 an investigation on behalf of the client to determine
9 whether there was any substance to the allegations.

10 Q Were you retained at that point, or were you
11 directed by the company to undertake representation of
12 the company?

13 A Yes. My representation began with that
14 telephone call shortly after the search warrant was served.

15 Q Would you indicate what the thrust of your
16 investigation was and what your investigation disclosed?

17 A The nature of the investigation was to
18 conduct interviews of individual employees at the Charlotte
19 facility and individuals in High Point to determine
20 whether, in fact, untreated wastewater had been discharged
21 into the Charlotte-Mecklenburg sewer system.

22 Largely on the basis of those interviews -- we also
23 reviewed a number of records and documents that were sub-
24 poenaed by the FBI. We had periodic discussions with the
25 FBI agent in charge of the case, Mr. Burleson. But based

1 largely on the interviews that I conducted, I determined
2 that, in fact, for at least an undetermined period of time,
3 there had been dumping of this wastewater into the
4 Charlotte sewer system.

5 Q Did your investigation make any attempt to
6 disclose how widely known within the company that activity
7 was, who had knowledge of it?

8 A Yes. Mr. Burleson indicated to us, to a
9 partner of mine, that it was the government's belief that
10 the top management officials in the company knew and had
11 authorized this activity at Charlotte. So one of the
12 concerns I had was to determine not only whether this had
13 occurred, but, of course, who knew about it within the
14 company.

15 Q What did you find out?

16 A Again, on the basis of the interviews that I
17 conducted, I determined that there were individuals at
18 the Charlotte facility who were aware of it, that the
19 practice was confined to the Charlotte facility, did not
20 exist at the other waste treatment facilities that the
21 company operated, and that the top management officials in
22 High Point -- and I'm talking about Gary Honbarrier and
23 his father and the Vice President of Operations, Cliff
24 James -- did not know about and had not authorized this
25 activity.

1 Q This was in 1987, is that correct, Mr. Doyle?

2 A That's when it began. The investigation by
3 the FBI covered about two-and-a-half years.

4 Q Did you continue to participate in that
5 investigation as it proceeded over that time span?

6 A I did intimately over that two-and-a-half year
7 period. The company also retained counsel in Washington,
8 D.C., who assisted me in this matter.

9 Q What was the company's reaction when the
10 subpoena was served? Was any acknowledgement made of it
11 publicly or to the employees, or how much publicity went
12 out at that time?

13 A There was an enormous amount of media activity.
14 This investigation by the FBI became the subject of wide-
15 spread media reports over the next several weeks. Indeed,
16 the investigation by the FBI, at least in part, had been
17 triggered by a report of one of the employees there. That
18 employee was on the six o'clock news in a helicopter flying
19 over the terminal, pointing out where various activities
20 had occurred. This was a lead story on the local news for
21 a couple weeks.

22 MR. PATTERSON: Your Honor, may I have just the
23 question that produced that answer read back?

24 JUDGE SCHNIERLE: Yes.

25 (Whereupon, the reporter read from the record, as
requested.)

1 BY MR. CHESNUTT:

2 Q We have marked and received into evidence,
3 Mr. Doyle, MR Exhibit No. 4.

4 A Yes, sir.

5 Q I think at page 8 of that exhibit there is a
6 signature for Central Transport by its attorney. Can you
7 identify that signature?

8 A Yes, sir. That is my signature.

9 Q So this document represents the culmination
10 of the investigation activities and the information that
11 is identified as MR Exhibit No. 2; is that correct?

12 A Yes, sir. The case culminated in the execution
13 of the plea agreement and the entry of a plea on March 5
14 of this year.

15 Q Let me direct your attention to numbered
16 paragraph (2) on MR Exhibit No. 4. That paragraph indi-
17 cates that the United States agrees not to further prosecute
18 criminally Central Transport, Inc., its subsidiaries,
19 divisions, officers, employees, or directors for various
20 activities. I want to focus on the language "not to further
21 prosecute officers, employees, or directors."

22 A Yes, sir.

23 Q Was there any prosecution of any officer,
24 director, or employee of Central Transport?

25 A No, sir, there was not.

1 Q Was the subject of prosecution of officers
2 or directors ever discussed with you during the course
3 of your representation of the company?

4 A Oh, yes, sir, quite often, by both Mr. Burleson
5 and also by the federal prosecutors.

6 Q What were the nature of those discussions?

7 A Well, they informed us that they were going
8 to seek indictments of the top management officials of
9 the company. They were, in fact, subjects of the federal
10 grand jury investigation being conducted by the FBI and
11 the U.S. Department of Justice.

12 Q If you know, why were those indictments not
13 brought?

14 A They were not brought because there was no
15 evidence to support such indictments. There was no knowl-
16 edge or involvement by the top management officials of
17 the company in these activities.

18 Q The plea agreement does contain language
19 that indicates the company knowingly violated environmental
20 statutes, does it not?

21 A Yes, sir.

22 Q How do we reconcile that with what you have
23 just said about the involvement of top officers and
24 directors of the company?

25 A Under the law, if employees knew they were

1 dumping wastewater that was untreated, any employee, then
2 that's a knowing violation by the company whether it was
3 authorized or approved by any management official of the
4 company.

5 Q Since the entry of the plea agreement on
6 March 5, 1990, have you had any ongoing relationship with
7 the company with respect to environmental matters?

8 A Yes, sir. I have continued to -- I and my
9 firm have continued to represent the company on environ-
10 mental matters and other matters.

11 Q Looking back to 1987 when you indicate that
12 there was publicity in the newspaper and on the television
13 concerning the allegations that have been made, did the
14 company take any actions at that time in response to these
15 developments?

16 A Yes, sir.

17 Q What kind of actions were they?

18 A Once I determined through the investigation
19 that there had been dumping of this untreated wastewater,
20 the company took a number of steps. First of all, the
21 President of the company, Mr. Honbarrier, relieved the
22 individual who was responsible for environmental affairs
23 of the company, relieved him of those responsibilities, and
24 assumed personal responsibility for all environmental
25 matters in the company.

1 Secondly, Mr. Honbarrier and the company engaged
2 the services of an engineering consulting firm, O'Brien &
3 Gere, to conduct environmental audits not only at
4 Charlotte but at all other facilities for the purpose of
5 ensuring that the company was in compliance with all
6 applicable environmental laws and regulations at all of
7 its sites.

8 The company also, subsequent to the inception of
9 the investigation, the company retained the services of a
10 new Director of Environmental Affairs -- I probably don't
11 have Glen's title correct -- but basically hired an expert,
12 someone who had the technical background and training to
13 manage and direct and oversee all of the environmental
14 affairs of the company.

15 The company also retained the services of a
16 consulting firm to assist it in developing more effective
17 communications, both video communications and written
18 communications, to its employees to ensure that all the
19 employees in the company were properly trained and
20 thoroughly aware of applicable environmental laws that
21 affected how they did their job, basically to ensure that
22 the employees got the message, too, that the company
23 complied with all environmental procedures.

24 Q Mr. Doyle, we have two basic dates that have
25 evolved during your testimony. One is a May 1987 date on

1 which this investigation commenced. Then we have the
2 March 5, 1990 date on which the plea agreement was executed.

3 The actions that you've just been talking about,
4 the removal of the environmental director, in particular,
5 and the hiring of the consultant in environmental areas,
6 when did they occur within that time frame that we have
7 been talking about? I'm sure you don't know precise
8 dates, but can you give us some idea?

9 A I think I can give you some general idea. We
10 became aware of the investigation in mid-May. Probably by
11 early-June to mid-June, it was clear that there had been
12 the dumping. The relieving of the individual who had
13 responsibility for environmental affairs occurred within a
14 few weeks of our learning about the FBI investigation. It
15 could have been earlier than that. I don't have an exact
16 date.

17 The retaining of the environmental consulting firm,
18 the engineering firm, occurred, again, in late-June or
19 early-July of 1987. The hiring of the environmental expert,
20 a staff expert, someone who really had the background and
21 knowledge, I think that occurred in early 1988. Glen can
22 give you the exact date of his hire.

23 Q In the pleading that resulted in the reopening
24 of this matter, Mr. Doyle, it was mentioned that Central
25 should present evidence of any mitigating circumstances,

1 if there were any, concerning this matter. Do you know
2 of any such what you would regard as mitigating circum-
3 stances, Mr. Doyle?

4 A I know of two things.

5 Q Tell us what they are.

6 A The first would be the fact that the environ-
7 mental violations at Charlotte, specifically, the dumping
8 of this untreated wastewater, was, in fact, confined to
9 that facility. It was not a practice throughout the com-
10 pany. As I said before, it was not authorized, it was not
11 known about by the top management in the company.

12 The government spent two years and a lot of the
13 taxpayers' money trying to satisfy itself of the opposite
14 conclusion and eventually agreed with us that that was
15 the case.

16 The second thing is that what happened in this
17 case is that the company, in essence, turned itself in.

18 Q Tell us about how that happened.

19 A This actually started in early April of 1987.
20 I received a call from the client. An employee, who later
21 turned out to be the FBI informant who was in the heli-
22 copter, a fella named Gary Belk, who was a long-term
23 employee at the company, he had been demoted. He
24 approached one of the management officials from High Point
25 who was visiting the Charlotte terminal and said, in

1 essence, "I know about illegal dumping at this terminal,
2 and if you don't promote me, don't give me my job back,
3 I'm going to turn you over to the FBI. I'm going to
4 report you."

5 The client called me, and subsequent to that the
6 client notified the local Department of Environmental
7 Health, with whom we had had some contact, to report what
8 the employee had reported to -- Ron Perryman was the
9 fella's name.

10 Q Ron Perryman was the person who --

11 A Was the fella from High Point who Belk made
12 this request to.

13 Perryman reported it to Cliff James, who is the
14 Vice-President of Operations. James called me. James
15 subsequently notified the Department of Environmental Health
16 in Charlotte. It's the county Department of Environmental
17 Health. They bounced him around. He called John Berry,
18 the director there, with whom we had had prior contact.
19 John referred him to another fella, who -- he wound up
20 with two or three referrals, the net result of which was
21 nothing happened. Mr. James repeatedly contacted the
22 fella who finally he was referred to, Gibson, and
23 eventually, after three or four phone messages over a four
24 or five-day period, Gibson said, "We're aware of this but
25 we have to notify the state about this illegal dumping."

1 Several weeks passed, no word from either Gibson
2 or anybody from the state, and finally in early May
3 Mr. James wrote to the state, reciting all this and
4 stating "We stand ready to -- we need your help in investi-
5 gating this report. Tell us what you want us to do."

6 About ten days later the FBI showed up. What
7 in fact had happened is that after not getting anywhere
8 with us -- Belk was not promoted, by the way -- after not
9 getting anywhere with us, Belk then went to the FBI, and
10 the FBI told the state not to do anything, not to respond
11 to our request, because they needed time to set up traps
12 on the line to establish whether there were pollutants
13 being discharged into the system; and so for the next
14 several weeks the FBI was running traps on the sewer dis-
15 charges to see if there were any violations. Then, as I
16 said, the search warrant was served.

17 So this actually started with our report to the
18 local Department of Environmental Health, which, again,
19 relayed this to the state.

20 So in way of mitigation I think the point is that
21 the company, when it first became aware there was any
22 problem environmentally at that facility, notified the
23 appropriate officials.

24 Q What counsel do you give the company now, in
25 light of what has happened with this investigation, if

1 anything of this sort were ever to rise again? What
2 would your counsel to them be?

3 A I suppose it would be not much different than
4 it was the last time, except perhaps this time we would
5 pick up the phone and call the FBI. At the time, frankly,
6 -- when I was an FBI agent we didn't handle environmental
7 crimes, there were no such things. We had security cases
8 and applicant cases and bank robberies, but we didn't have
9 environmental crimes. Now I suppose we might call the
10 FBI or we might call the local U.S. Attorney, or the EPA,
11 perhaps. That's about the only thing, if such a report
12 were to come. We're not going to have such a report.

13 MR. CHESNUTT: If Your Honor please, I would like
14 to have marked, in accordance with notations that you've
15 already adopted, Applicant's Remand Exhibit 1, a four-page
16 document that went out, I think, with the materials sent
17 last week.

18 JUDGE SCHNIERLE: It may be so marked.

19 (Whereupon, the document was marked
20 as Applicant's Remand Exhibit No. 1 for
identification.)

21 MR. CHESNUTT: The first page of this, for purposes
22 of identifying it in the record, is the letter headed the
23 "State of North Carolina, Department of Environment, Health
24 and Natural Resources." The subject is a Notice of Viola-
25 tion, Aurora Terminal, Beaufort County.

1 BY MR. CHESNUTT:

2 Q Mr. Doyle, let me hand you what has just
3 been marked as Applicant's Remand Exhibit No. 1. Can you
4 tell us what that document is, and what acquaintance you
5 have with it?

6 MR. CHESNUTT: Actually, there's really two
7 documents, Your Honor. There is a response authored by
8 Mr. Doyle to the notice. Since they are related materials
9 I have them marked as one exhibit. I would be happy to
10 mark them as two, if that would be your direction.

11 JUDGE SCHNIERLE: No.

12 MR. CHESNUTT: All right.

13 BY MR. CHESNUTT:

14 Q Discuss Applicant's Remand Exhibit No. 1 for
15 us, if you would, Mr. Doyle.

16 (Document handed to witness.)

17 A I guess the question is what do I know about
18 them.

19 Q Yes.

20 A The October 17, 1990 letter was referred to
21 me by the client, and, as you can see, I responded to it
22 after talking with the officials at the North Carolina
23 Department of Environment, Health and Natural Resources.

24 Q The position you have set forth on behalf of
25 the company is certainly articulated in the response that

1 you wrote on October 31, 1990. Perhaps it would be useful
2 for the record to simply summarize what, in your opinion,
3 this matter is all about.

4 A What it's about is a terminal, a new facility,
5 at Aurora. The company is serving a customer in eastern
6 North Carolina that I think for whom we're hauling
7 phosphoric acid and needed to set up a small facility
8 there. The company sought to set up a tank wash, similar
9 to the one in Charlotte but smaller in scale, to set up a
10 tank wash there for the tank trailers, to treat the
11 residue of the phosphoric acid, and to have a permit --
12 applied for a permit to discharge its wastewater to a
13 nearby town of Aurora.

14 That permit was submitted, was scrutinized, and
15 eventually the town was not able to accommodate that
16 request. They had been having problems of their own in
17 compliance with their sewage system.

18 The company then sought to dispose of the waste-
19 water at a site, an environmentally approved site, in
20 South Carolina at Harleyville, and for that purpose had
21 to generate some wastewater to see what the characteristics
22 are. They don't take anything at Haryleyville unless they
23 know what its chemical constituents are. So you have to
24 have a wash operation, get the effluent, send it off to
25 the labs, sample it.

1 That was in process when these folks from the
2 state showed up. They took the position we were running
3 what they describe as a wastewater collection system, and
4 they also took the position that if we were going to
5 haul -- we had not hauled anything -- if we were going
6 to haul, we had to have a pump for what they call pump
7 and haul activities, and that triggered these notices of
8 violation.

9 The company, as soon as the notices were received,
10 stopped the wash, contacted me. I wrote to the state,
11 after talking with them, seeking -- first of all, taking
12 our position. I reviewed the statute. I don't think the
13 statute governs these activities, as I said in the letter.
14 Secondly, there is nothing in our statutes or regulations
15 that requires a permit for pump and haul activities. I
16 pointed that out here and also asked them for their
17 authority. And, frankly, the state has not responded to
18 the letter, nor have they proposed any kind of penalty
19 or taken any other action. The statute typically calls
20 for some, if you issue a violation notice, issuance of
21 a proposed penalty. They haven't even done that.

22 That's what I know about those two letters.

23 MR. CHESNUTT: I think that's all the examination
24 I have of Mr. Doyle. He is available for cross-
25 examination.

1 JUDGE SCHNIERLE: Mr. Patterson.

2 MR. PATTERSON: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. PATTERSON:

5 Q Mr. Doyle, I take it that you continue, even as
6 of today, as counsel for Central Transport?

7 A Hopefully.

8 Q So you are here testifying on behalf of your
9 client?

10 A I am.

11 Q The employee who was the, I guess the term,
12 the widely-used term, is whistle-blower, is Gary Belk?

13 A Belk.

14 Q B-e-l-k?

15 A Yes, sir.

16 Q When did he first blow his whistle, if you
17 recall?

18 A That, I suppose, depends upon to whom you're
19 referring. I don't know when he blew his whistle to the
20 FBI. Although the affidavit that was filed by Mr. Burleson
21 suggests that it was sometime in the middle of April of
22 '87, his first approach to us, to put it kindly, was on
23 or about the -- sometime in the first week of April.

24 Q That was the in-company or the in-house whistle-
25 blowing, so to speak?

1 A Or blackmailing. Basically, what he said is,
2 "I'm going to turn you in to the FBI if you don't promote
3 me." If that's whistle-blowing, that's what he did.

4 Q I don't represent Mr. Belk. I'm just concerned
5 about when Mr. Belk brought to the company's attention
6 that there was the possibility of dumping at the Charlotte
7 terminal.

8 A The answer is the first week in April 1987.

9 Q If you will look, sir, at -- or maybe you know
10 without looking, because I'll have to wend my way through
11 these documents. When were the samples from the discharge
12 point taken by the FBI, that is the samples that are
13 mentioned either in the information or the negotiated plea
14 agreement? I frankly don't remember which.

15 A Again, I don't know. My recollection of the
16 affidavit is that they were taken sometime in late April,
17 and perhaps in early May.

18 Q Let's go, sir, to the second page of Exhibit C
19 attached to the negotiated plea agreement, which is
20 Exhibit MR-4.

21 A What document are you referring to? Which is
22 Exhibit C, the information?

23 JUDGE SCHNIERLE: The factual basis.

24 THE WITNESS: The factual basis?
25

1 BY MR. PATTERSON:

2 Q Yes, sir.

3 A Okay.

4 Q If you'll go, sir, to the second page of that
5 and almost to the very bottom of that page, it says, "On
6 the three dates in the Information, the FBI found
7 chemical wastes in the CMUD public sewer." Are you with
8 me?

9 A Yes, sir.

10 Q If you go to the Information, you find that
11 you're correct, that it was in the -- if you look at
12 Count I, Count II and Count III, you find the dates
13 April 28 through May 5 in those three counts. Are you
14 with me?

15 A Yes, sir.

16 Q So they were the dates, approximately one
17 month after the company had reason to know of the dumping,
18 at least directly from Mr. Belk, that apparently the
19 dumping continued?

20 A Well, Mr. Belk talked about illegal dumping.
21 In reviewing the letter that was sent to the state, it
22 isn't clear that it was illegal dumping of wastewater or
23 what. But, yes, the wastewater, according to the FBI's
24 warrant, and certainly according to the Factual Basis, the
25 dates here coincide with the search warrant dates. In the

1 search warrant they show when the samples were taken, and
2 I think they were taken in late April and early May.
3 That was, as you say, about a month after Belk first made
4 reference to illegal dumping.

5 Q And it's a fact that the statements in the
6 negotiated plea agreement and its attachments are admitted
7 as true beyond a reasonable doubt by the company; is that
8 correct?

9 A They are admitted as facts.

10 Q And the period of time we are talking about now
11 is in April and May of 1987, to get the year fixed,
12 because it's now 1990?

13 A The period you and I have been discussing is
14 1987.

15 Q Do you know the period used up by the factual
16 hearings in this case?

17 A No, sir.

18 Q If I told you, subject to being corrected by
19 your counsel, that they ended on June 28, '89, as the last
20 date of nine hearing days in this case, would you disagree
21 with me?

22 A I wouldn't disagree with you about anything
23 having to do with the hearings.

24 MR. CHESNUTT: I'll stipulate that that was the
25 last day of hearing prior to this one.

1 BY MR. PATTERSON:

2 Q Were you consulted at all, sir, in connection
3 with your environmental representation of Central Transport,
4 in connection with this Charlotte incident at least, were
5 you consulted in connection with this PUC, Pennsylvania
6 Public Utility Commission, hearing at all?

7 A By my client?

8 Q Yes, sir, or by Mr. Chesnutt on behalf of your
9 client.

10 A I had some conversations with Mr. Chesnutt.

11 Q Were you aware of any discovery pending in
12 this proceeding through that period of time, starting in
13 October of 1988, actually -- it doesn't go back as far
14 as your incident in 1987 -- requesting information regard-
15 ing certain environmental problems?

16 A I can't tell you exactly what the nature of
17 the discovery was, but I was asked by, I believe it was,
18 Mr. Chesnutt, for certain information, which we provided.
19 I think it may have involved safety, some safety viola-
20 tions, and perhaps also environmental. I'm not sure.

21 MR. PATTERSON: If you will indulge me a moment,
22 sir. I'm trying to find something.

23 (Pause.)

24 BY MR. PATTERSON:

25 Q Mr. Doyle, on behalf of the company, if you

1 were asked in late 1988, October, November, December of
2 '88, the following question, would you have produced the
3 then state of the proceeding that culminated in the
4 negotiated plea agreement? Now, I'm trying to be careful
5 with this, because I don't want to drag you off the track.
6 The question asked is: since January 1, 1986 -- Your
7 Honor, let me show this to counsel. I think it would be
8 easier, and probably better for the witness, if he was
9 able to read it, rather than me rereading it. It is fairly
10 lengthy. It happens to be question 14 from Matlack's
11 interrogatories to Central.

12 I'll show it to counsel before the witness, if
13 Your Honor, would prefer.

14 JUDGE SCHNIERLE: Okay.

15 (Document shown to Counsel Chesnutt.)

16 MR. PATTERSON: Are you comfortable with that?

17 MR. CHESNUTT: I'm comfortable with him reading it.

18 (Document handed to witness.)

19 MR. PATTERSON: Take your time.

20 (Witness perusing document.)

21 THE WITNESS: Go ahead.

22 BY MR. PATTERSON:

23 Q Are you ready, sir?

24 A I have read it.

25 Q My question was: if asked that question in

1 late 1988, --

2 A Asked what question? This question?

3 Q That question, sir.

4 JUDGE SCHNIERLE: Can we put on the record exactly
5 what question you're referring to?

6 MR. PATTERSON: Yes, sir. It's question 14 from
7 Matlack's interrogatories. Shall I read it, sir?

8 JUDGE SCHNIERLE: Yes. I think it would be better
9 that way. It will be clear on the record.

10 MR. PATTERSON: The question is as follows: "Since
11 January 1, 1986, has Applicant" -- and I would put in
12 that that is Central -- "received any complaints, warnings,
13 or notices of claim from, or been cited by, the
14 Pennsylvania Public Utility Commission, the Pennsylvania
15 Department of Environmental Resources, the United States
16 Environmental Protection Agency, the United States
17 Department of Transportation, the Federal Bureau of
18 Investigation, the North Carolina Division of Environmental
19 Management, or other federal governmental agencies, or
20 governmental agencies in the States of North Carolina and
21 Pennsylvania, in connection with alleged violations
22 involving or affecting transportation? If so, give the
23 following information for each instance."

24 Now, there is a footnote after the words "involving
25 or affecting transportation," and that footnote reads:

1 "Upon stipulation of Matlack, Inc. and Central Transport,
2 Inc., the term 'involving or affecting transportation,'
3 for the purposes of this interrogatory, shall be inter-
4 preted to mean: incidents and occurrences, one, during
5 the operation of vehicles on the public highways, two, at
6 or adjacent to terminals, and three, during the process of
7 repair or cleaning of vehicles."

8 The interrogatory then goes on, as above set
9 forth, to ask for certain information involving each
10 instance of such violation. I don't think it is necessary
11 to go through that, Your Honor.

12 That was question 14 of Matlack's interrogatories.
13 That question was, as you can tell from the text, sort of
14 negotiated as a final form of the question that was
15 acceptable to the parties and to Your Honor.

16 JUDGE SCHNIERLE: I recall that. And your question
17 of the witness is how would he have answered --

18 MR. PATTERSON: No. It's a little bit more specific
19 than that, Your Honor.

20 My question to the witness was: being presented
21 with that question in late 1988, would he have reported
22 anything regarding the Charlotte terminal incident we've
23 talked about the whole time this morning?

24 MR. CHESNUTT: And I object to that question for the
25 following reasons. My objection goes this way. I think,

1 with all deference to Mr. Doyle, whose qualities as a
2 lawyer I totally respect, it seems to me that what
3 Mr. Patterson is asking him to do is to second guess my
4 judgment as an attorney in advising the client what to
5 offer in response to the interrogatory. I don't think
6 that is an appropriate question. I don't think it is a
7 useful question in the context of this hearing. If we
8 were having a hearing on my conduct as an attorney, per-
9 haps it would be an appropriate question, but I don't think
10 that is the scope or the purpose of this hearing.

11 I furthermore think that irrespective of how it
12 would be answered, it really has no moment to this hearing,
13 because the information that is being presented, and the
14 whole scope of this rehearing opportunity, is eliciting
15 everything and more than Mr. Patterson would have gotten
16 in 1988, because none of the documents here as they've
17 been introduced as Matlack Exhibits 1 through 4 were in
18 existence in 1988.

19 MR. PATTERSON: Your Honor, I'm not accusing
20 Mr. Chesnutt of anything. I don't know whether Mr. Chesnutt
21 was aware of these things at all. It's obvious to me the
22 company was at that time, his client was, but I don't know
23 whether he was, so I'm not impugning his judgment.

24 I think Mr. Doyle has been offered here as, although
25 representing the company, as a witness for the company to

1 explain a lot of these things, and I began to be con-
2 vinced in the midst of his testimony that this was all just
3 a \$1.5 million mistake.

4 I think I'm entitled to explore with him in the
5 same manner the company's response to a question asked
6 long ago in this proceeding which would have obviated
7 the need in large measure for this rehearing.

8 I think it is an appropriate question, and it's
9 actually the only one I have on this subject.

10 MR. CHESNUTT: I think that that is where
11 Mr. Patterson and I clearly disagree, because, as I point
12 out, none of the documents that have been produced here
13 were in existence in 1988. So if what we're examining is
14 what we have in front of us today, that need would not have
15 been obviated because we would not have had those documents
16 in 1988.

17 MR. PATTERSON: Your Honor, there's no question
18 that the documents would not have been here, but, Your
19 Honor, indeed, you may have denied this, so who knows what
20 would have been had this information been in the record.
21 This application might have been denied on the basis of
22 fitness. I can't know what would have happened.

23 JUDGE SCHNIERLE: I am inclined to -- I'm going to
24 sustain the objection for these reasons: reading the
25 question over, it is apparent to me that -- well, I'll

1 sustain the objection. I'm going to ask one question.

2 Had Central received any documents of any sort
3 from the agencies regarding this matter as of the last
4 quarter of 1988?

5 THE WITNESS: The only thing Central had received,
6 Your Honor -- the answer is yes, we received subpoenas.
7 The government or the grand jury issued subpoenas, a federal
8 grand jury issued subpoenas. That's all we received from
9 the government. We received no notice of claim or complaint
10 or citation such as is described there. The only thing we
11 had, we had a series of grand jury subpoenas to produce
12 documents.

13 JUDGE SCHNIERLE: I'm going to sustain the
14 objection. I think probably you can argue that they were not
15 in compliance with the interrogatory. Central can argue
16 that they were in strict compliance with the interrogatory.

17 In hindsight, perhaps, disclosure of this material
18 back then would have been helpful to everybody involved in
19 this case, but I don't think Mr. Doyle's answer to that
20 question is going to be germane to the outcome of this
21 proceeding.

22 MR. PATTERSON: Very well, Your Honor.

23 BY MR. PATTERSON:

24 Q At that point in time, when you received the
25 subpoenas, I take it there also was a search warrant

1 issued, was there not?

2 A The search warrant was issued. There was only
3 one search warrant. That was issued and executed on or
4 about May 13, 1987. That was completed on or about the
5 14th, I think.

6 Q So in addition to subpoenas there was a search
7 warrant, and I think you indicated that the investigation
8 had been going on for some time.

9 A I'm sorry?

10 Q The investigation with respect to dumping had
11 been going on for some time.

12 When did the company become aware, other than
13 through -- let me restate that. Was the company aware,
14 before Mr. Belk came to the company, that there was an on-
15 going investigation involving dumping?

16 A I'm sorry. I did not understand the question.
17 Could you repeat the question, please?

18 Q Sure. I'll restate it. Maybe it will be more
19 understandable.

20 Was the company aware, before early April of 1987
21 when Mr. Belk first mentioned the problem, that there was
22 an illegal dumping problem with respect to the Charlotte
23 terminal?

24 A No.

25 Q Subsequent to that time and during the period

1 after the issuance of subpoenas and before the negotiated
2 plea agreement, a period of some two years, --

3 A Two-and-a-half years.

4 Q -- two-and-a-half years, did the company become
5 aware that there was an investigation which predated
6 Mr. Belk's April of 1987 mention to the company of the
7 problem?

8 A No, and there was no investigation prior to
9 Belk's report, to my knowledge.

10 Q Help me then. In the negotiated plea agreement,
11 Mr. Doyle, the second page -- and this is Exhibit MR-4 --
12 right near the top of the page it talks about the scope
13 of the government's investigation from 1985 through
14 January 31, 1990. Help me out.

15 A I'll be glad to. That was the period of time
16 -- the government hadn't started an investigation in 1985.
17 The government, by its own affidavit, by the affidavit of
18 Mr. Burleson, his investigation began on or about the
19 middle of April of 1987, but the scope, that is the records
20 that they reviewed, the activities that they were looking
21 into, apparently extended prior -- that's what they told
22 us. They told us: well, we've been looking at what's
23 been going on at this facility going back to 1985. But the
24 actual act of investigation such as that conducted by the
25 FBI did not start until the middle of April of '87.

1 Does that help?

2 Q Yes, sir. Thank you.

3 Based on your investigation, which you detailed
4 early in your testimony, how long, over what period of time,
5 had the dumping occurred, the illegal dumping occurred?

6 A That's a question which I was never able to
7 satisfactorily answer. It depended upon which employee
8 you talked to. I interviewed employees who said it had
9 been occurring for a couple months prior to the FBI showing
10 up at the terminal. There was at least one employee who
11 told us it had been going on for a couple years. Frankly,
12 we were never able to determine over what period of time
13 this had occurred. The only thing we were able to deter-
14 mine with reasonable certainty was that there had been
15 bypassing of the waste treatment system, at least in 1987.

16 Q Now, sir, I would assume that the negotiated
17 plea agreement and the rest of this matter were not
18 matters treated lightly by the company, that is, it was a
19 major dislocation of the company, a major concern of the
20 company, perhaps that's better.

21 A From the day that Mr. Belk first indicated
22 there might be environmental violations at the facility,
23 it was never treated lightly.

24 Q During the two-and-a-half years leading up to
25 the negotiated plea agreement, were there off-and-on

1 discussions about the liability, as a polite word, of
2 the officers and directors of the company for the problem?
3 Were there continuing discussions of that possibility?

4 A There were discussions that I had with
5 representatives of the government about that, yes. I had
6 discussions with my client, which I am probably not at
7 liberty to disclose. I did discuss that subject with
8 the client.

9 Q And I suppose, with that kind of an ax
10 hanging over your head, that's part of the reason you
11 negotiate a plea agreement and agree to pay \$1.5 million
12 in fines and to make public apologies and so forth. All of
13 that gets swallowed in a negotiated plea. Isn't that
14 generally why defendants negotiate?

15 A Are you asking me why we entered into the
16 plea agreement?

17 Q No. I think the question was --

18 A Could you restate the question, please?

19 Q Do you want it read back or restated?

20 A Whichever is more convenient for you.

21 Q Let me try to restate it. Isn't it a fact that
22 it's the process of two-and-a-half years of negotiations,
23 with various pressures being applied by the U.S. Attorney,
24 pressures with respect both to the company itself, the
25 corporation, and with respect to the officers and directors

1 of the company, which brings about a negotiated plea
2 agreement? Isn't that in fact what happened?

3 A No, I don't think that's an accurate state-
4 ment as to what happened. What happened is that it took,
5 I think, about that long for the government to become
6 convinced of what we were telling them all along, and
7 that is that the management people at the company had no
8 knowledge, Mr. Honbarrier, both Honbarriers, and Cliff
9 James and Perryman, none of them knew about this. I
10 think it took that long for the federal government to
11 realize what we had told them from the outset, because
12 we knew pretty early on that there had been this bypassing.

13 Q Did the government at any point suggest the
14 indictment of those people who were indeed responsible for
15 the bypass?

16 A Never. They showed us an indictment, though, a
17 mock indictment, of the top management officials at
18 the company at one point in an effort to try to bring the
19 pressure that you're talking about on the company.

20 Q I think you indicated that you continue to
21 represent the company in connection with environmental
22 and I guess other matters, your firm.

23 A It's principally litigation matters. I don't
24 hold myself out as a great environmental expert.

25 Q Have you, since the negotiated plea agreement,

1 represented the company in connection with any environ-
2 mental complaints?

3 A Yes, sir. The Exhibit AR-1.

4 Q Is that the only one that you have represented
5 the company in connection with?

6 A Since what date?

7 Q Since you reached the negotiated plea agreement.

8 A Yes, sir.

9 MR. PATTERSON: Excuse me a minute. I'm looking
10 for something.

11 (Pause.)

12 BY MR. PATTERSON:

13 Q Are you aware of any notices of non-compliance
14 issued to Central Transport from the Charlotte-Mecklenburg
15 Utility Department?

16 A CMUD. Yes, sir, I am.

17 Q Have you represented the company in connection
18 with those notices?

19 A No, sir, I have not.

20 Q How did you become aware of it?

21 A I believe when they were produced for this
22 proceeding.

23 MR. PATTERSON: Your Honor, I am afraid that I don't
24 have sufficient copies of these to mark as an exhibit.
25 That's my intent right now. Mr. Chesnutt may want to object,

1 but my intention is to mark as an exhibit Notices of
2 Non-Compliance from the Charlotte-Mecklenburg Utility
3 Department, Industrial Waste Division, dated May 31, 1990,
4 August 24, 1990, and September 18, 1990.

5 MR. CHESNUTT: I have no objection to your marking
6 them. I furnished them to you, I believe.

7 MR. PATTERSON: Yes, sir.

8 MR. CHESNUTT: I would suggest to you that a
9 subsequent witness is the one best in the position to
10 address them, but --

11 MR. PATTERSON: I'm probably not going to go any
12 further than I have. I didn't know whether you had brought
13 copies, intending to make them exhibits, as you did AR-1.
14 It might make life a little bit easier if you did.

15 MR. CHESNUTT: I believe I did not bring sufficient
16 copies of those.

17 JUDGE SCHNIERLE: Let's go off the record.

18 (Discussion off the record.)

19 JUDGE SCHNIERLE: Back on the record.

20 We've had a short off-the-record discussion regard-
21 ing the production and reproduction of Exhibits MR-5, 6
22 and 7.

23 Those exhibits may be marked as requested. MR-5
24 being the Notice of Non-Compliance dated May 31, 1990,
25 MR-6 being the Notice of Non-Compliance dated August 24,

1 1990, and MR-7 being the Notice of Non-Compliance dated
2 September 18, 1990.

3 (Whereupon, the documents were marked
4 as Matlack Remand Exhibits Nos. 5
through 7 for identification.)

5 JUDGE SCHNIERLE: Mr. Patterson.

6 MR. PATTERSON: I have nothing further, Your Honor.

7 JUDGE SCHNIERLE: Mr. Wick.

8 MR. WICK: I have no questions of the witness.

9 JUDGE SCHNIERLE: Mr. Malin.

10 MR. MALIN: I just have a couple, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MALIN:

13 Q The Exhibits MR-5, 6 and 7, do you have them
14 in front of you?

15 A I do not have them.

16 MR. MALIN: May I approach the witness.

17 (Documents handed to witness by Mr. Patterson.)

18 THE WITNESS: I have a set.

19 BY MR. MALIN:

20 Q Is that the same district, the same sewer
21 system, the same district that involved the incident that
22 you were discussing?

23 A Yes, sir.

24 MR. MALIN: I have nothing further.

25 JUDGE SCHNIERLE: I have a couple of questions.

1 THE WITNESS: Yes, sir.

2 JUDGE SCHNIERLE: Could you explain exactly how
3 the dumping occurred?

4 THE WITNESS: Yes, sir. May I give a lengthy --
5 it takes a lengthy explanation, if you'll bear with me.

6 JUDGE SCHNIERLE: Sure.

7 THE WITNESS: Originally, at that facility the
8 effluent from the tank wash operation was piped to
9 lagoons or settling ponds. That was kind of the state of
10 the art in the 1970s as to how you treated your waste-
11 water for one of these operations, as I understand it.

12 JUDGE SCHNIERLE: All right. Let me interrupt you.
13 In other words, the tank is pulled into some area that
14 has drains and --

15 THE WITNESS: Exactly. Water flows then from the
16 wash area, and also they have steam rack, it flows also
17 from the steam rack into a settling pond. That was the
18 flow. Now, --

19 JUDGE SCHNIERLE: And I take it in those days you
20 would wait, periodically you would pump the stuff out of
21 there and take it somewhere else, and the idea was anything
22 that wasn't water hopefully would --

23 THE WITNESS: Would settle.

24 JUDGE SCHNIERLE: -- would settle.

25 THE WITNESS: And these are concrete lined, clay

1 based ponds.

2 In the middle 1980s the company put in -- actually,
3 in early 1980, and then subsequently in middle 1980 they
4 upgraded it. In the early '80s they put in a waste
5 treatment facility to pretreat the waters before they were
6 discharged into the public sewer system. That's a permitted
7 activity.

8 They upgraded that facility in the middle 1980s
9 and put in at that time a state of the art waste treatment
10 facility.

11 JUDGE SCHNIERLE: Let me break in again. In other
12 words, at that point the water from the wash was no longer
13 -- it was still directed to the lagoon --

14 THE WITNESS: It still goes to the -- it could go
15 either way. It could go from the wash to the waste treat-
16 ment system, or it could come from the lagoons. I think
17 most of it went to the lagoons and from there back to the
18 waste treatment facility. I may be --

19 JUDGE SCHNIERLE: But eventually it would go
20 through the waste treatment facility and then be discharged
21 into the sewers.

22 THE WITNESS: Exactly. And it went from the waste
23 treatment facility to the sewer system. The purpose of
24 the waste treatment facility was to remove solids from the
25 rinse or the wastewater. That was the nature of the

1 treatment process, and to alter the pH level in the wash
2 water.

3 JUDGE SCHNIERLE: Basically, the idea was to
4 remove those things that the city's municipal treatment
5 plant wouldn't --

6 THE WITNESS: Wouldn't normally accommodate. There
7 are standards, discharge standards, that the city has, and
8 the idea of the treatment system is to bring the effluent
9 into those tolerances. It's a fairly delicate process,
10 but that was the nature of the operation.

11 Apparently, what happened is -- and, again, I
12 can't tell you when, but that line, that sewer line --
13 there was also an old sewer line to some structure which
14 I think no longer existed. In any event, there was a pipe
15 going to this old but still operable sewer line, I
16 believe a separate sewer line, that eventually the waste
17 treatment operation tied into. And the dumping, if you
18 will, or bypassing, occurred by discharging directly into
19 this pipe, which didn't go through the waste treatment
20 system but went straight to the sewer system. That, as I
21 understand it, and as it was explained by a couple of the
22 employees, is how the activity occurred. The pipe was
23 not even visible. It, when I saw it, was covered with
24 grass. Unless you knew it was there, you would never see
25 it. That's apparently how it was conducted.

1 JUDGE SCHNIERLE: Did you ever determine -- I take
2 it there was a physical connection of some sort?

3 THE WITNESS: I believe so; yes, sir.

4 JUDGE SCHNIERLE: Did you ever determine who in
5 the company authorized that to be done?

6 THE WITNESS: Let me put it this way: no one ever
7 admitted authorizing it. Several people at the terminal
8 admitted knowing about it. The employees indicated that
9 it was an individual named Jim Moore, who had been a
10 terminal manager there in Charlotte; that he was the fella
11 that had authorized it. Moore denied that but said he
12 knew about it.

13 JUDGE SCHNIERLE: One other question regarding the
14 business with the Aurora terminal. I'm going to summarize
15 what I think your testimony was, and I just want to make
16 sure I've got this clear in my mind.

17 Originally, -- well, Central has got this tank
18 cleaning operation in Aurora. Originally, the wastewater
19 was to be discharged into the Aurora sewage
20 system after being subject to appropriate treatment.

21 THE WITNESS: Yes, sir.

22 JUDGE SCHNIERLE: The Aurora sewage system, for
23 whatever reason, cannot accept that.

24 THE WITNESS: That's correct.

25 JUDGE SCHNIERLE: So what you're going to have to do

1 is truck it somewhere else.

2 THE WITNESS: Yes. That is an alternative. In
3 fact, what is happening is nothing is -- there's no wash
4 being conducted. Indeed, the wash that was conducted
5 there was a very limited operation for about a week, may-
6 be, at the most, two to three weeks, and then stopped.
7 It generated enough wash water to fill a tank trailer,
8 and perhaps one tank trailer and part of another. Frankly,
9 that wash water is at the site.

10 We're waiting for the state to respond to my
11 letter to see if they have a legal basis upon which to
12 require us to get a permit before we transport that
13 wastewater to an approved disposal site in South Carolina.

14 JUDGE SCHNIERLE: But, in any event, the general
15 idea is that the sewage system cannot take it, and if you
16 get the permit what you will simply do is truck it some-
17 where else.

18 THE WITNESS: That's correct; yes, sir. But to a
19 permitted location. It's got to go to a location that is
20 sanctioned and environmentally authorized, in this case
21 by the South Carolina Department of Environmental -- it's
22 called DHEC, Department of Health and Environmental Control,
23 I think.

24 JUDGE SCHNIERLE: They have to be authorized to
25 accept that waste --

1 THE WITNESS: Yes, sir. The facility at Harley-
2 ville is a regulated facility by DHEC, and any disposal
3 there would have to be a permitted activity through the
4 South Carolina Department of Health and Environmental
5 Control.

6 JUDGE SCHNIERLE: Before you redirect, I'm going
7 to ask them if they have any more questions they want to
8 ask on the basis of what I asked.

9 Mr. Patterson.

10 MR. PATTERSON: Yes, sir. Very briefly.

11 FURTHER CROSS-EXAMINATION

12 BY MR. PATTERSON:

13 Q Is there a savings realized through dumping
14 directly and not treating waste? Was that the purpose of
15 the employees who did not use the treatment facility?
16 What advantage is it to avoid that? Obviously, now there
17 is none.

18 A No, sir. I can tell you what they told me,
19 which is that they did it because the waste treatment
20 system was running close to full capacity, and they had
21 had periods when they simply had more effluent than the
22 system would accommodate at that particular time, and
23 rather than put it in a tank trailer and retain it there
24 until it could be run through the system, they took the
25 expedient way out and just simply dumped it.

1 But in terms of a cost savings, no, there really
2 was no cost savings. In fact, that was the thing that
3 was so frustrating to the top officials in the company.
4 I mean they made an investment of several hundred thousand
5 dollars on a state of the art waste treatment facility
6 only to have these folks in Charlotte bypass it.

7 MR. PATTERSON: That's all I have.

8 JUDGE SCHNIERLE: Mr. Wick.

9 MR. WICK: Nothing, sir.

10 JUDGE SCHNIERLE: Mr. Malin.

11 MR. MALIN: No, sir.

12 JUDGE SCHNIERLE: Mr. Chesnutt.

13 MR. CHESNUTT: Why don't we take a recess and I'll
14 see whether any redirect is necessary, or if it can be
15 shortened if there is any.

16 JUDGE SCHNIERLE: All right. Ten-minute recess.

17 (Recess.)

18 JUDGE SCHNIERLE: Let's go back on the record.

19 Mr. Chesnutt, do you wish to move for the admission
20 of AR-1?

21 MR. CHESNUTT: I do.

22 JUDGE SCHNIERLE: Any objection?

23 MR. PATTERSON: None.

24 JUDGE SCHNIERLE: AR-1 is admitted.
25

1 (Whereupon, the document marked as
2 Applicant's Remand Exhibit No. 1 was
received in evidence.)

3 MR. CHESNUTT: I have no redirect examination.

4 JUDGE SCHNIERLE: You may step down, sir. Thank
5 you.

6 THE WITNESS: Thank you, Your Honor.

7 (Witness excused.)

8 MR. PATTERSON: Your Honor, I would move the
9 admission -- and I don't think I did this -- of MR-5, 6
10 and 7. I think we marked them, identified them, but
11 didn't move their admission.

12 MR. CHESNUTT: I have no objection.

13 JUDGE SCHNIERLE: MR-5, 6 and 7 are admitted.

14 (Whereupon, the documents marked as
15 Matlack Remand Exhibits Nos. 5 through
7 were received in evidence.)

16 JUDGE SCHNIERLE: Mr. Chesnutt, do you have another
17 witness?

18 MR. CHESNUTT: I do. I call Glen Simpson forward
19 and ask that he take this seat and stand and be sworn.
20 Whereupon,

21 GLEN SIMPSON

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CHESNUTT:

25 Q Will you state your name and business address,

1 sir?

2 A My name is Glen Simpson. My business address
3 is P.O. Box 7007, High Point, North Carolina.

4 Q Who do you work for?

5 A I work for Central Transport, Incorporated.

6 Q What is your position there?

7 A My position is Environmental Director.

8 Q When were you hired?

9 A I started March 14, 1988.

10 Q To whom do you report?

11 A I report to the President of the company.

12 Q Could you give us some idea of what you did
13 before you came to Central Transport in 1988, particularly
14 with respect to your education and qualifications to
15 accept the job that you accepted with Central Transport?

16 A I have approximately eight years of environ-
17 mental research experience with North Carolina State
18 University. I have Bachelor and Master's Degrees from
19 the University of Wisconsin and North Carolina State
20 University.

21 Q In the position that you've identified, what
22 are your responsibilities at Central Transport?

23 A My major responsibility is to ensure environ-
24 mental compliance, and to see that environmental operations
25 are conducted in a sound manner for the company.

1 Q Let's relate those duties to the treatment
2 of wastewater in particular. Where does that occur, and
3 what are your responsibilities with respect to it?

4 A We treat wastewater at a number of our
5 terminals or facilities. I have responsibilities to ensure
6 that the wastewater treatment process is operational and
7 in compliance, and that includes collection of samples
8 for analysis, with submission of monitoring data to the
9 appropriate sewer authorities, and discussion with them
10 on an as-needed basis.

11 Q This record reflects that one of the places
12 at which you conduct wastewater treatment in the Central
13 system is at Karns City, Pennsylvania. Are you familiar
14 with that location?

15 A Yes, sir.

16 Q When did you first visit that facility?

17 A Probably during the summer of 1988.

18 Q How frequently do you visit that facility, or
19 have you visited that facility since that time?

20 A No less than four times per year.

21 Q When you say you visit four times a year,
22 how long do you stay when you come to visit?

23 A I'll spend a week at the facility, a week at a
24 time.

25 Q What are the purposes of the visits that you

1 make to Karns City?

2 MR. PATTERSON: Your Honor, I'm going to object
3 and ask for an offer of proof with respect to this
4 testimony.

5 JUDGE SCHNIERLE: Mr. Chesnutt.

6 MR. CHESNUTT: I'm not sure what he wants in the
7 way of an offer of proof. I'm not sure what the basis of
8 his objection is.

9 MR. PATTERSON: I will make it clear; no mystery.
10 This proceeding has been reopened, according to the
11 Commission's order, for the limited purpose of obtaining
12 testimony and evidence regarding Central Transport, Inc.
13 Clean Water Act violations and any other environmental
14 or safety violations occurring or becoming known since the
15 close of the evidentiary record.

16 From what I sense of this witness -- and this is
17 why I asked for the offer of proof -- this gentleman is not
18 going to talk about safety or environmental violations.
19 If that's the offer of proof, I'm satisfied. I think he's
20 going to talk about how good Central is about taking care
21 of environmental problems, and I think that is beyond the
22 scope of the Commission's remand, very clearly.

23 MR. CHESNUTT: My response to that, Your Honor, is
24 that -- if I can find the order of reopening -- my sense
25 of it is there is an expression of concern by the Commission

1 that evidence has been produced by Matlack, and we've
2 had testimony about here this morning, the guilty plea
3 entered, the plea agreement entered into at Charlotte,
4 and I think it is pretty clear that the Commission wants
5 to know what bearing the entry of that guilty plea in
6 March of 1990 has on this company's activities in
7 Pennsylvania where it seeks to operate. I think the
8 Commission is entitled to know that. I think Mr. Simpson
9 is here prepared to tell you what is going to happen in
10 response to that. That is the purpose for which his
11 testimony is being presented.

12 MR. PATTERSON: Your Honor, the Commission is very
13 clear, and they could easily have said, "and any improvements
14 made by Central in its environmental programs," or words to
15 that effect. They were very, very specific. I think they
16 did not want to give the opportunity to either side to
17 talk about how good they are, or what changes they have made.
18 They asked very specifically: Clean Water Act violations
19 and any other environmental or safety violations, period.
20 It doesn't say improvements, it doesn't say betterments.
21 It's very, very clear, and I think we are beyond the scope
22 of that order if that's what the witness is going to talk
23 about.

24 MR. MALIN: I would like to join in that, if you
25 would hear from me.

1 JUDGE SCHNIERLE: Mr. Malin.

2 MR. MALIN: The problem is also going down a
3 slippery slope. I don't believe the Commission thought
4 that we were supposed to start this case over again. In
5 other words, I'm not supposed to have an opportunity to
6 bring in any additional evidence about something I might
7 have overlooked on a direct examination, or anybody else.
8 Once you start over again on even a limited subject, or
9 any subject, then we have a situation where, although the
10 testimony may have been proper in the initial hearing, in
11 the initial part of the Applicant's proof, I don't think
12 we are here to begin again. We are here to put a footnote
13 on a record that has already been created, and that
14 footnote should not be expanded beyond the specific and
15 most narrow confines that the purpose of the reopening was
16 for.

17 JUDGE SCHNIERLE: I'm going to overrule the
18 objection, because I think the purpose, as I've indicated
19 in my decisions, the purpose of the fitness criteria is
20 forward-looking rather than to punish the Applicant for
21 past transgressions. However, I would suggest to
22 Mr. Chesnutt that an extensive examination on this point is,
23 in my view, not warranted by the remand order. I think
24 to the extent that Mr. Simpson was hired as a response to
25 the violation, it's fair game, but I think to the extent

1 that it goes much beyond that, I think it is beyond the
2 scope.

3 MR. PATTERSON: I would point out, Your Honor, --
4 and I'm not disagreeing with your ruling. As I have to, I
5 accept it -- that there was testimony in this record,
6 extensive testimony, back and forth about Karns City.
7 If we're going to sit and improve on that part of the
8 record on a unilateral basis, then I think we're entitled
9 to probably extend this thing a little bit longer. I
10 haven't even examined the question yet. I mean that's the
11 kind of thing, it seems to me -- and that's where we
12 started to go, to Karns City, not to talk about its
13 violations, but to improve the record that was made before
14 Your Honor a couple years ago, a year-and-a-half ago.

15 JUDGE SCHNIERLE: I'm inclined to agree about the
16 specificity towards Karns City.

17 MR. CHESNUTT: Let me understand. When you say
18 you're inclined to agree about the specificity --

19 JUDGE SCHNIERLE: I agree with Mr. Patterson's
20 comments about -- as I see it, I think it is reasonable to
21 respond, to have Mr. Simpson testify about his duties
22 generally, since apparently his hiring is one of the
23 responses to the violation that got this ball rolling again.
24 But I was, quite frankly, -- does he visit Karns City four
25 times a year and spend a week per visit, or is this a

1 practice generally with respect to all Central terminals?
2 In other words, I don't think it is appropriate at this
3 point to -- I think it is beyond the scope of the remand
4 order to go into a long exploration of Central's opera-
5 tions at Karns City. I think that is clearly beyond the
6 scope.

7 MR. CHESNUTT: Then as I understand your ruling,
8 you are not interested in learning the state of compliance
9 of Karns City at this time?

10 JUDGE SCHNIERLE: No.

11 BY MR. CHESNUTT:

12 Q The Judge inquired with respect to the
13 visitation that you described at Karns City, Mr. Simpson,
14 whether that occurs only at Karns City, or does it occur
15 at other facilities throughout the Central system. Would
16 you answer that?

17 A I also visit other Central terminals through-
18 out the system.

19 Q With the same frequency, or a different
20 frequency?

21 A Approximately, the same frequency.

22 Q For the same duration?

23 A Not always the same duration. Sometimes less.

24 JUDGE SCHNIERLE: What do you do while you're at
25 the terminals?

1 THE WITNESS: I check any appropriate records,
2 any data, monitoring data that would be available, check
3 for functioning of equipment, general environmental
4 compliance. I talk to the employees. I do whatever is
5 necessary in terms of reviewing whatever data is
6 available, and also plan for upcoming regulatory changes
7 that will require us to make changes in our operations.

8 BY MR. CHESNUTT:

9 Q Mr. Simpson, earlier in the examination of
10 Mr. Doyle, Mr. Patterson had marked for identification
11 MR Exhibits 5, 6 and 7. Those are entitled Notices of
12 Non-Compliance, and they are dated May 31, August 24,
13 September 18, and addressed to a Lawrence Wellington. Do
14 you know Mr. Lawrence Wellington?

15 A Yes, sir.

16 Q Do you know anything about these documents?

17 A Yes. I have seen them before.

18 Q Did you furnish them to me?

19 A Yes.

20 Q What is this all about? What are these
21 Notices of Non-Compliance all about?

22 A Those were received as part of a process that
23 we have in the discharge of treated wastewater from our
24 Charlotte facility, in that as part of the permit that
25 we have to discharge treated water, we are required to

1 collect samples, have those samples analyzed, and submit
2 the analytical results to the city sewer authorities.

3 This monitoring program is such that there are 16
4 samples collected per year. Eight of those we collect
5 ourselves for analysis, with submission of the results.
6 The other eight are collected by the sewer authority for
7 their own analysis as an independent audit.

8 If the analytical results indicate that any of
9 the parameters, chemical constituents, in our wastewater
10 would exceed the permitted discharge limitation, then they
11 will issue one of these Notices of Non-Compliance for that
12 parameter which has exceeded its discharge limitation.

13 Q What do you do when you get one of these? What
14 does the company do?

15 A As we are required under our discharge permit,
16 we are required to collect four additional samples for
17 analysis, and the analytical results then have to be
18 submitted within a given time period to the sewer authority
19 to demonstrate that our wastewater again is in compliance
20 with our permitted discharge limitations.

21 Q I notice in the third paragraph -- these are
22 essentially form letters, is this correct, in some
23 respects?

24 A Yes.

25 Q Certainly, they have repetitive language in

1 them.

2 In the third paragraph of each one of them there's
3 an indication that if subsequent analyses indicate
4 continued violations, a Compliance Agreement may be issued.
5 Has one been issued with respect to any of these three?

6 A No, sir.

7 Q Have there been any specific actions that
8 the Charlotte-Mecklenburg Utility Department has asked
9 Central Transport to take with respect to changing its
10 basic wastewater treatment facility?

11 A No, they have made no request in that manner.

12 Q What is the company doing in response to these
13 indications of Notice of Non-compliance?

14 A We've attempted to make improvements in our
15 wastewater treatment process through a variety of means.
16 The initial step was to hire a wastewater consultant to
17 come in advise us as to what improvements, changes,
18 modifications, we could make in our waste treatment process.
19 As a result of that advisement we are using or have added
20 an additional pre-treatment chemical to the process to
21 remove additional solids from the wastewater and make
22 wastewater improvements.

23 We also recently made a physical modification
24 to our pre-treatment equipment to improve its efficiency
25 and performance.

1 MR. CHESNUTT: Your Honor, Mr. Patterson had
2 requested earlier that I make an offer of proof with
3 respect to what I would have this witness testify to, and
4 I will do that at this time.

5 If he had been permitted to testify concerning
6 the Karns City facility, it would have been our intent to
7 show and to have him testify about continuing activities
8 at that terminal with respect to the wastewater treatment
9 activities there, to indicate additional investment at
10 that facility for the purpose of improving wastewater
11 treatment there, and to have sponsored an exhibit that I
12 will tender for marking, and subsequent rejection, I'm
13 certain, of a DER inspection report of the Karns City
14 facility, which indicates that the company is in compliance
15 at that facility.

16 JUDGE SCHNIERLE: This may be marked for identi-
17 fication as AR-2.

18 (Whereupon, the document was marked
19 as Applicant's Remand Exhibit No. 2
20 for identification.)

21 MR. CHESNUTT: I offer that as part of my offer
22 of proof, and I offer the exhibit into evidence.

23 MR. PATTERSON: Is your offer of proof at an end?

24 MR. CHESNUTT: Yes, it is.

25 MR. PATTERSON: Your Honor, in line with your
earlier ruling regarding the specific information regarding

1 Karns City, and particularly information that is not
2 within the Commission's remand order, I would ask that
3 AR-2 not be accepted into evidence.

4 JUDGE SCHNIERLE: AR-2 is not admitted. It is
5 beyond the scope of the remand order.

6 (Whereupon, the document marked as
7 Applicant's Remand Exhibit No. 2 was
8 rejected.)

9 MR. CHESNUTT: The witness is available for cross-
10 examination.

11 JUDGE SCHNIERLE: Mr. Patterson, before you start,
12 I have one question I want to ask him.

13 On MR-5 -- do you have that before you?

14 THE WITNESS: No, sir.

15 MR. CHESNUTT: He will in a minute.

16 (Document handed to witness by Counsel Chesnutt.)

17 JUDGE SCHNIERLE: In the first paragraph it says,
18 "Analysis indicate violations(s) of Permit No. 0188 for
19 the following parameters: BOD, TSS, and Zinc." I know
20 what Zinc is. What are BOD and TSS?

21 THE WITNESS: Those are abbreviations for chemical
22 characterizations of the wastewater. BOD stands for
23 Biological Oxygen Demand, and TSS stands for Total Suspended
24 Solids.

25 JUDGE SCHNIERLE: Thank you. I tend to ask when I
don't recognize an abbreviation.

1 Mr. Patterson.

2 CROSS-EXAMINATION

3 BY MR. PATTERSON:

4 Q Does the company receive similar indications
5 from other industrial waste departments, or whatever they
6 call themselves, where other of your terminals are where
7 tanks are cleaned?

8 A In what respect?

9 Q Similar to the three Notices of Non-Compliance;
10 that is, indications that what you are putting into the
11 sewer system is outside of their parameters, whatever
12 testing parameters they have?

13 A No, sir, we've received none.

14 Q These are the only ones you've received since
15 the negotiated plea agreement earlier this year?

16 A Yes, sir.

17 MR. CHESNUTT: Excuse me. I think the request was
18 since the close of the record, which was June 28, 1989.

19 BY MR. PATTERSON:

20 Q I would be happy to amend the question to ask
21 you whether you have received others of these kinds of
22 documents, either from the Charlotte-Mecklenburg Industrial
23 Waste Division or the similar divisions, however named, of
24 other jurisdictions where you have tank cleaning facilities
25 at your terminals, since June 28, 1989?

1 A No, sir, we have not received any.

2 Q How many of these do you think you have to
3 get before they do what they suggest doing in the
4 third paragraph of each of these letters; that is, a
5 Compliance Agreement issues?

6 A I can't answer that. I can offer that in
7 discussions with them, they have different levels of
8 what they would classify as non-compliance. They are
9 looking for those who either their discharge would be an
10 acute problem or a chronic, a long-term thing, or just
11 some sort of flagrant discharge.

12 Q Is it your view that they are particularly
13 sensitive with respect to Central Transport in this
14 Charlotte-Mecklenburg Industrial Waste Division?

15 A I feel we're being treated fairly.

16 Q Fairly?

17 A Yes.

18 Q You indicated you made some physical modifications
19 to the equipment, the treatment equipment, at your Charlotte
20 terminal.

21 A Yes, sir.

22 Q Did I understand you correctly?

23 A Yes, sir.

24 Q Was that a physical modification peculiar to
25 the Charlotte terminal, or did you do that same modification

1 elsewhere?

2 A Well, let me answer that this way. The type of
3 pre-treatment equipment that we have at our Charlotte
4 facility is unique to that terminal, so it would not be
5 required or appropriate at other facilities.

6 Q Now, sir, I suppose in your position as the
7 Environmental Director of the company you would be aware
8 of any other environmental or safety violations, other than
9 those we have talked about here today, either occurring or
10 becoming known since June 28, 1989?

11 A Yes, sir, in the environmental area.

12 Q Have you been in the hearing room since the
13 hearing began this morning?

14 A Yes, sir.

15 Q Do you know of any other violations, other than
16 those we have talked about this morning, environmental
17 violations, since June 28, 1989?

18 A No, sir.

19 MR. PATTERSON: That's all I have.

20 JUDGE SCHNIERLE: Mr. Wick.

21 MR. WICK: No questions.

22 JUDGE SCHNIERLE: Mr. Malin.

23 MR. MALIN: Yes.

24

25

FORM 1

CROSS-EXAMINATION

1
2 BY MR. MALIN:

3 Q Mr. Simpson, you seem to differentiate, in
4 answering Mr. Patterson's question, between environmental
5 and safety. He asked if you would know all about the
6 environmental and safety violations. You said: yes,
7 environmental. Was I perceptive? Is your authority broken
8 up in some way, you are environmental and someone else is
9 safety?

10 A Yes. Our corporate organization is set up so
11 that I strictly have environmental responsibilities, and
12 another individual has responsibilities for safety
13 enforcement.

14 Q So, in your answer that this is all the
15 "environmental violations," would that imply that there
16 may be some safety violations, some violations not within
17 your jurisdiction in your employment?

18 A I meant to imply nothing, just that there were
19 no environmental violations.

20 Q Is my question accurate? Could there be some-
21 thing that would be considered a safety violation but not
22 an environmental violation in your company and you would
23 not be aware of that?

24 MR. CHESNUTT: I object to that because it is
25 beyond the scope of his knowledge, obviously. He's already

FORM 1

1 testified to that.

2 JUDGE SCHNIERLE: I think he has answered that
3 question. The objection is sustained.

4 BY MR. MALIN:

5 Q Could you tell me what you consider within
6 your environmental jurisdiction, personally, and what is
7 not?

8 A Generally, environmental jurisdiction would
9 fall under any EPA issued rule or regulation, which is then
10 promulgated through state regulatory agencies. That's
11 where I separate it, in distinction, from, say, OSHA type
12 rules and regulations.

13 Q Some employment problem or hazard might not
14 be within your jurisdiction.

15 A Exactly.

16 Q You indicated that eight samples were taken
17 by yourself and eight samples were taken by the sewer
18 district. What time frame was that, a year, every month,
19 every three months; what is it?

20 A The 16 total are collected over a year's time;
21 there will be 16 per year. At any given time you collect
22 four samples in a row, one per day for four days in a row.

23 Q These letters that are MR-5, 6, and 7, would
24 they be a result of the sewer district samples, one or
25 more of these eight samples that they took? Would that be

1 what generates this type of letter?

2 A They would be generated by both the results
3 they get from their sampling, and also from the results
4 that we submit to them.

5 Q During the year 1990, how many samples have you
6 taken as it relates to the testing? So far; the year is not
7 up. It's not a trick question.

8 A I'd say approximately 12.

9 Q Did your samples indicate excessive parameters
10 of BOD, TSS, zinc and nickel?

11 A I believe that was our analysis, yes.

12 Q Was there anything else found in excess in
13 your samples that are not mentioned in here?

14 A No, sir. When the results are submitted to them,
15 you submit all the results.

16 Q Now, your role of environmental compliance, is
17 that an engineering role as well, such as how do we change
18 this waste treatment center to make it do a better job, or
19 is it a regulatory role only where you are concerned with
20 only the paperwork and the rules and regulations itself
21 rather than how to accomplish the end?

22 A It's a combination of both.

23 Q Have you done anything to reduce the amount of
24 nickel that they proclaim in two of their letters is beyond
25 the parameters?

1 A We feel that the modifications made in both
2 the addition of an additional pre-treatment chemical, plus
3 the physical modifications, will reduce the nickel. We're
4 testing for that --

5 Q When were the physical modifications made,
6 Mr. Simpson?

7 A Approximately, six weeks ago.

8 Q Have you taken any samples since?

9 A We're sampling presently.

10 Q Would it be fair to say right now we don't
11 know whether it has worked or not, whether there is or is
12 not nickel beyond the parameters of the sewage district?

13 A We haven't seen the results, the analytical
14 results, yet.

15 Q Do you know what penalties that they refer to
16 that they can assess? What are they, monetary or --

17 A I don't know.

18 Q They say they may establish a Schedule of
19 Compliance with penalties and interim limitations. Did you
20 have any discussions as to what those penalties could be,
21 or interim limitations could be?

22 A No, sir, because we have not entered into that
23 level of discussion.

24 Q Do you know from your expertise as an environ-
25 mental director what the maximum penalty could be for any

1 of these violations --

2 A No, sir.

3 Q -- under the law or regulations that apply to
4 them?

5 A No, sir.

6 Q Have you not looked them up in a book, or are
7 they not written? I'm not trying -- why is it you would not
8 know?

9 A I don't anticipate receiving any. It's our
10 anticipation that we will make whatever adjustments that
11 are necessary; that that won't be necessary for us.

12 MR. MALIN: I have nothing further. Thank you.

13 JUDGE SCHNIERLE: I want to clarify your responsi-
14 bility. In terms of environmental matters, you cover
15 discharges from your plant and various cleaning facilities
16 and that sort of thing.

17 THE WITNESS: Yes, sir.

18 JUDGE SCHNIERLE: Would it be your responsibility
19 if a tank truck had an accident and spilled its load?

20 THE WITNESS: I would have responsibilities for
21 spill clean-up.

22 JUDGE SCHNIERLE: For the spill clean-up.

23 Are you familiar with the -- well, earlier in this
24 proceeding there was testimony regarding employee safety
25 and health matters generally involving the cleaning of tank

1 trailers and wearing respirators and so forth. Is that
2 within your area of responsibility?

3 THE WITNESS: No, sir. That's within safety.

4 JUDGE SCHNIERLE: And general truck safety, brakes
5 and that sort of thing, that is not within your --

6 THE WITNESS: No, sir.

7 JUDGE SCHNIERLE: All right.

8 Do you have any further questions?

9 MR. PATTERSON: No, Your Honor.

10 JUDGE SCHNIERLE: Do you have any redirect,
11 Mr. Chesnutt?

12 MR. CHESNUTT: I have no redirect.

13 JUDGE SCHNIERLE: Thank you, sir. You may step
14 down.

15 (Witness excused.)

16 MR. CHESNUTT: That concludes our presentation.

17 JUDGE SCHNIERLE: You're not going to call another
18 witness?

19 MR. CHESNUTT: No. I have noted that there are no
20 safety issues, and in consonance with the objections to
21 affirmative evidence, so to speak, there would be no pur-
22 pose in calling any further witness, so we rest.

23 JUDGE SCHNIERLE: Mr. Patterson, do you have any-
24 body you want to put on today, or are you going to ask for
25 another day of hearing?

1 MR. PATTERSON: No, sir, I'm not going to do either
2 one of those two things, Your Honor.

3 JUDGE SCHNIERLE: Mr. Wick.

4 MR. WICK: No, sir.

5 JUDGE SCHNIERLE: Mr. Malin.

6 MR. MALIN: No, sir.

7 JUDGE SCHNIERLE: I gather all parties by now
8 have received my order on Central's motion to take notice
9 of facts?

10 MR. CHESNUTT: Yes. I have received that. I don't
11 know whether the record is better served. I had represented
12 to you in that request for the taking of official notice
13 that I would submit a certified copy of the complaint in
14 question. I have that certified copy here in its
15 original form.

16 JUDGE SCHNIERLE: I think, in light of the fact
17 that it was attached to your motion, and the fact that I
18 denied your motion, there is no point in further submitting
19 it to the record until we hear from the Commission on the
20 certification of the material question.

21 MR. CHESNUTT: That is the instruction I wished to
22 obtain.

23 JUDGE SCHNIERLE: I take it, assuming the
24 Commission refuses to answer the material question, in that
25 event that this record would be closed based upon the

1 testimony and the documents received here today. If
2 that happens, is it the parties' desire to file briefs?

3 MR. CHESNUTT: Yes, it is, if Your Honor would
4 believe them to be helpful. If you don't believe them to
5 be helpful, --

6 JUDGE SCHNIERLE: I have no problem. I would
7 appreciate receiving briefs.

8 All right. What I will do is, I believe the --
9 I hope the Commission will be prompt in answering the
10 certified question. If the Commission answers the certi-
11 fied question and essentially overrules my ruling on your
12 motion, there will be another day of hearing for the
13 purpose of offering the documents which you have attached
14 to the motion. At that point I am assuming that,
15 Mr. Patterson, you would probably wish to produce or have
16 available witnesses to discuss those matters.

17 MR. PATTERSON: Yes, Your Honor.

18 JUDGE SCHNIERLE: All right. If the Commission
19 answers the material question and says I was correct, I will
20 set a briefing schedule.

21 MR. CHESNUTT: Fine.

22 MR. MALIN: May we discuss the briefing schedule in
23 the sense of scope? We are not going to start over again?

24 JUDGE SCHNIERLE: Oh, I certainly hope not,
25 Mr. Malin.

1 MR. MALIN: The last time, Your Honor, you had
2 the Applicant file a brief and we filed a reply brief, in
3 essence. At least sequentially, that's what was done.

4 JUDGE SCHNIERLE: I would prefer to do that again
5 this time. Obviously, the limit -- assuming that there
6 is no further hearing, the limited subject matter of the
7 brief is what has been received during the remand period.
8 Well, regardless of whether we have another day of hearing
9 or not, I don't want to hear about need and all that
10 other good stuff again, or financial fitness. What
11 we have discussed in the remand, basically, would be the
12 subject matter of the limited brief. I would be inclined to
13 require the briefing to be done the way it was done earlier,
14 namely that Mr. Chesnutt would file an Applicant's brief,
15 and the Protestants would file responsive briefs, rather
16 than going through simultaneous main briefs and simultaneous
17 reply briefs. I don't think that's necessary.

18 MR. CHESNUTT: I agree.

19 JUDGE SCHNIERLE: Mr. Patterson.

20 MR. PATTERSON: That sounds good to me.

21 JUDGE SCHNIERLE: Is there anything further we need
22 to discuss today?

23 MR. CHESNUTT: There is not.

24 JUDGE SCHNIERLE: This hearing is adjourned.

25 (Whereupon, at 12:10 p.m., the hearing was
adjourned.)

C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
by me, and thereafter reduced to typewriting by me or
under my direction; and that this transcript is a true and
accurate record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

By: Judith Toberman-Valencik
Judith Toberman-Valencik

FORM 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25