

The Commission hereby authorizes the chairman to sign and issue Order, LIS 85-029, adopting the Administrative Order of the Director issued on September 16, 1985. The Administrative Order issued on September 16, 1985 fully states the findings of fact in this matter and requires Paul A. Schmidt, Paul G. Schmidt and ACRO Corporation to take the action necessary to correct any violations of their permit and the Arkansas Water and Air Pollution Control Act, and pay a civil penalty of \$3,250.

COMMISSIONERS

DB  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

[Signature]  
CHAIRMAN

SUBMITTED BY: Martha M. Adcock DATE PASSED: 11-22-85

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY  
BEFORE THE COMMISSION ON POLLUTION CONTROL & ECOLOGY

IN THE MATTER OF:  
PAUL A. SCHMIDT, PAUL G. SCHMIDT  
and ACRO CORPORATION,  
Permit No. 2998-W

LIS 85-029

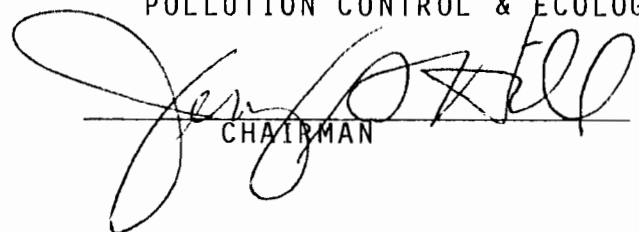
ORDER

The Commission on Pollution Control and Ecology, hereby affirms and adopts the Findings of Fact and Order and Penalty Assessment contained in the Administrative Order issued in this matter by the Director of ADPC&E on September 16, 1985.


However, the Commission orders that \$2,500 of the assessed civil penalty shall be suspended if the Schmidts and ACRO Corporation fully comply with the terms of their permit and the Administrative Order within thirty (30) days of November 22, 1985.

SO ORDERED this 22 day of November, 1985.

ARKANSAS COMMISSION ON  
POLLUTION CONTROL & ECOLOGY

  
CHAIRMAN

ATTEST:

  
DIRECTOR

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

IN THE MATTER OF:  
PAUL A. SCHMIDT, PAUL G. SCHMIDT  
and ACRO CORPORATION, Permit  
No. 2998-W

LIS 85-029

ADMINISTRATIVE ORDER

On the 23rd day of August, 1985, this matter came on for hearing before Hearing Officer James M. McHaney, the Department of Pollution Control and Ecology appearing by its attorney Martha M. Adcock, and respondents Paul A. Schmidt, Paul G. Schmidt and ACRO Corporation appearing by their attorney C. Thomas Pearson, Jr., and the matter being presented on the pleadings herein, the testimony of the witnesses, and the exhibits of the parties, and the Director being well and sufficiently advised in the premises, issues the following Findings of Fact and Order and Penalty Assessment.

FINDINGS OF FACT

1. ACRO Corporation is a corporation organized and existing under the laws of the State of Arkansas, having been incorporated in 1974. It owns and operates a caged layer egg farm facility located in Washington County, Arkansas.

2. Paul A. Schmidt and Paul G. Schmidt are the principal officers and stockholders of ACRO Corporation and control the operation of the egg farm.

3. ACRO commenced operations at its present location in or about June, 1977. It operated without a permit from the Department, thereby violating Ark. Stat. Ann. Section 82-1908(2), until April 25, 1984, when Permit No. 2998-W was issued. The operation includes two poultry houses with a capacity of 72,000 hens. Each house has four interior waste pits with another covered concrete waste pit that is located between the two houses. The facility originally had a series of three earthen waste pits located outside the hen houses. Two of these have been eliminated, but one is still in existence and was in use a short time prior to the hearing. Paul G. Schmidt testified he expected to eliminate the last earthen pit in September, 1985.

4. One of the conditions contained in the permit issued by the Department to ACRO requires that "all operational procedures and/or conditions as outlined in the design report submitted to the Department" be followed. The design report submitted to the Department was prepared by the Soil Conservation Service (SCS) at the request of the Schmidts and it specifically discussed the earthen waste pit. It is the practice of the Department to accept animal waste management plans prepared by the SCS for the purpose of obtaining a permit. The report noted that this type of pit does not meet SCS standards because of a lack of

freeboard and top width. Therefore, the Schmidts and ACRO were instructed to use this earthen pit only in the case of emergencies. All waste was to be kept pumped out of the structure and no overflow was to be allowed at any time.

5. The Schmidts and ACRO Corporation have not complied with the terms of the permit, but have allowed waste to accumulate in the pit and then overflow from the pit into the waters of the State. Six out of eight inspections of the facility during the past year revealed that waste from the earthen pit had overflowed and run into an unnamed wet weather spring creek. The overflow was detected on January 31, 1984, March 5, 1984, June 1, 1984, November 10, 1984, March 5, 1985, and April 4, 1985. Therefore, the Schmidts and ACRO have violated Ark. Stat. Ann. Sections 82-1908(1) and (2), by failing to comply with the permit conditions, by placing waste in a location where it is likely to cause pollution of waters of the state, and by operating without a permit prior to April 25, 1984.

6. The liquid waste from the poultry operation flows out of the earthen pit, through a culvert and into an unnamed wet weather spring creek that flows to Sulphur Fork Creek, then to Muddy Fork Creek and finally to the Illinois River. The results of a sample taken on November 10, 1984, from the discharge that flowed into the unnamed wet weather spring creek were as follows:

Biochemical Oxygen Demand	3130 mg/l
Total Suspended Solids	738 mg/l
Total Dissolved Solids	1760 mg/l

Fecal Coliform	31,000/100 ml
Fecal Streptococcus	490,000/100 ml

The results of a sample taken on March 5, 1985, from the unnamed wet weather spring creek above the location where the discharge occurs, were as follows:

Biochemical Oxygen Demand	0.8 mg/l
Total Suspended Solids	7 mg/l
Total Dissolved Solids	168 mg/l
Fecal Coliform	128/100 ml
Fecal Streptococcus	242/100 ml

The results of a sample taken on March 5, 1985, from the discharge that flowed into the unnamed wet weather spring creek were as follows:

Biochemical Oxygen Demand	12,000 mg/l
Total Suspended Solids	8720 mg/l
Total Dissolved Solids	7686 mg/l
Fecal Coliform	1,800,000/100 ml
Fecal Streptococcus	6,700,000/100 ml

The results of a sample taken on March 5, 1984, from the unnamed wet weather spring creek below the location where the discharge occurs were as follows:

Biochemical Oxygen Demand	300 mg/l
Total Suspended Solids	66 mg/l
Total Dissolved Solids	293 mg/l
Fecal Coliform	60,000/100 ml
Fecal Streptococcus	700,000/100 ml

Therefore, the Schmidts and ACRO have caused pollution to the waters of the State in violation of Ark. Stat. Ann. Section 82-1908(1).

7. Another condition to Permit No. 2998-W requires that dead animal disposal be handled in the manner specified in the U.S. Soil Conservation Service Management Plan, which requires that disposal pits be constructed by digging trenches approximately 20 feet long, 4 feet wide and 6 feet deep. The Schmidts and ACRO have not completed the required facilities. This failure to comply with the permit conditions violates Ark. Stat. Ann. Section 82-1908(1).

ORDER AND PENALTY ASSESSMENT

IT IS THEREFORE ORDERED, that ACRO Corporation, Paul A. Schmidt, Paul G. Schmidt, their agents, servants, and employees, and all persons in active concert or participation with them, shall immediately cease operating said caged layer egg farm facility in any manner which causes or permits a violation of Section 82-1908 of the Arkansas Water and Air Pollution Control Act.

A civil penalty in the aggregate sum of \$3,250.00 is hereby assessed against ACRO Corporation, Paul A. Schmidt, and Paul G. Schmidt which shall be paid to the Department of Pollution Control and Ecology within thirty (30) days of the date of this order.

ACRO Corporation, Paul A. Schmidt, and Paul G. Schmidt are hereby granted sixty (60) days within which to attain full compliance with the terms of the permit and perform any

remedial action necessary to abate the threat of pollution to the waters of the State of Arkansas.

Pursuant to Section 6 of Part V of Regulation No. 8, Administrative Procedures, the Department of Pollution Control and Ecology and/or the respondents, ACRO Corporation, Paul A. Schmidt, and Paul G. Schmidt may request a review of this decision and order by the Commission on Pollution Control and Ecology by making written application therefor within thirty (30) days of the date hereof. Any request for Commission review shall be made in accordance with Section 7 of Part V of Regulation No. 8, Administrative Procedures.

  
\_\_\_\_\_  
Phyllis Garnett, Ph.D.  
Director

9/16/85  
\_\_\_\_\_  
Date

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY  
BEFORE THE COMMISSION ON POLLUTION CONTROL & ECOLOGY

IN THE MATTER OF:  
PAUL A. SCHMIDT, PAUL G. SCHMIDT  
AND ACRO CORPORATION  
Permit No. 2998-W

LIS 85-029

POST-HEARING BRIEF OF  
DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

I. STATEMENT OF THE CASE

This proceeding was initiated by the Director as an enforcement action to compel compliance with the Arkansas Water and Air Pollution Control Act. After receiving two complaints, an area field inspector from ADPC&E, Don Morgan, visited the Schmidt/ACRO egg farm on March 23, 1984. The inspector discovered that the facility was being operated without a waste discharge permit and that there was an illegal discharge of chicken waste going into the waters of the state. The Schmidts and ACRO Corporation obtained a permit in April, 1984. Nonetheless, they failed to stop the illegal discharge of waste from their holding ponds into the waters of the state. Additional investigations on June 15, 1984, November 8, 1984, March 5, 1985 and April 4, 1985 revealed that the Schmidts and ACRO Corporation continued to illegally discharge waste and failed to comply with the terms of their permit.

The matter was then referred to the Legal Section and a Notice of Violation was issued on Tuesday, April 30, 1985. An Administrative Hearing was held on Friday, August 30, 1985. The Hearing Officer, Mr. James McHaney, Sr., made a recommended decision to the Director of the Department. The Director accepted that recommended decision and issued an Administrative Order on Monday, September 16, 1985. The Schmidts and ACRO have requested that this Commission review the Order issued by the Director.

## II. APPLICABLE LAW

The Schmidts and ACRO Corporation are charged with violating provisions of the Arkansas Water and Air Pollution Control Act, (Act) codified at Ark. Stat. Ann. §§ 82-1901 to 1909 and 82-1931 to 82-1943 (Repl. 1976 and Supp. 1985). The ensuing enforcement action and assessment of civil penalties was taken pursuant to the Act, Regulation No. 7: Civil Penalties and Regulation No. 8: Administrative Procedures.

## III. DISCUSSION

This appeal by Paul A. Schmidt, Paul G. Schmidt and ACRO Corporation is based on the sole contention that the assessed penalty of \$3,250.00 is excessive, unjust, and inequitable. In their request for review and at the administrative hearing, the Schmidts and ACRO have not denied that they violated state law by allowing waste from their storage pits to discharge to the waters of the state and by failing to comply with the terms of their permit, No. 2998-W. (TR. 10, 155). Their

entire argument centers around the assessment of a civil penalty.

The Department staff will argue that in light of all of the facts and circumstances surrounding this case, the penalty is not excessive or unjust but instead is fair and proper. As a basis for their argument, the Department staff will ask the Commission to consider three pertinent factors: First, the Schmidts and ACRO had an excessive length of time (one year) in which to correct their violations before any penalty was assessed. Second, the discharge from the waste pits owned by the Schmidts and ACRO caused pollution to waters of the State of Arkansas. Third, the Schmidts and ACRO could have, through proper operation, prevented any violation of the Arkansas statutes.

A. THE SCHMIDTS AND ACRO HAD AN EXCESSIVE LENGTH OF TIME IN WHICH TO CORRECT THEIR VIOLATIONS BEFORE A PENALTY WAS ASSESSED.

The Schmidts and ACRO had one year in which to correct their violations before any legal or escalated enforcement action was taken and a civil penalty was assessed. Don Morgan, an area field inspector from ADPC&E, received complaints regarding the facility and then visited the egg farm on March 23, 1984. (TR. 14). The inspector noted they were operating without a permit and there was an illegal discharge of waste from their holding ponds or collection pits, which then flowed to a wet weather creek adjacent to their property. (TR. 21). Additional visits on June 15, 1984

and November 8, 1984 revealed that the waste ponds were still full and the illegal discharge of wastes still continued. Thus, the inspector, with the approval of his supervisor, scheduled a compliance meeting. The meeting was held in January of 1985. At that time, Department employees explained once again the seriousness of the problem and what needed to be done to correct all violations. The Schmidts and ACRO agreed at that time to correct all violations of the Arkansas law and follow the terms of their permit. Specifically, they agreed to 1) construct a pit in which to dispose of dead birds, 2) eliminate the earthen waste pit at their facility, and 3) prevent any further discharge of waste from the facility to the waters of the State. (TR. 48-49).

After receiving an additional complaint, Mr. Morgan visited the facility again on March 5, 1985. (TR. 49). He discovered that the Schmidts and ACRO had failed to comply with the agreement made in January. They had failed to construct a dead bird disposal pit and continued to allow waste from their holding pits to discharge to the waters of the State. (TR. 51-52). Only after this visit in March of 1985 when Mr. Morgan discovered an illegal discharge for the fourth time in one year, was the matter referred to the Legal Section for enforcement action. The field inspector had attempted to work with the Schmidts and ACRO Corporation on an informal basis for a full year. He had written letters, (Exhibits 4 & 8), held a compliance meeting and explained again and again what had to be done to correct the violations

and comply with the Arkansas law. When the Schmidts and ACRO failed to respond to the field inspector's instructions, only then did he request that the matter be handled in a formal manner.

It is certainly not the position of this Department to immediately impose a monetary fine on all small chicken farm operators who violate the Arkansas law. Instead, the area field inspectors attempt to work with individuals and companies alike to bring them into voluntary compliance without the use of any formal legal sanctions. However, after repeated visits by the inspector, when little or no corrective action has been taken, then the Department must escalate enforcement in order to gain compliance. If the Schmidts had taken the necessary action within the first year after these violations were brought to their attention, then the matter would never have been referred for legal action and no penalty would have been assessed. In light of their repeated failures to take the necessary corrective action, the Department staff strongly believes that a \$3,250 penalty is justified in this situation.

B. THE DISCHARGE FROM THE WASTE PITS CAUSED POLLUTION TO THE WATERS OF THE STATE.

The illegal discharge from the waste pits owned by the Schmidts and ACRO caused actual pollution to the waters of the State. It was not an imagined or potential threat, but it caused real environmental harm.

The Schmidt/ACRO egg farm is located in northwest Arkansas, in the Illinois River Basin (Exhibit 1). Samples from the discharge that flowed to the wet weather creek were taken on November 10, 1984 and March 5, 1985. It should be noted that these samples were not taken from the waste pits, but from the actual discharge that left the pits and flowed to the waters of the State. Exhibits 12 and 18 depict the actual location where samples were drawn.

Mr. Dick Cassat, Manager of Technical Services at the Department testified at the hearing concerning the results of the samples taken. The sample taken in November revealed the following:

Biochemical Oxygen Demand	3130
ph	7.57
Total Suspended Solids	738 mg/l
Total Dissolved Solids	1760 mg/l
Fecal Coliform	31,000/100 ml
Fecal Streptococcus	490,000/100 ml

During testimony, Mr. Cassat noted that the biochemical oxygen demand for streams like the Illinois River and Flint Creek generally run below 2 mg/l (TR. 96), and the normal BOD value for raw sewage is 200-300 mg/l. (TR. 95). The BOD value from the Schmidt/ACRO egg farm of 3130 mg/l is 1500 times greater than that found in the Illinois River and over 10 times greater than the strength of raw untreated sewage. Cassat testified that the danger from having such a high level of BOD is that the materials degrade or use the available oxygen in the stream. (TR. 95). As the oxygen is used up, "then sulfides are produced which are quite noxious and

could....become quite toxic, because hydrogen sulfide is almost as toxic as hydrogen cyanide." (TR. 95).

The next parameter tested was total suspended solids (TSS). Cassat testified that most of the streams in that area have a TSS value of around 5. (TR. 97). The value for raw, untreated sewage is normally between 200-300 mg/l. (TR. 97). Again, the TSS value from the Schmidt/ACRO egg farm of 738 mg/l is over 2 times greater than the strength of raw sewage and approximately 150 times greater than the value present in streams in that area.

Cassat also testified regarding total dissolved solids (TDS). The normal value for TDS in the Illinois River and the surrounding area is 200-300 mg/l. (TR. 98). The value for the Schmidt/ACRO egg farm of 1760 mg/l is six to nine times more concentrated than that found in the surrounding streams. The danger in having too high of a TDS is that it prohibits people from using the stream for irrigation, drinking water, and other such uses. (TR. 98).

The results from the tests for fecal coliform and fecal streptococcus indicate that the waste material is of animal origin. (TR. 99). The normal values for streams in that area is less than 200 organisms per 100 millimeters. The Department requires all sewage treatment plants to chlorinate their effluent so that it has an average of 200/100ml with a maximum of 400/100ml. (TR. 99). The discharge from the Schmidt/ACRO egg farm had a value of 60,000/100 ml for fecal

coliform and 700,000/100ml for fecal streptococcus. Those values are several hundred times higher than the acceptable levels of 200 and 400/100ml. The danger in having such high levels is that these organisms are "infectious and pathogenic and can cause disease in both people and animals that come in contact with that water." (TR. 100).

Thus, it is clear that the discharge from the Schmidt/ACRO egg farm was not just an imagined threat to the waters of the State, but was a very real threat which needed to be stopped. All of the values for BOD, TSS, TDS, Fecal Coliform, and Fecal Streptococcus were much higher than those normally found in streams in that area and often were higher than the values found in raw, untreated sewage. The danger in having this type of a waste was clearly demonstrated by Mr. Cassat. There is a clear danger of forming a toxic hydrogen sulfide, degrading the stream so that it cannot be used for irrigation or drinking water, and causing disease in both animals and people who come in contact with this water.

Three additional samples were taken in March of 1985, when the Schmidts and ACRO failed to stop the illegal discharge of wastes. These samples clearly reveal that the discharge caused pollution to the wet weather stream that flowed adjacent to the Schmidt property.

The values for the March 5, 1985 discharge from the Schmidt/ACRO egg farm were as follows:

Biochemical Oxygen Demand	12,000 mg/l
Total Suspended Solids	8,720 mg/l

Total Dissolved Solids	7,686 mg/l
Total Phosphorous	180 mg/l
Fecal Coliform	1,800,000/100 ml
Fecal Streptococcus	6,700,000/100 ml

A quick comparison of these values with those from the sample taken in November of 1984, reveals that the March discharge has even higher concentrations of all of the parameters listed. A new parameter total phosphorous was also tested for at this time.

Along with sampling the actual discharge from the Schmidt/ACRO egg farm, the inspector, Mr. Morgan, also sampled the wet weather creek. The results of the sample taken from above the location where the illegal discharge entered the stream were as follows:

Biochemical Oxygen Demand	0.8 mg/l
Total Suspended Solids	7 mg/l
Total Dissolved Solids	168 mg/l
Total Phosphorous	.10 mg/l
Fecal Coliform	128/100ml
Fecal Streptococcus	242/100ml

All of these values are typical for a stream in that area of the state and show no contamination. (TR. 102, 103 & 104). However, after the discharge from the Schmidt/ACRO egg farm entered the stream, these values drastically changed and obvious contamination occurred. The results of the sample taken from below the location where this illegal discharge entered the stream proved that contamination occurred.

Biochemical Oxygen Demand	300 mg/l
Total Suspended Solids	66 mg/l
Total Dissolved Solids	293 mg/l
Total Phosphorous	3.7 mg/l

Fecal Coliform	60,000/100 ml
Fecal Streptococcus	700,000/100 ml

Due to the discharge from the Schmidt/ACRO egg farm, the BOD in the stream had been raised to the level of raw, untreated sewage. Total suspended solids was nine times greater than what the stream originally carried and it was over twice the value that this Department would allow sewage treatment plants to discharge. Total dissolved solids was almost doubled. Total phosphorous in the stream was 37 times greater than what it was originally. Cassat testified that this level of 3.7 mg/l of phosphorous "is a very high number and would cause algae problems." (TR. 103). The fecal coliform and fecal streptococcus levels in the stream were raised to an outrageously high level and present a very real threat of disease and infection to anyone who might come in contact with this stream.

The environmental threat from the Schmidt/ACRO discharge was not imagined or illusory and the violations were more than mere technicalities, they were real. The discharge from this egg farm caused pollution to the waters of the state and thus the Department staff believes that the assessed penalty of \$3,250 is justified.

C. THROUGH PROPER OPERATION, THE VIOLATIONS COULD HAVE BEEN PREVENTED

Evidence presented at the Administrative Hearing revealed two specific violations. First, the Schmidts and ACRO had failed to construct the necessary temporary pits for disposing of dead animals. Condition No. 12 of Permit No. 2998-W issued to ACRO Corporation c/o Paul Schmidt requires the permittee to follow the operational procedures and/or conditions as outlined in the design report submitted to the Department. Paragraph D of the design report requires the permittee to construct temporary pits for disposing of dead animals. These pits are easily constructed and can be completed by merely digging a trench 20 feet by 4 feet by 6 feet. (TR. 112). The trench must be covered with a foot of soil and have three openings in which to place the animals. This is a common requirement and the violation could have been easily corrected. The permit was issued in April of 1984 and as of the Administrative Hearing date in August of 1985, sixteen months later, the Schmidts had failed to construct the necessary dead bird pit. (TR. 149-150).

The second area of violations concerned the illegal discharge of waste from the holding pits. Testimony at the hearing revealed that the Schmidt/ACRO facility had two chicken houses, with a total capacity of 72,000 hens. Storage for the waste from this operation consisted of undercage storage, a concrete pit located outside the two houses and a series of earthen waste pits outside the houses. (ADPC&E

Exhibit 22). Joe Doughty, Engineering Supervisor for the permits branch of this Department, reviewed the permit application submitted by the Schmidts and ACRO. In his testimony, Mr. Doughty noted that 9,639 cubic feet of storage was required in order to store the waste from the 72,000 hens for 45 days. (TR. 110). The available waste storage capacity in the undercage facility and the concrete waste pit is 14,835 cubic feet. Thus, the Schmidts and ACRO have 5,196 cubic feet of excess storage capacity in the concrete pits.

Mr. Doughty also examined the amount of acreage needed to properly land apply the waste from a 72,000 layer facility. (TR. 113 & 114). Two hundred and sixty-seven (267) acres are needed, and the permittee has a total of 491 total acres available to them for land applying the waste. There is an over abundance of available land. If the Schmidts and ACRO had merely followed their design plans and properly stored and then land-applied their waste on a regular basis, there would have been no reason for any of the pits to overflow and thus there would have been no violation. The permittee argued at the hearing that heavy rainfall prevented them from land applying their waste. However, they presented no evidence to that effect and did not prove that heavy rainfall prevented them from land-applying the full year that violations were noted. Thus, since the violations could have been easily remedied by the Schmidts and ACRO, the Department staff strongly believes that a civil penalty of \$3,250 is justified in this situation.

For the reasons stated above, the Department staff requests that this Commission adopt the Administrative Order issued by the Director on September 16, 1985 and require Paul A. Schmidt, Paul G. Schmidt, and ACRO Corporation to take the actions as stated therein.

Respectfully submitted,

Arkansas Department of  
Pollution Control & Ecology

By: Martha M. Adcock  
Martha M. Adcock  
Staff Attorney  
P. O. Box 9585  
Little Rock, AR 72219  
Telephone: (501) 562-7444

CERTIFICATE OF SERVICE

I, Martha M. Adcock, hereby certify that I have served a copy of the foregoing document by mailing a true and correct copy thereof, postage prepaid to:

C. Thomas Pearson, Pearson, Woodruff, & Evans, 36 E.  
Center Street, Fayetteville, Arkansas, 72701, this 5th day of  
November, 1985.

Martha M. Adcock  
Martha M. Adcock

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

IN THE MATTER OF:  
PAUL A. SCHMIDT,  
PAUL G. SCHMIDT AND  
ACRO CORPORATION  
PERMIT NO. 2998-W

LIS 85-029

REQUEST FOR REVIEW

Come now Paul A. Schmit, Paul G. Schmidt and ACRO Corporation, and respectfully request a review by the Commission of the Decision and Order of Phyllis Garnett, Director, entered herein on September 16, 1985.

The said petitioning parties base their Request for Review on the civil penalty assessed in the aggregate sum of Three Thousand, Two Hundred Fifty and 00/100 Dollars (\$3,250.00), and assert, in view of all of the circumstances of this case, that said penalty is excessive, unjust and inequitable.

The petitioning parties respectfully request a stay of the Director's Decision and Order only insofar as same pertains to the assessment of a civil penalty in the aggregate sum of Three Thousand, Two Hundred Fifty and 00/100 Dollars (\$3,250.00), said stay to be in effect until such time as the Commission may review this matter.

SECRETARY, ARKANSAS COMMISSION ON POLLUTION  
CONTROL AND ECOLOGY, 8001 NATIONAL DRIVE,  
LITTLE ROCK, ARKANSAS 72209

FILED 10-15-85 Marilyn Woods

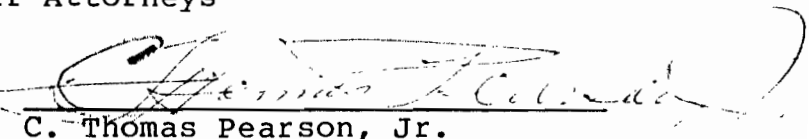
WHEREFORE, PREMISES CONSIDERED, Paul A. Schmidt, Paul G. Schmidt and ACRO Corporation request that the Commission review the Decision and Order of Phyllis Garnett, Director, entered on September 16, 1985, insofar as same pertains to the assessment of a civil penalty in the aggregate sum of Three Thousand, Two Hundred Fifty and 00/100 Dollars (\$3,250.00), and, further respectfully request a stay as to the assessment of said penalty until such time as the Commission shall have an opportunity to review this request.

Respectfully submitted,

PAUL A. SCHMIDT, PAUL G. SCHMIDT AND  
ACRO CORPORATION, Petitioners

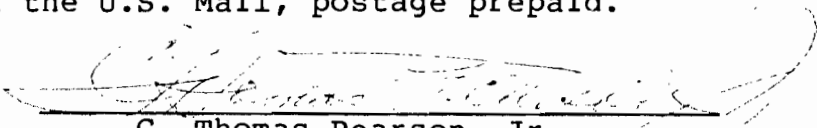
BY: PEARSON, WOODRUFF & EVANS  
36 East Center Street  
Fayetteville, Arkansas 72701

Their Attorneys

BY:   
C. Thomas Pearson, Jr.

CERTIFICATE OF SERVICE

I have this 10th day of October, 1985, served Phyllis Garnett, Ph.D., Director of the Arkansas Department of Pollution Control & Ecology, at 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas, 72209, with a copy of this pleading by deposit in the U.S. Mail, postage prepaid.

  
C. Thomas Pearson, Jr.