UNITED STATES ENVIRONMENTAL PROTECTION AGENGY

BEFORE THE ADMINISTRATOR

IN RE	)	
	)	RCRA-VI-415-H
FRIT INDUSTRIES, INC.	)	
	)	INITIAL DECISION
Respondent	)	

1. Resource Conservation and Recovery Act - Penalty Assessment - Where, prior to the issuance of the EPA complaint, the Respondent was diligently negotiating a consent agreement with the authorized state agency and was bringing itself into compliance, some reduction of the proposed penalty is warranted.

2. Resource Conservation and Recovery Act - Penalty Assessment - In a situation where the Respondent had been making a good-faith effort, since 1981, to remove its facility from the requirements of RCRA with the knowledge, concurrence and cooperation of the authorized state agency, a reduction of the proposed penalty is warranted.

3. Resource Conservation and Recovery Act - Penalty Assessment - When the Agency has provided a logical and appropriate rationale for establishing a proposed penalty for five out of six alleged violations of a similar nature, setting the same penalty for the five and proposing a penalty over four times as high for the sixth without providing any reasons therefore, the penalty for the sixth violation should be reduced to a level consistent with the other five.

Appearances:

David Cohen, Esquire
Mary E. Kales, Esquire
U.S. Environmental Protection Agency
Dallas, Texas
(For the Complainant)

Joseph W. Adams, Esquire
Steagall & Adams
Ozark, Alabama
(For the Respondent)

INITIAL DECISION

This is a proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (hereafter "RCRA"), Section 3008, 42 U.S.C. 6928 (Supp. IV 1980), for assessment of a civil penalty for alleged violations of the requirements of the Act, and for an order directing compliance with those requirements.[1] This proceeding was instituted by a complaint and compliance order against Frit Industries, Inc., (hereinafter "Frit") issued by the United Stated Environmental Protection Agency, Region VI, (hereafter "EPA" or "the Agency") on August 21, 1984.

The complaint alleged that Frit is a generator of hazardous waste and an owner or operator of a hazardous waste management facility located in Airport Industrial Park, Walnut Ridge, Arkansas, which is used for the treatment, storage, or disposal of hazardous wastes as those terms are defined in 40 CFR § 260.10. The complaint further states that the Respondent, Frit Industries, having made the necessary filings and notifications in 1980 and 1981 enjoys what is known as interim status under the Act and regulations and is, therefore, subject to the rules and regulations governing hazardous waste facilities. At an inspection done by the State agency on or about May 31, 1984 it was determined that the facility had violated several provisions of the regulations, to wit, they had no waste anaylsis plan on file, had

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[1]Pertinent provisions of Section 3008 are:

Section 3008 (a)(1): "(W)henever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle (C) the Administrator may issue an order requiring compliance immediately or within a specified time. . . ."

Section 3008(g): "Any person who violates any requirement of this subtitle (C) shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such voilation shall, for purposes o this subsection, constitute a separate violation.

Subtitle C of RCRA is codified in Subchapter III, 42 U.S.C. 6821-6931.

inadequate security, had not developed an inspection schedule, had not developed a personnel training program, did not have a contingency plan, did not have closure financial assurance nor financial assurance for sudden accidental occurrences or for non-sudden accidental occurrences, and had failed to prepare and have on file a closure plan for its facility. The complaint proposed to assess a civil penalty of $21,750.00 against Frit for the above enumerated violations. The Respodent filed an answer which for the most part admitted the violations set forth in the complaint but pled mitigating circumstances which it felt should result in a substantial reduction or the elimination of the proposed penalty. The answer did deny that there was inadequate security on the premises.

Following the exchange of pre-hearing information and an opportunity for the parties to settle this matter without further litigation, a Hearing thereon was had in Little Rock, Arkansas on April 15, 1985. Following the Hearing, each party submitted proposed findings of fact, conclusions of law and briefs in support thereof. On consideration of the entire record and the submissions of the parties, a penalty of $7,950.00 is assessed and a compliance order is issued. All proposed findings of fact, motions or suggestions inconsistent with this decision are hereby rejected.

Factual Background

Frit Industries owns and operates a facility in Walnut Ridge, Arkansas at which it formulates and manufactures micro-nutritional additives to be blended with fertilizer which is ultimately sold to the farm community of the Nation. This facility receives as raw materials a variety of substances which contain trace elements of lead, cadmium, zinc, and so forth, which are the ingredients which are ultimately added to the fertilizer as required

mineral nutrients. Some of the materials they receive from outside manufacturers include bag house dust resulting from the smelting of lead, bronze, zinc and other ferrous and non-ferrous metals. This material is considered a hazardous waste by EPA and is a listed waste due to its content of lead. The raw materials used by the facility are usually shipped in bulk form and consist of dry granules, powders and dust.

At the time the facility filed its Part A application and notification under the Act it felt that, for the most part, its activities did not involve the handling or processing of hazardous waste and it immediately set upon a course of action to place its facility outside the perview of the RCRA and its associated regulations. In furtherance of this intent, the facility advised the Arkansas State agency, which at that point in time had Phase I authorization to administer the RCRA program in the State of Arkansas, that it intended to stop receiving, as raw materials, any manifested hazardous waste and would consume the remaining stock of those wastes on its facility no later than October 8, 1981. This intention was communicated to the State agency and the agency agreed that if they would cease such activity they would, in fact, be outside the perview of the Act and need not pursue the additional requirements under the regulations. From 1981 until 1983, the facility engaged in a series of communications and negotiations with the Arkansas State agency, some of which is confusing, at best. There was some concern expressed by the State agency about various treatment ponds and waste piles on the Respondent's premises which they felt might also cause them to be regulated by RCRA. The Respondent had these various areas sampled and analyzed and the consensus seem to be that they did, in fact, not contain any contaminates to the extent recognized by the regulations and, therefore, it was at one point in time apparently conceded by the State agency that the

facility may, in fact, not be regulated by RCRA. The facility also advised the State agency on several occasions during this period that it wished to withdraw/have rescinded its Part A application and no longer be permitted under the Act.

On July 13, 1983, an inspection of the Respondent's facility was conducted by the State agency and various violations were noted. By letter dated October 21, 1983 the State agency advised the facility that it considered it to be a hazardous waste generator which stores and treats hazardous wastes and required the setting of a schedule of compliance to meet the deficiencies cited in the inspection report and asked that the facility file its Part B application. On November 8, 1983, a long and detailed meeting was had between the Arkansas Department of Pollution Control and Ecology and the Respondent to discuss what the next step should be. Up until this point, the facility assumed that it was not regulated by RCRA since it had not received any manifested hazardous wastes since 1981 and had, in its judgement, satisfied the concerns of the State agency about several of the other activities engaged in at its plant. Early on in this meeting, the facility was apparently shocked to discover that even though it had ceased receiving as raw materials any manifested wastes, it had a responsibility to analyze all wastes that it received whether it was manifested under the Act or not to determine if, in fact, it was hazardous. The primary contention in this regard seemed to be the bag house dust received from the I. Shuman Company of Ohio which had certified to Frit that its materials were not hazardous and had never shipped them under a manifest. The State agency investigated the situation and determined that the bag house dust was hazardous and that the Respondent had the responsibility for determining whether or not all of its received raw materials were hazardous under the Act and could not simply rely on the fact

that they did not come into the plant under a manifest. When advised of this fact the Respondent was forced to completely change its approach to the problem since although it could proceed with its processes readily without some of the manifested wastes, it could not eliminate all of the raw materials that the State agency identified as being hazardous and still stay in business.

Therefore, the company at the meeting advised the State agency that they would immediately hire a consultant and take all steps necessary to come into compliance with RCRA and the notion of establishing a schedule for such compliance was discussed at this meeting.

Pursuant to the instructions of the State agency, the Respondent shortly thereafter provided the Agency with a compliance schedule and, through its consultant, immediately proceeded to take the necessary steps to come into compliance with RCRA. At this meeting or shortly thereafter, the State advised the Respondent that in order for them to continue in operation they would have to sign a consent agreement with the State agency which included not only the above-mentioned compliance schedule but a penalty provision and that this agreement must be ultimately signed by both the State agency and the Respondent in order for it to be effective.

Since the Respondent knew what it was that it had to do in order to come into compliance, it immediately authorized its consultant to proceed with speed to prepare all the necessary documents and obtain all the necessary insurance and other paper materials necessary for it to comply with the regulations. Shortly thereafter, the attorney for the State agency mailed to the Respondent a proposed draft of the compliance order. Several of the findings of fact contained therein were thought by the Respondent to be inaccurate and the notion of admitting that it violated the Act and paying the penalty appeared to the Respondent to be unduly harsh and in conflict with its

historical dealings with the State agency. The Respondent made some modifications to the proposed consent document and returned it to the State agency with the request that it review it and advise them if it had any problems with the changes that the Respondent had made. By this time we are into January and February of 1984 and on January 24, 1984, the State of Arkansas received final authorization to administer the RCRA program in the State. During January and February 1984, when the Respondent was attempting to comply with the requirements of the State of Arkansas it was advised apparently informally, that its file had been sent to EPA Region VI for investigation and possible enforcement activities by the Federal Agency.

On May 18, 1984, Region VI EPA sent a § 3007 letter to the Respondent requesting that they provide the Agency with a long list of answers to a variety of questions purportedly having to do with their facility. § 3007 of the Act authorizes the Agency to request information from a hazardous waste facility, the answers to which must be provided under penalty of law. The facility answered all the questions in the 3007 letter which it felt were relevant to its operation and such reply was mailed on June 21, 1984. The Agency, thereafter, filed the above-mentioned complaint and compliance order against the Respondent on August 31, 1984.

Prior to the issuance of the 3007 order by EPA, the Respondent believed it was still negotiating a consent agreement with the State agency and was, in fact, at the time of the 1984 inspection in compliance with the time frames set forth in its schedule previously filed with the State agency, with the exception of one minor item.

Just what caused the State agency to forward Frit Industries' file to Region VI EPA is unclear from this record. There had been suggestions that it was done at the request of EPA that the State agency send it some

troublesome cases so it with its larger resources could assist the State in dealing with them. There was testimony in the record to the effect that the attorney for the State agency, after having discussed the proposed consent order with an official of Frit Industries felt, that since the facility had serious problems with the penalty aspects of the proposed consent agreement and the fact that it would also have to admit liability for violations of the Act, no consent order would ultimately be executed between the State and Frit Industries. Since the negotiations on the final language on the consent agreement between the State agency and Frit Industries was in its early stages, it occurs to me that it might have been premature on the part of the State attorney to assume that simply because there was some objections raised as to certain portions of the consent agreement that no agreement would ultimately be executed. In any event, no consent agreement was ever executed between the State agency and Frit Industries primarily for the reason that the State turned over the Frit file to EPA before such execution could occur.

Immediately prior to the hearing, the parties executed a stipulation of facts which is hereby adopted as a partial finding of fact and attached hereto as Exhibit A.

Discussion

Essentially, what happened in this case was that the Respondent, from the outset, intended to so operate its facility as to avoid being regulated under RCRA. Given the complexity of that Act and the regulations promulgated thereunder one could hardly blame the Respondent for not wishing to place itself under its requirements. The Respondent in my judgement was embarked on a good-faith effort to remove its facility from the purview of the Act and was doing so with the knowledge and concurrence of the State agency which at that

time had responsibility for regulating the facility's activities. The record reveals that just about everytime the facility felt that it had satisfied all of the State's objections and concerns a new issue would pop up which had to be addressed and ultimately resolved. It is also apparent from this record that for the most part the Respondent was dealing with Mr. Mike Bates of the State agency who is the hazardous waste supervisor of the Compliance and Technical Assistance Branch. Since various requirements under the Act and the regulations become due at different dates as time goes by, other State officials who have responsibility for that particular aspect of the regulations would send notification to the Respondent that certain documents were now required to be filed apparently unbeknowst to other State officials which whom the Respondent had historically dealt. The Respondent up until the fateful meeting in October of 1983, felt that it was proceeding diligently and with some success in its efforts to get the facility deregulated and have its permit application withdrawn. As indicated above, the facility could continue to operate with little difficulty by eliminating the raw materials it felt were hazardous and it was only upon being advised that not only those materials but a vast majority of the other materials it was receiving would also be considered hazardous whether or not they came to the facility under a RCRA manifest or not, that the Respondent decided that it must completely reverse its previous intentions and immediately take whatever steps were necessary to bring it into compliance with RCRA.

The requirements that the Respondent would have had to comply with in order to satisfy the State agency consisted primarily of preparing analysis plans, waste handling instruction manuals for its employees, inspection schedules, contingency plans, and the obtaining of the necessary insurance in

the format required by the State agency. It also would have had to prepare a closure plan. The point of this particular dissertation is to highlight the fact that the only things that the facility lacked in order to comply with the RCRA regulations was the preparation of certain documents and other paper activities. They were not operating their facility in such a manner as to pose a hazard to the environment or to human health but rather the activities which they had been consistently engaging in were for the most part simply not documented in the manner required by the regulations. The facility was, at the time of the later inspection and at the time the EPA complaint was issued, in the process of preparing all of the documentation required by the State agency and which was the subject of the compliance schedule and ultimate consent agreement which it was planning to execute with the State.

Nothing contained herein should be taken to suggest that the Court deems a paper violation to be non-important in the context of the Act and its regulations but rather simply to put this particular case in perspective so that one can get an accurate picture as to just what posture the Respondent was in at the time the EPA complaint was issued. As pointed out by several of the Respondent's witnesses at the trial, the materials which it utilizes in the manufacture of its final product are deemed by the Agency to be hazardous primarily because of their content of certain heavy metals. These witnesses pointed out that the facility also utilizes sulfuric acid and anhydrous ammonia which are extremely hazardous to humans that may come in contact with them but these materials are not even regulated under the Act. Given this situation, the Respondent argued that the violations cited by the Agency and the amount of the penalty proposed to be levied against it are unreasonable and should either be eliminated or substantially reduced.

Although the State inspection report did note that it had some concerns about the way in which the Respondent stored and handled some of the hazardous materials on its premises such allegations were not the subject of any citation in the complaint nor did they play a part in the calculation of the penalties ultimately suggested by the Agency.

The Proposed Penalties

At the Hearing, the Agency offered a witness who made the actual penalty calculations which appeared in the complaint. This witness testified that he identified the violations for which the Agency proposed to assess penalties based on examination of two primary sources of information. One was the response to the § 3007 letter that the facility had provided to the Agency pursuant to its request and the other was the inspection report filed by the State agency, which accompanied the file ultimately forwarded to EPA for enforcement. The witness stated that in calculating the penalties involved, he utilized the Agency Final RCRA Civil Penalty Policy issued on May 8, 1984. He described this document and how it was structured and then addressed each of the violations in turn.

I will discuss the following violations as a group since the Agency essentially treated them the same in terms of the proposed penalty. These violations are: failure to have a waste analysis plan, no inspection schedule no personnel training document, no contingency plan, and failure to have financial assurances for the variety of events that the regulations identify. In each of these five categories, the Agency witness who developed the penalties determined that, looking at the matrix which appears in the above-mentioned Final Civil Penalty Policy, the potential for harm in each instance was minor, apparently due to the nature of the wastes involved and major in

the category of extent of deviation from requirements. The witness stated that his reasons for choosing the major categories in the extent of deviation from the requirement axis of the matrix was that in each instance the Respondent had admitted at the time of the 1984 inspection, it had not prepared any of the above-mentioned documents nor did it have the required insurance. The witness' theory was, since there was in each instance a complete absence of any of the required materials, the deviation from the requirements of the regulations was in the major category. Had the Respondent actually prepared the documents but they had been deemed to be deficient in some regard, the penalty policy would suggest that either a moderate or minor category be chosen since there was some attempt on the part of the facility owner to abide by the requirements of the regulations. Reference to the matrix as it appears in the penalty policy advises that the range of suggested penalties in a situation where the potential for harm are minor and the extent of deviation is major shows a range of dollar amounts from $1,500.00 to $2,999.00. In each instance the EPA witness choose the mid-range of these two numbers which is $2,250.00. Apparently this decision is consistent with Agency policy where there are no other factors which would cause the Agency to choose the higher or lower range of these figures. The penalty computation work sheet which appears in the record as Complainant's Exh. 17, indicates that the Agency applied no penalty adjustments and determined that the median number was appropriate for each of the subject violations. The penalty adjustment categories which would allow the initial assessment to be adjusted either upwards or downwards involve such matters as good-faith efforts to comply, degree of willfulness or negligance, history of non-compliance and other unique factors. As indicated above, the Agency chose not to make adjustments in the penalty suggested on the basis of these factors. The witness however

testified that had he known at the time he calculated these penalties that the Respondent had been out of compliance from the outset, he would probably have adjusted that number upwards.

I have no quarrel with the rationale of the Agency in determining the initial violation penalty amount in regard to these violations since the minor for potential for harm and the major extent of deviation seem to be appropriate under the circumstances in this case. However, due to what I consider to be good-faith efforts on the part of the Respondent and the unique factors involved, as described above, I am of the opinion that some downward adjustment of the suggested penalty is appropriate in this case. The record is clear that the Respondent was at the time of the inspection and for some period of years prior thereto involved in a good-faith effort to have its facility removed from the purview of the regulations and the Act. This endeavor was done with the knowledge and concurrence of the State agency and at several points in time it appeared that these efforts would be successful. It was only at the October 1983 meeting that the Respondent was advised that a major portion of its raw material stock which it had been advised was not considered to be hazardous was in fact hazardous, that an effort was made to reverse its procedure from the position of trying to get out from under the regulations to a position of trying as quickly as possible to comply with the regulations. Given this set of facts and the fact that at the time of the inspection the Respondent and the State were engaged in negotiations which would ultimately result in the signing of a consent decree which would have resolved the matter at the State level and that the Respondent was at that point in time diligently pursuing the schedule of compliance activities which the State agency advised they must accomplish, in my judgement requires some penalty reduction. Only the fact that the file was forwarded to the EPA

prevented the ultimate execution of this document. In view of these good-faith efforts and the unique situation that exists as to this Respondent, I am of the opinion that the proposed penalty for the above-mentioned violations should be in each instance reduced to $1,200.00.

The only portion of the complaint which was not the subject of the stipulation was the question of whether or not the security measures taken at the facility were adequate under the regulations. During the last inspection, the State inspector apparently misunderstood the facility personnel to the effect that the State inspector thought that no watchman was currently employed by the facility but that one was going to be hired in the future. At the trial, the witnesses for the Respondent all testified that they have had a watchman on the payroll for many years and that they had no idea as to how this fact was misunderstood by the State inspector. The watchman involved is on duty during non-operating hours and on weekends and holidays when the plant is closed. During operating hours, the Respondent felt that inasmuch as all their employeees had been advised to direct visitors and strangers appearing on the premises to a supervisor or to the office no additional guards were needed during those hours since the full complement of employees provided better security protection than would a single watchman roaming around the premises. The facility did not, however, at the time of the inspection have a fence or other natural or man-made barrier around the premises to keep persons and live stock from wandering into the active portions of the facility. Since the inspection and prior to the Hearing, the company has, at the insistence of the EPA, erected a six-foot cyclone fence entirely enclosing the facility with the exception, of course, of certain gates which are necessary to provide ingress and egress to the plant for deliveries and shipments. In regard to security the Agency choose minor for harm and moderate

for the extent of deviation resulting in a matrix range of from $500.00 to $1,199.00. Once again the Agency choose as the appropriate penalty the mid-point of that range and assessed a penalty of $1,000.00. A careful reading of the record leads one to conclude that, in assessing this penalty, the Agency was unaware of the fact that the facility did have a full-time watchman on duty to protect the facility from intruders during off-hours, weekends and holidays. Given this set of circumstances, it occurs to me that since the facility did have a watchman on its payroll, the penalty proposed by the Agency of $1,000.00 should be reduced to $750.00.

The next item in the list of proposed penalties has to do with the failure of the facility to have on file a closure plan. For that violation, the Agency determined that the potential for harm was moderate and the extent of deviation was major, arriving at a matrix cell range of from $8,000.00 to $10,999.00. Once again the Agency chose the mid-point of that range and came up with a proposed penalty of $9,500.00. The record is silent as to why the Agency deviated from its previous practice in this case in regard to setting the penalties and chose a moderate potential for harm rather than a minor. Reference to the penalty policy provides no clue as to why the Agency chose the moderate range under potential for harm. Given that all of the violations, with the exception of the security portion, involved the failure of the Respondent to either prepare or have on file written documentation as opposed to the failure to handle its waste in a proper fashion, I see no rationale for determining a higher potential for harm in regard to the closure plan than for the other failures to provide documentation. The burden of proof is upon the Agency to present evidence that the proposed penalty is the appropriate penalty to be assessed. The

Agency presented no reason for its choice of the moderate potential for harm in this instance as opposed to minor as in the other five violations assessed in this matter for failure to provide written material. Accordingly, I am of the opinion that the potential for harm in regard to the closure plan should likewise be reduced to a minor cateogory thus placing us in a cell range of from $1,500.00 to $2,999.00. Having done that and consistent with Agency policy, I would then choose the mid-point range of $2,250.00. Likewise consistent with the previous discussion in regard to the good-faith efforts and the unique factors of this case, I am of the opinion that the penalty in regard to the closure plan should also be reduced to $1,200.00.

Conclusion

It is concluded on the basis of the record that the Respondent has violated § 3008 of RCRA by failing to have prepared a waste analysis plan, inspection schedule, personnel training manual, contingency plan, a closure plan, and to have provided the required financial assurance documents and coverage for both closure and for sudden and non-sudden accidental occurences, and for having inadequate security measures at its premises. It is further concluded, for the reasons stated, that $7,950.00 is an appropriate penalty for said violations and that a compliance order in the form hereinafter set forth should be issued.

ORDER[2]

Pursuant to the Solid Waste Disposal Act, Section 3008, as amended, 42 U.S.C. 6928, the following Order is entered against Respondent, Frit Industries, Inc.:

1. (a) A civil penalty of $7,950.00 is assessed against Respondent for violations of the Solid Waste Disposal Act found herein.

(b) Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the Final Order upon Respondent by forwarding, via certified mail, a cashiers' check or certified check payable to the Treasurer, United States of America, to

U.S. Environmental Protection Agency, Region VI
(Regional Hearing Clerk)
Post Office Box 360582M
Pittsburgh, PA 15251

2. Within thirty (30) days of the service of the Final Order, Respondent shall:

(a) Complete and submit a proper Notification of Hazardous Waste Activity. Include all hazardous waste streams handled by the facility.

(b) Complete and submit a proper Federal Part A permit application. Indicate all hazardous waste streams and hazardous waste management components used by the facility.

(c) Obtain financial assurances for closure, sudden and non-sudden accidental occurrences as required by 40 C.F.R. Subpart H. Submit proof of compliance.

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[2]40 C.F.R. 22.27(c) provides that this Initial Decision shall become the Final Order of the Administrator within 45 days after its service upon the parties unless (1) an appeal is taken by a party to the proceedings, or (2) the Administrator elects, sua sponte, to review the Initial Decision. 40 C.F.R. 22.30(a) provides that such appeal may be taken by filing a Notice of Appeal within twenty (20) days after service of this Decision.

(d) Implement proper security and post the necessary warning signs as required by 40 C.F.R. § 265.14. Submit proof of compliance.

(e) Develop and implement a written inspection schedule in accordance with 40 C.F.R. § 25.15(b). Record all inspections in an inspection log in accordance with 40 C.F.R. § 265.15(d). Submit proof of compliance.

(f) Make the necessary arangements with the local authorities in accordance with 40 C.F.R. § 265.37.

(g) Develop and implement a proper personnel training program in accordance with 40 C.F.R. § 265.16. Submit proof of compliance.

(h) Develop and implement a proper waste analysis plan in accordance with 40 C.F.R. § 265.13(b). Submit proof of compliance.

(i) Develop a proper contingency plan in accordance with 40 C.F.R. §§ 265.51, 265.52, and 265.53. Submit proof of compliance.

(j) Equip the facility with internal communications or alarm system as required by 40 C.F.R. § 265.34. Submit proof of compliance.

(k) Develop a proper closure plan with an adequate closure cost estimate in accordance with 40 C.F.R. §§ 265.112 and 265.142. Submit a copy.

(l) Test the leachate run-off from the waste piles to determine if it is hazardous. Submit the results.

To the extent any of the above enumerated activities have been completed as of the date of this Order such documentation shall be submitted to the EPA within five (5) days of the receipt of this Order.

DATED: August 5, 1985

Thomas B. Yost
Administrative Law Judge

EXHIBIT A

FRIT INDUSTRIES, INC.

DOCKET NO. RCRA VI-415-H

STIPULATION OF FACTS

1. On or about August 18, 1980, Respondent notified as a generator, and a treatment, storage, and/or disposal facility.

2. Respondent is a generator of hazardous waste and an owner or operator of a hazardous waste management facility locating in airport Industrial Park, Walnut Ridge, Arkansas, which is used for treatment, storage, or disposal of hazardous wastes.

3. On or about November 19, 1980, and on May 31, 1984, Respondent was conducting its business of generating and/or treating, storing, or disposing of chemicals, including hazardous waste, at its facility in Airport Industrial Park, in Walnut Ridge, Arkansas.

4. On or about May 18, 1984, Respondent was sent a RCRA § 3007 letter requesting information about the operations of the facility.

5. On or about June 21, 1984, Respondent submitted a response to the RCRA § 3007 letter requesting information about the operations of the facility.

6. On or about July 13, 1983, and May 31, 1984, Respondent was inspected by a representative or employee of Arkansas Department of Pollution Control and Ecology pursuant to Section 3007 of RCRA.

7. On or about May 31, 1984, and as stated in his letter dated June 21, 1984, Respondent did not have a written waste analysis plan at the facility.

8. On or about May 31, 1984, and as stated in his letter dated June 21, 1984, Respondent did not have a written inspection schedule at the facility.

9. On or about the date May 31, 1984, and as stated in his letter of June 21, 1984, Respondent did not have the required personnel training documents at the facility.

10. On or about May 31, 1984, and as stated in his letter dated June 21, 1984, Respondent did not have a written contingency plan concerned with the management of hazardous waste at the facility.

11. On or about May 31, 1984, and as stated in his letter dated June 21, 1984, Respondent did not have documentation of financial assurance for closure of the facility on file with EPA or the ADPC&E.

12. On or about May 31, 1984, and as stated in his letter dated June 21, 1984, Respondent did not have documentation of financial assurance for sudden accidental occurrences on file with the EPA or the ADPC&E.

13. On or about May 31, 1984, and as stated in his letter dated June 21, 1984, Respondent did not have documentation of financial assurance for non-sudden accidental occurrences on file with the EPA or the ADPC&E.

14. On or about May 31, 1984, and as stated in his letter dated June 21, 1984, Respondent did not have a written closure plan.