

Haywood County Board of Commissioners  
September 7, 2010  
County Commission Meeting

VIII New Business

13. North Carolina DENR Administration Consent Agreement and Settlement Document. Attachments 29 and 30.



AUG 18 2010

August 13, 2010

Mr. David B. Cotton, County Manager  
Haywood County  
215 North Main Street  
Waynesville, North Carolina 28786

RE: Compliance Order  
White Oak MSW Landfill  
Haywood County, North Carolina

Dear Mr. Cotton:

Per your request, we are providing this letter to summarize the recent Compliance Order with Administrative Penalty that the County received regarding the White Oak Municipal Solid Waste (MSW) Landfill. As you are aware, the County received a Compliance Order dated July 15, 2010 for certain violations of the North Carolina Solid Waste Management Act (NC General Statute 130A, Article 9) and of the North Carolina Solid Waste Management Rules (15A NC Administrative Code 13B). In addition to the Compliance Order, the County received an Administrative Penalty in the amount of \$39,375.00 plus an Investigative Cost of \$754.10 for a total amount of \$40,129.10.

The Compliance Order centers around four (4) main issues:

1. Solid waste placed outside the liner limits.
2. Leachate discharged outside the liner limits.
3. Existing monitoring wells were abandoned without approval.
4. Intermediate soil cover not placed over waste.

The issues are summarized below.

#### Solid Waste Outside the Liner Limits

As part of the Phase 3 construction, the new Phase 3 liner must be physically connected to the existing liners in Phase 1 and Phase 2. During the construction of the new liner, it was discovered that solid waste was located outside the existing liner limits in two (2) locations. One location was at the junction of the original Phase 1 and Phase 1, Cell 4 and the other location was near the sump of Phase 2, along the northern liner edge. It is estimated that this waste had been placed during the early to mid 2000's. As required by the Solid Waste Rules, the County notified the Solid Waste Section (SWS) of the North Carolina Department of Environment and Natural Resources (NCDENR) on August 6, 2009 of the discovery. The County also instructed the landfill contractor to immediately begin relocating the waste from outside the liner limits to the current working face. The removal of the waste was completed by August 25, 2009. Approximately 6,350 cubic yards of waste material was relocated.

**E n g i n e e r i n g • P l a n n i n g • F i n a n c e**

McGill Associates, P.A. • P.O. Box 2259, Asheville, NC 28802 • 55 Broad Street, Asheville, NC 28801

828-252-0575 • Fax: 828-252-2518

#### Leachate Discharged Outside the Liner Limits

Leachate was also discovered outside the liner limits during the construction of Phase 3. The leachate discharge was inevitable due to the fact that waste was outside the liner limits as described above. The County also included this information during the notification of the SWS on August 6, 2009. Section .1626 (8) (d) of the Solid Waste Rules states that leachate shall be contained on site and properly treated prior to discharge. The SWS section position is that "on-site" is defined as lined waste area. This position is generally accepted by the solid waste industry. The County, through the assistance of the landfill contractor, established berms to contain and collect the leachate within the waste limits and began a pumping operation to pump the leachate to either tanks or the on-site leachate pond. In addition, the County tested the soil in the area of the leachate discharge outside the liner and removed any soil that had been contaminated by the leachate. As a result, there was no evidence of leachate reaching any surface water features.

#### Existing Monitoring Wells Abandoned without Approval

In order to construct the new Phase 3 landfill, several existing environmental monitoring points had to be abandoned. A majority of these structures were abandoned prior to construction. Three (3) points consisting of two (2) groundwater monitoring wells and one (1) methane gas monitoring well were not abandoned. These wells were located outside the limits of the new Phase 3 waste area but within the vicinity of the existing leachate pond. During the permitting phase of the Phase 3 development, these wells were not identified to be removed. These wells were originally planned to be raised in-place to reduce the cost of new wells. However, as the construction progressed, it was decided that these wells would have to be relocated to accommodate the actual field conditions encountered while expanding the leachate pond. During the improvements to the leachate pond, these wells were destroyed. However, the revision to permitted drawings to delineate the new well construction was not approved by the SWS prior to the wells being destroyed and a March 30, 2010 comprehensive audit conducted by the SWS. McGill Associates has now received approval to replace the destroyed wells as required by the SWS. The new wells will be installed within the next 45 days.

#### Intermediate Soil Cover Not Placed Over Waste

The Solid Waste Rules require waste areas that do not receive waste within one year be covered with a minimum one foot of soil cover. The areas along the western edge of Phase 1 and northern edge of Phase 2 during the winter and spring of 2010 had minimal soil cover. During the waste removal, as described above, a portion of the area was not re-covered with the required soil cover. This was a result of the contractor having to move the waste that was outside the liner limits and limited resources of the landfill operations staff to cover the waste with soil. In order to save construction cost, the minimum amount of waste was removed by the Contractor to bring waste inside the liner limits making it difficult to place soil cover. The County has now covered a majority of the areas with soil cover with the exception of the area along Phase 2. This effort was completed in April and May of 2010.



In the area along the Phase 2 limits, a proper soil cover cannot be established at this time due to the existing steep slope and inaccessibility to the location by construction equipment. As noted above, waste had to be relocated to construct the Phase 3 waste area tie-in to the Phase 2 liner. Due to the existing condition of the Phase 2 waste fill, it was not feasible to relocate enough waste to establish a slope suitable for placement of soil cover material. Based on the current condition, the SWS has agreed to allow the County to cover the exposed waste along the northern slope of Phase 2 with a plastic tarp. The plastic tarp will remain in-place until such time as the Phase 3 area is permitted to receive waste and access can be established through Phase 3 to the uncovered waste along Phase 2. Once access is established a proper soil cover can be placed. The Phase 2 soil cover will be established within 60 days of issuance of the Permit to Operate for Phase 3.

#### Summary

On August 3, 2010, representatives of the County and McGill Associates met with the Asheville Region SWS staff to conduct an informal conference to discuss the Compliance Order. Within the Compliance Order, there is section that describes the necessary conditions required to bring the facility into compliance. Most of these conditions have already been addressed and, in fact, were addressed prior to issuance of the Compliance Order. As a result of our discussions with SWS staff, the SWS has agreed to reduced the penalty portion of the fine to \$32,000 resulting in a revised total fine of \$32,754.10. This reduction along with clarification to the conditions of compliance will be handled in a supplemental agreement soon to be issued by the SWS.

The Haywood County Solid Waste department has taken several steps to limit the possibility of the above violations from reoccurring. These steps included additional training of landfill personnel, permanent liner edge markers, and a sophisticated leachate collection system in Phase 3. In addition, County staff is currently evaluating options for handling leachate within the existing Phase 1 and 2 waste areas.

Based on our previous experience assisting clients with NCDNER and Compliance Orders, we had anticipated that the fine might be reduced further. The waste outside the liner and leachate outside the liner are very serious violations and could have resulted in a higher fine. Unfortunately, the County has been issued several Notice of Violations in the past for solid waste operations. These violations have resulted in a strained relationship with the SWS. The immediate actions taken by Haywood County and McGill Associates at the time of discovery allowed the SWS to provide leniency with the fine. While we are disappointed that the fine was not reduced further, we recommend that County accept the reduced fine.

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Mr. David Cotton  
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McGill Associates appreciates the opportunity to continue our relationship with Haywood County at the White Oak MSW Landfill. Please call should you have any questions or need additional information.

Sincerely,  
McGILL ASSOCIATES, P.A.



JEFFREY R. BISHOP, PE  
Director of Solid Waste Services

Cc: Mr. Marty Stamey, Haywood County  
Mr. David Francis, Haywood County  
Mr. Stephen King, Haywood County

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AUG 18 2010

North Carolina Department of Environment and Natural Resources

Division of Waste Management

Beverly Eaves Perdue  
Governor

Dexter R. Matthews  
Director

Dee Freeman  
Secretary

August 6, 2010

Haywood County  
c/o David Cotton, County Manager  
215 N. Main Street  
Waynesville, NC 28786

Re: Administrative Consent Agreement and Settlement  
Haywood County MSW Landfill

Dear Mr. Cotton:

Enclosed is an Administrative Consent Agreement and Settlement document. The agreement proposes to settle the combined penalty and investigative costs of \$40,129.10 assessed against Haywood County for the amount of \$32,754.10.

If the agreement meets your approval, please sign the agreement, and return the signed agreement within fourteen (14) days of your receipt of the agreement to the Attention of: Compliance Officer, Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. The payment will be due within 60 days of Haywood County's execution of this agreement as indicated in paragraph A.

If you have any questions or concerns, please contact me at 919-508-8502.

Sincerely,

Donald Herndon  
Compliance Officer  
Solid Waste Section

Enclosures

cc: Paul S. Crissman, Section Chief, Solid Waste Section  
Terry Townsend, Assistant Attorney General  
Mark Poindexter, Field Operations Branch Head  
Deb Aja, Western District Supervisor  
Andrea Keller, Environmental Senior Specialist  
Solid Waste Central Files



NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND  
NATURAL RESOURCES

DIVISION OF WASTE MANAGEMENT

SOLID WASTE SECTION

ADMINISTRATIVE CONSENT AGREEMENT AND SETTLEMENT

IN RE: HAYWOOD COUNTY

The North Carolina Department of Environment and Natural Resources through its Division of Waste Management, Solid Waste Section (the "Division"), and Haywood County ("County") hereby enter into this Administrative Consent Agreement and Settlement ("Agreement") in order to amicably resolve matters which arise out of a Compliance Order with Administrative Penalty ("Compliance Order") issued by the Division to Haywood County on July 15, 2010, with an administrative penalty of \$39,375.00 plus investigative costs of \$754.10, for a total amount owed of \$40,129.10. The Division issued this Compliance Order with Administrative Penalty pursuant to the North Carolina Solid Waste Management Act, and the rules which implement the act, for violations more specifically described in the Compliance Order.

Haywood County requested and received an opportunity to engage in an informal conference to discuss the allegations presented in the compliance order. Based on the facts and evidence presented as a result of the informal conference, Haywood County and the Division have reached a settlement with a reduction of the penalty and the terms for compliance. Haywood County will not file a petition for a contested case hearing pursuant to N.C.G.S. §130A-22(e). The July 15, 2010, Compliance Order with Administrative Penalty will constitute a final agency decision. The Division and Haywood County agree to the following settlement:

- A. Haywood County agrees to pay the reduced sum of Thirty Two Thousand Seven Hundred and Fifty Four Dollars and Ten Cents (\$32,754.10), which constitutes the entire reduced amount owed: an administrative penalty of \$32,000.00 plus investigative costs of \$754.10. Payment of this sum of \$32,754.10 shall be made by **money order or certified check** payable to the North Carolina Department of Environment and Natural Resources, Division of Waste Management and sent to the Attention of: Compliance Officer, Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. The \$32,754.10 payment is due within 60 days of Haywood County's execution of this Agreement.
- B. The Division agrees to accept payment of \$32,000.00 for the penalty plus the investigative costs of \$754.10 as full and complete discharge of the obligation to pay the original penalty amount of \$39,375.00, provided that the County remits payment in accordance with paragraph A. In the event of default, the Division shall deliver written notice to the County of its default. Such notice shall be deemed delivered upon

placement in the United States Mail postage prepaid and addressed to the County c/o its County Manager, Haywood County, NC. If the County fails to cure its default within ten (10) days of the Division's written notice, the unpaid original assessed penalty of \$39,375.00 plus the investigative costs of \$754.10 shall become immediately due and payable.

- C. Haywood County expressly stipulates and acknowledges that by entering this Agreement, it waives all defenses to collection of the penalty and that the issue in any action to collect said penalty will be limited to the payment or non-payment thereof in accordance with the terms of this Agreement.
- D. The Division acknowledges that Haywood County completed Condition of Compliance Number 1 and has submitted documents for review for Condition of Compliance Numbers 3 and 4, as required by the Compliance Order dated July 15, 2010. Haywood County agrees to comply with the following Conditions for Compliance, which replace specific Conditions of Compliance in the Compliance Order dated July 15, 2010:
  - (a) Condition of Compliance 2: Within 30 days of issuance of the Permit to Operate for 44-07 Phase 3, place a minimum of one foot of intermediate soil cover over all areas where waste was exposed during activities relating to the August 2009 discovery of waste outside the base liner system.
  - (b) Condition of Compliance 3: Within 30 days of execution of this Agreement, Submit a detailed plan, including a timetable, to locate and properly abandon MW-3, MW-3D, MW-9 and LFG-4, or, for any wells that cannot be located and properly abandoned submit a detailed justification to Andrea Keller, Environmental Senior Specialist, and, to Zinith Barbee, Permitting Branch Hydrogeologist, for review and approval;

Zinith Barbee  
Permitting Branch Hydrogeologist, SWS  
Raleigh Regional Office  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Andrea Keller  
Environmental Senior Specialist  
Asheville Regional Office  
2090 US Highway 70  
Swannanoa, NC 28778

- (c) Condition of Compliance 4: Within 30 days of a request by DENR, provide any information, documents, or revisions pertaining to the Landfill Gas Monitoring Plan submitted for review in accordance with the Condition of Compliance Number 4 in the Compliance Order dated July 15, 2010. The submittals should be sent to Andrea Keller and Zinith Barbee.



- E. Nothing in this Agreement shall restrict the right of DENR, the Division, or the Solid Waste Section to initiate any action against Haywood County for any new or other violation of the North Carolina Solid Waste Management Act, the North Carolina Solid Waste Management Rules, or any other law or rule. Haywood County acknowledges that, pursuant to N.C.G.S. 130A-22, each day of a continued violation of any requirement of the North Carolina Solid Waste Management Act, the solid waste management rules, or any order issued under the act or rules constitutes a separate violation for which a penalty of up to \$15,000.00 per day may be imposed.
- F. This Agreement may not be amended orally or by performance. Amendments must be made in written form and signed by duly authorized representatives of both the Division and the County.
- G. The parties irrevocably waive any right to appeal from this Agreement, assuming such right exists, except that either party may, at its option, seek judicial intervention to enforce the terms of this Agreement.
- H. The parties agree and acknowledge that this Agreement sets forth all terms and conditions between them concerning the subject matter of this Agreement, and that there are no terms or conditions between the parties except as specifically set forth herein.
- I. This Agreement is effective on the last date that any signatory to the Agreement shall affix his or her signature.

In WITNESS WHEREOF, the parties hereby agree to the preceding terms, as evidenced by the signatures set forth below.

\_\_\_\_\_  
Paul S. Crissman, Chief  
Solid Waste Section  
Division of Waste Management

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cotton, County Manager  
Haywood County

\_\_\_\_\_  
Date