

11/2/98 Mark -
See me today
to discuss. - (R)

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October 27, 1998

REGISTERED MAIL
RETURN RECEIPT REQUESTED
and FIRST CLASS U.S. MAIL



Permit/Co ID #	Date	Doc ID#
hc	10 29, 98	DIN

Rick Honeycutt,
Jackson County Manager
401 Grindstaff Cove Road
Sylva, North Carolina 28779

Carol M. Browner, Administrator, USEPA
1101
USEPA Headquarters
401 M Street S.W.
Washington, D.C. 20460

William L. Meyer, Division Director
North Carolina Department of Environment
and Natural Resources, Division of Waste
Management
401 Oberlin Road
Suite 150
Raleigh, North Carolina 27605

John H. Hankinson, Jr., Regional
Administrator, USEPA Region IV
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

**Re: Notice of Intent to File A Civil Action Pursuant to Citizen Suit Provisions of
42 U.S.C.A. § 6972**

Dear Messers. Honeycutt, Meyer, Hankinson and Ms. Browner:

Section 7002 of the Federal Solid Waste Disposal Act (42 U.S.C. §6972) requires that 60 days prior to the filing of a citizen's suit in federal district court under Section 7002, notice must be given to the alleged violator, the U.S. Environmental Protection Agency (both through the Administrator and the Region with jurisdiction), and the State in which the alleged violations occur of the citizen's intent to bring suit for the alleged violations.

Pursuant to 42 U.S.C.A. § 6972 (a) (1) (A), D & R Properties, Inc. ("D & R") and Western Builders Inc. of Sylva ("Western Builders") provides this Notice of their intent to commence a civil



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action against Jackson County, North Carolina with regard to contaminated leachate migrating from the Jackson County Municipal Solid Waste Landfill owned and operated by Jackson County (the "Jackson County Landfill") onto the adjacent property owned by D & R (the "Property").

The Jackson County Landfill is located on West Haywood Road, Dillsboro, Jackson County, North Carolina. The Property is located adjacent to the Jackson County Landfill at 390 West Haywood Road, Dillsboro, Jackson County, North Carolina. The Jackson County Landfill is subject to terms and conditions of Permit No. 5002 as issued by the North Carolina Department of Environment and Natural Resources, Division of Waste Management, Solid Waste Section. As early as February 7, 1996, Jackson County was notified by the North Carolina Department of Environment and Natural Resources ("NCDENR") that its operation of the Jackson County Landfill did not comply with the North Carolina Solid Waste Management Rules for groundwater monitoring. Specifically, in a February 7, 1996 letter to Jackson County (the "Letter"), NCDENR informed Jackson County that it had failed to perform the requisite number of baseline sampling events at the Jackson County Landfill on all detection monitoring wells for Appendix I constituents, and for previously detected Appendix II constituents. In addition, NCDENR stated in the Letter that Jackson County had failed to provide NCDENR with baseline sampling reports on Appendix I and Appendix II constituents and a comparison of the analytical data from the baseline sampling to the North Carolina Groundwater Standards. A copy of the Letter is attached as Exhibit A and incorporated by reference in this Notice.

An April 27, 1998 sampling of the groundwater drawn from the Jackson County Landfill detected elevated levels of benzene, tetrachloroethane, and vinyl chloride exceeding the North Carolina Groundwater Quality Standards as set forth at 15A N.C.A.C. 2L.0202. In addition, the April 27, 1998 sampling also detected elevated levels of trichloroethane. A copy of the Groundwater Analytical Results for the April 27, 1998 sampling event on the Jackson County Landfill is attached as Exhibit B and incorporated by reference in this Notice. Earlier this year, a groundwater monitoring well was installed on the Property in a location hydraulically downgradient from the Jackson County Landfill. Sampling of groundwater from this well in October 1998 detected elevated levels of benzene, tetrachloroethylene, trichloroethylene and vinyl chloride exceeding groundwater quality standards as set forth at 15A N.C.A.C. 2L.0202. A copy of the Groundwater Analytical Results for the October 1998 sampling event on the Property is attached as Exhibit C and incorporated by reference in this Notice.

The migration of leachate from the Jackson County Landfill onto the Property is a violation of the applicable permits, standards, regulations, conditions, requirements and prohibitions of 42 U.S.C.A § 6901, et. seq., as well as 15A N.C.A.C. 13B.1626 (8) (d), 13B.1626 (8) (e), 13B.1630, 13B.1631, 13B.1632, 13B.1633, 13B.1634, 13B.1635, 13B.1636, 13B.1637, 2L.0106, 2L.0110, and 2L.0202. Jackson County has been in continuous violation of such applicable permits, standards, regulations, conditions, requirements and prohibitions since at least February 7, 1996.

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D & R's mailing address is as follows:

D&R Properties, Inc.
Post Office Box 96
Sylva, North Carolina 28779
Telephone: 828/586-5094

Western Builders' mailing address is as follows:

Western Builders, Inc. of Sylva
Post Office Box 96
Sylva, North Carolina 28779
Telephone: 828/586-5094

D & R and Western Builders are represented in this matter by the law firm of Smith Helms Mulliss & Moore, L.L.P. Any correspondence or inquiries regarding this matter should be directed to:

Benne Hutson
Smith Helms Mulliss & Moore, L.L.P.
P.O. Box 31247
Charlotte, North Carolina 28231
Telephone: 704-343-2060
Telecopy: 704-334-8467

Sincerely,
Smith Helms Mulliss & Moore, L.L.P.



Benne C. Hutson

BCH
Enclosures

cc: Roger Bartlett (w/encls.)
Don Hensley (w/encls.)
Sandy Wright (w/encls.)
James G. Middlebrooks (w/encls.)
Craig Baldauf (w/encls.)

FROM : John Sommerer & Company PA CPA PHONE NO. : 9547529585

Oct. 14 1998 04:27PM P11

FROM : CASHIERS COMMONS

PHONE NO. : 8287439064

Oct. 14 1998 03:56AM P9

State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Solid Waste Management



James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
William L. Meyer, Director

February 7, 1996

Mr. Dave Fowler
Solid Waste Coordinator, Jackson County
Jackson County Justice Center
401 Grindstaff Cove Road
Sylva, North Carolina 28779

RE: Jackson County MSW Landfill Water Quality Monitoring Program
Permit No. 50-02

Dear Mr. Fowler,

Enclosed is a copy of the April 1995 water quality data for the Jackson County Landfill that you requested in our telephone conversation today. The Solid Waste Section only has one set of data in our files for 1995.

9/95
It appears that Jackson County is out of compliance with the Solid Waste Management Rules for ground-water monitoring. Between the Autumn of 1994 and April 1995 all MSW Landfills were required to perform a baseline monitoring of all detection monitoring wells that included four independent samples for Appendix I constituents. According to our records Jackson County only sampled twice during this period, in October 1994 and April 1995. In the baseline sampling report due in April 1995, the County was required to report on all four of the baseline sampling events, and to report the in-situ hydraulic conductivity, total porosity, effective porosity, direction of ground-water flow, and rate of ground-water flow for each monitoring well. This report should have also included a comparison of the analytical data to the N.C. Groundwater Standards and a statistical analysis of the sample data.

Since some of the analytical data indicates that Groundwater Standards have been exceeded, Jackson County was required to sample for the Appendix II constituent list in July 1995. Another sampling event for Appendix I constituents and detected Appendix II constituents was due in October 1995.

EXHIBIT

FROM : John Sommerer & Company PA CPA PHONE NO. : 9547529585

Oct. 14 1998 04:27PM P12

FROM : CASHIERS COMMONS

PHONE NO. : 8287439864

Oct. 14 1998 09:57AM P10

Mr. Dave Fowler
Jackson County Landfill
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If any of this sampling has been done, it should be reported to the Solid Waste Section immediately. If it has not been done, Jackson County needs to schedule additional sampling as soon as possible and attempt to catch up and re-establish compliance with the Solid Waste Management Rules, .1630 through .1637. If they have not already done so, the County should probably go ahead and sample all monitoring wells for the Appendix II constituent list.

If you have any questions about this letter, you may contact me at (919) 733-0692, extension 258. For questions about ground-water monitoring at Solid Waste Management facilities, you may call either me or Mark Poindexter of our Groundwater Compliance Unit.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc: Mark Poindexter, Solid Waste Section
Jim Patterson, SWS - Asheville

rec'd from WBI 10/5/98

**JACKSON COUNTY MSWLF - MW-4
SUMMARY OF ANALYSES - DETECTED COMPOUNDS
→ 4-27-98 SAMPLING EVENT**

Monitoring Well	Compound	Detection Limit (ug/L)	Analysis (ug/L)	2L Groundwater Standard (ug/L)
4	Benzene	0.50	2.00 ✓	1.0
	Chlorobenzene	0.50	1.89 ✓	50.0
	Chloroethane	0.50	2.47	NL
	1,4-Dichlorobenzene	0.50	3.92	NL
	Dichlorodifluoromethane	0.50	1.45	1400
	1,1-Dichloroethane	0.638 + 1.62	2.79	700
	Cis-1,2-Dichloroethane	0.50	18.20	70.0
	Tetrachloroethane	0.50	4.38 ✓	0.70
	Trichloroethane	0.50	2.39 ←-----→	2.8
	Vinyl Chloride	0.50	2.01 ✓	0.015

EXHIBIT
B

FROM: ALPHA ENVIRONMENTAL SCIENCES, INC.,
 MONITORING WELL SAMPLING & ANALYSIS
 SUMMARY REPORT FOR WESTERN BUILDERS, INC. - 9/22/98

**TABLE ONE
 GROUNDWATER ANALYTICAL RESULTS
 DETECTED COMPOUNDS
 EPA METHOD 8260**

(concentrations in parts per billion)

<u>CONSTITUENT</u>	<u>RESULT</u>	<u>NCAC 2L STANDARD</u>
BENZENE	[REDACTED]	1.0
CHLOROBENZENE	3.59	50.0
CHLOROETHANE	1.99	NL
1,4 - DICHLOROBENZENE	4.35	NL
1,1 - DICHLOROETHANE	2.13	700
CIS - 1,2-DICHLOROETHENE	31.9	70
METHYL CHLORIDE	13.4	NL
TETRACHLOROETHYLENE	[REDACTED]	0.70
TRICHLOROETHYLENE	[REDACTED]	2.8
VINYL CHLORIDE	[REDACTED]	0.015
XYLENES (TOTAL)	3.88	530
NUMBER OF TIC'S		—

[REDACTED] Exceeds NCAC 2L Standards

**EPA METHOD 8270
 (concentration in parts per billion)**

<u>CONSTITUENT</u>	<u>RESULT</u>	<u>NCAC 2L STANDARD</u>
ALL NUMBER OF TIC'S	ND 2	—

* ND - NONE DETECTED
 NL - NOT LISTED
 TIC'S - TENTATIVELY IDENTIFIED COMPOUNDS
 ALL REMAINING PARAMETERS ANALYZED FOR WERE BELOW
 METHOD DETECTION LIMITS

EXHIBIT
C