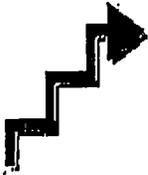




NEW MAILING ADDRESS:



Raleigh Regional Office
 Department of Environment
 and Natural Resources
 1628 Mail Service Center
 Raleigh, NC 27609-1628

PHYSICAL LOCATION (not a
 mailing address)
 3800 Barrett Drive, Rm 101
 Raleigh, NC 27609

Voice: 919/571-4700
 FAX: 919/571-4718

F
A
X

PLEASE NOTE OUR NEW
 MAILING ADDRESS!!!

TO: Bill Houtt FAX: _____

FROM: Ben Barnes

SUBJECT: Re Use DATE: 4/25/2002

7 Pages including cover sheet

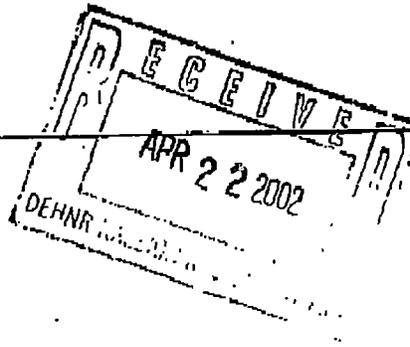
MESSAGE:

This is Re Use Tech response to
the N.O.V dated 4/4/2002.
The N.O.V was delivered on 4/8/2002
The plan to redirect surface water
is due on 5/8/2002



ReUse
TECHNOLOGY INC.

665 Molly Lane
Suite 100
Woodstock, Georgia 30189
770.517.7017
fax 770.517.9689



April 19, 2002

Mr. Ben Barnes
Waste Management Specialist, Solid Waste Section
North Carolina Department of Environment and Natural Resources
The Division of Waste Management
Raleigh Regional Office
1628 Mail Service Center
Raleigh, North Carolina 27699-1628

Re: Swift Creek CCB Structural Fill
Highway 301, Nash County

Dear Mr. Barnes:

I am writing in reply to the Notice of Violation ("NOV"), which the Division of Waste Management sent to ReUse Technology, Inc. ("ReUse") on April 4, 2002. This reply will respond to statements by the Division in the order in which they appear in the NOV.

ReUse does not believe the chronology set forth in the NOV is complete or accurate.

As you know, ReUse submitted a notice to the Division on December 11, 2001 in accordance with the Division's current regulations for beneficial use of coal combustion by-products at 15A NCAC 13B Section 1703. That notice covered a small expansion to ReUse's existing Swift Creek Coal Combustion By-Product Structural Fill. ReUse explained that it had purchased the adjacent property to the south of the original project. It sought to complete and close out the existing project by filling a small portion of its new property and closing the entire project. Work was to be completed by June 2002. As part of this notice ReUse submitted a drawing to the Division showing the as-built state of the original project, and how the expansion would tie into it.

The Division wrote ReUse on December 19, 2001 that it had identified certain differences between the "as built" Swift Creek Coal Combustion By-Product Structural Fill and the plans that ReUse had submitted to the Division for that project on November 11, 1991. These differences had to do with the location of coal ash in relation to the property lines and the highway right of way, the height of the structural fill in 2001, and a drainage feature having been piped under the structural fill rather than ditched. The Division

progress today, with respect for tomorrow. . .

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requested ReUse to submit a plan and timetable for corrective actions "to bring the original facility into compliance" with the plans the Division had approved in December, 1991.

ReUse replied on to the Division on January 10, 2002. ReUse said it believed that the piping of the drainage feature (actually a pre-existing ditch) was in fact allowed by the 1991 approval and the 1992 Corps of Engineers Regulations. ReUse noted that the change in the height of the fill had been explained to and approved by the Division in 1997. ReUse noted that the property boundary concerns had been obviated by ReUse's consent to ash placement as the purchaser and owner of adjoining property. ReUse agreed to re-deed the property to eliminate the property line and agreed not to place any ash within the area of the right-of-way, which was of concern to the Division.

The Division wrote ReUse on January 16, 2002 requesting information about the date of the adjacent property purchase transaction and requesting documentation respecting any Corps of Engineers approval of placement of pipe in the ditch. The Division also requested information about the elevation of the pipe and the soil placed around it.

ReUse and counsel met with the Division on January 22, 2002, and provided information about pipe placement and the Corps of Engineers Nationwide Permit Number 26 as requested by the Division. ReUse also provided the Division with copies of 1997 correspondence between ReUse and the Division explaining ReUse's plans to raise the height of the fill structure to resolve a complaint by a neighbor. ReUse again emphasized that it believed the differences between the structural fill drawing as submitted in 1991 and as built over the subsequent 10 years were not significant in terms of the performance of the fill structure or its potential impact on the environment.

The Division wrote ReUse on February 8, 2002 recounting the previous correspondence and the meeting on January 22. The Division indicated in its letter that "[t]he primary issue not dealt with in your documentation was the construction and location of the concrete pipe." The Division provided ReUse until March 14, 2002 to provide additional information about the source of flow in the pipe, and, if an on-site source of water flow was identified, to take and analyze samples.

The Division also gave ReUse until March 14, 2002 to "Bring the Swift Creek Site into compliance with any other conditions . . . that have not been met;" and to "Formulate the required plan described in the December 19, 2001 letter including a list of corrective measures, a time table for each phase and a deadline. . .".

In response to the Division's February 8 letter ReUse requested an additional meeting to provide information about the pipe, and to seek methods to resolve the Division's concerns without being requested to remove large volumes of ash from the nearly-completed

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project. This meeting could not be scheduled until March 11, 2002, due to my absence from the country. Prior to that meeting ReUse's counsel supplied the Division with copies of correspondence between ReUse and the Division for its files. Counsel also provided historical information about drainage across the Swift Creek property from an adjoining farm field, structures built to convey that drainage, and the construction and placement of the piping which was extended by ReUse to convey that drainage under the subsequently installed fill.

At the March 11, 2002 meeting with you, your colleagues and your counsel, ReUse and its counsel supplemented the information provided about the pipe with additional photographs. We had additional discussion of the history and current status of the project, the construction of the drainage pipe and the Corps of Engineers Nationwide Permit. ReUse explained the significant costs involved in returning the structure to the initially planned configuration, and asked for suggestions respecting how to resolve the Division's concerns about drainage short of re-establishing the ditch. ReUse believed at the end of that meeting that it would be possible to implement the Division's suggestion of diverting drainage around the fill so as to resolve concerns about continued drainage through the pipe. ReUse also believed that it had responded substantively and appropriately to all of the questions that the Division had raised, and requested that the proposed diversion solution be memorialized.

The Division has not agreed to what was discussed in the meeting. It now takes the position in the NOV that ReUse has addressed "some but not all Division Concerns" about the Swift Creek project, and sets forth a series of options and requirements. These options and requirements appear below in bold print, and are addressed in the order stated by the Division.

"ReUse Technology must cease receiving ash at this site."

Response: As stated in our first meeting, ReUse ceased all ash deliveries to the site upon receipt of the Division's December 19, 2001 letter. Deliveries have not recommenced, and no further ash deliveries will be made to the site. ReUse hereby withdraws its December 11, 2001 notice respecting the placement of additional ash at the site.

"Within 90 days of the receipt of this letter [ReUse must] either reconfigure the site to comply with the November 11, 1991 agreement or comply with the following requirements"

As explained at our March 11, 2001 meeting ReUse does not believe it is practicable or necessary to reconfigure the site to match the November 1991 plans. The site has been

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constructed, as a coal combustion byproduct structural fill in accordance with good engineering practice. Removing 140,000 cubic yards of fill to reopen a drainage ditch is an unnecessary expense, would provide no environmental benefit, and would reduce the utility of the fill for use as a building site.

The practice of piping existing drainage under coal ash structural fills, or any other fill structure, is a necessary and acceptable part of standard engineering design. The pipe was installed at a time when the applicable Corps of Engineers Nationwide Permit authorized construction, without notice to the Corps, affecting less than one acre of wetland. The Division's December 3, 1991 approval letter indicated that applicable wetlands regulations would apply to the project. Moreover, the November 11, 1991 submittal by ReUse, which was accepted by the Division as the basis for its approval of construction without a solid waste permit, provided, in paragraph 21.b. that "Fly ash and bottom ash may be used for backfill materials around water, sewer and storm drain piping." The Division inspected the project several times after the pipe was installed and was aware of the change, yet it made no mention of any concern.

"... the following requirements."

"1. Within 30 days of receipt of this letter, submit a plan to the Section to redirect surface water away from the ash fill and the concrete pipe that has been installed under the site. Indicate in the plan how water flow through the pipe will be prevented in the future."

Although we believe rerouting the drainage is not required from either an engineering or a regulatory perspective, ReUse is willing to address this issue to resolve the Division's concerns. Therefore, ReUse is preparing a plan to submit to the Division. The plan will provide for diversion of the drainage that now flows through the pipe through a new pipe to be placed outside the ash fill area, and for permanent plugging of the existing pipe to prevent future drainage. The plan will be submitted within 30 days of ReUse's receipt of the NOV, which occurred on April 8, 2002.

"2. Within 90 days of the Solid Waste Section's written approval, implement the plan and complete the following items.

A. "Grade the site to control surface water runoff in a controlled manner. Cover the entire fill with a minimum of one foot of suitably compacted earth. Seed and stabilize the area to prevent erosion.

Response: ReUse will implement the approved diversion plan and will grade, cover, stabilize and seed the entire fill area. ReUse had been finishing the work on this site by

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covering the CCB fill with eighteen inches of earth, exceeding the six inches required by the 1991 approval. To remove the earth already placed will needlessly extend the project.

B. "Close and record the site as follows:

"1. Submit to the section an entire copy of the property deed giving the complete legal description of the property as it is registered in the index of the county where the land is located. The description will be by metes and bounds, or by reference to a recorded plat map."

Response: ReUse will submit a deed to the Section as specified. As previously agreed to, the deed will reflect ReUse's purchase of additional property, and will remove the previous boundary between the two tracts. This will fully resolve the Division's stated concerns respecting set-backs and ash placement within 100 feet of boundaries.

"(2) Submit to the Section a map of the land prepared by a registered land surveyor in accordance with N.C. G.S. 47-30. The map must show:

- (a) Name of owner, property lines, north arrow, scale and bearings and distances taken from the deed.**
- (b) Disposal area delineated, with the words "Coal Ash Disposal Site" delineated on the map.**
- (c) Final as-built contours**
- (d) Certification and seal by a registered land surveyor.**

Note: be sure that the map ties to U.S.G.S. Monument in accordance with G.S. 47-30 (f)(9).

Response: ReUse's property has not been converted into a "Coal Ash Disposal Site" because of the differences between the as-built structure and the November, 1991 plans. The Division approved construction of the structure in 1991 without the need for a solid waste disposal permit. The basis for this approval was that the project provided for beneficial reuse of coal combustion byproducts, and that it would be constructed with proper engineering controls to provide for functional utility and protection of the environment and natural resources.

ReUse has fully explained the differences between the 1991 submittal and the as-built project. None of these differences affect the performance of the structure for its intended use, or increase the fill's potential for impact on the environment. A requirement to delineate the entire structure as a "disposal site" is therefore not appropriate.

ReUse believes the project's legal status and utility is best reflected by current North Carolina regulations governing owners of land where coal combustion by-products have been utilized in volumes greater than 1000 cubic yards. Accordingly, within 90 days of

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completion, and as owner of the land, ReUse will file a statement with the volume and location of the coal combustion by-products with the Register of Deeds in the county where the property is located. The statement will identify the parcel of land according to the complete legal description on the recorded deed, either by metes and bounds, or by reference to a recorded plat map. ReUse will sign and acknowledge the statement in the form prescribed by G.S. 47-38 through 47-43. The statement will identify the location of the fill structure on the land.

"(3) The Section will prepare a "Notice of Closed Unpermitted Solid Waste Disposal Site, which the Landowner(s) shall sign and acknowledge in the form prescribed by G.S. 47-38 through 47-43.

- (a) The Landowner(s) must file the closure notice with the map attached where appropriate, with the Register of Deeds in the county or counties where the land is located. If the map is too large to be reduced legibly to a legal size, it shall be recorded in the map index, and the closure notice shall reference the separately recorded plat.**
- (b) The Register of Deeds shall record the Notice in the Grantor Index under the name(s) of the owner of the land.**
- (c) After all other closure requirements have been met, and the Section has received the original closure notice from the Register of Deeds, upon which the book and page number where recorded have been noted, the Section will issue a closure letter.**

Response: As noted above, ReUse's property has not been converted into an "Unpermitted Solid Waste Disposal Site" because of concerns raised by differences between the as-built structure and the November, 1991 plans. These differences do not affect the performance of the structure for its intended use or increase any potential impacts on the environment. A requirement to delineate the entire structure as an "unpermitted solid waste disposal site" is therefore not appropriate. ReUse believes the project's status is best reflected by current North Carolina regulations governing owners of land where coal combustion by-products have been utilized in volumes greater than 1000 cubic yards. It will complete the project and file the statement with the Recorder of Deeds described above.

- C. Install a ground water monitoring well on the south side of the concrete pipe. This well must be constructed according to 15A NCAC 2C Standards. Prior to construction a schematic must be submitted and approved by the Division. Contact Ellen Lorscheider at (919) 733-0692, extension 345, for further information and to locate the well. A representative of the Solid Waste Section shall be on site while the well is being constructed to verify location and construction.**

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Response: The project, as constructed, has conformed to all conditions of the November 11, 1991, submission and Division approval relating to ash placement in relation to groundwater. The pipe installed by ReUse was bedded in soil. The Division has never identified to ReUse, and the NOV does not say, how any difference between the project as approved on November 11, 1991 and the project as constructed would raise a concern sufficient to justify installation of a groundwater monitoring well on the property. If the pipe installed by ReUse leaked, off-site drainage would have flowed through soil and sand into the groundwater. If the pipe had never been installed by ReUse, the same off-site drainage would have flowed through soil and sand into groundwater. This requirement is not based on any difference between the project as built and the project as approved, and is unreasonable and unjustified.

D. The well must be sampled within one week of construction for RCRA metals and sulfates and another sample taken within 6 months of the date of the first sample. If no significant groundwater contamination above 2L standards is detected, then institute an annual sampling program for this monitoring well. Samples must be taken. Duration of sampling will be for a minimum of 5 years; results shall be submitted to the Division within 2 months of each sampling event.

Response: See response to C. above. ReUse does not agree to the installation of a monitoring well or subsequent groundwater monitoring.

Please be advised that pursuant to N.C.G.S. 130A-22(a) and 15A N.C. Admin. Code 13B, Section .0701-.0707, and administrative penalty of up to \$5,000.00 per day may be assessed for violations of the Solid Waste Law or Regulations.

Response: The NOV does not allege any violation of the North Carolina Solid Waste Law or regulations by ReUse.

ReUse sincerely regrets that it did not submit amended drawings to the Division for approval in advance of making changes to the project. ReUse does not believe, however, that failure to amend its submission is the equivalent of failure to obtain a permit, or to comply with a permit, which was required. The Division's decision not to require a permit for construction of this project was appropriate at the time it was made in 1991. It would have been an equally appropriate decision for the project as built. The differences between the 1991 submittal and the 2001 as-built drawings do not convert the project from a legitimate use of coal combustion byproducts to an unpermitted site.

ReUse requests that the Division accept and approve the plans it will submit to divert drainage and plug the pipe and accept ReUse's proposal for site recordation. ReUse

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requests that the Division take no further action with respect to this matter, and treat ReUse's response as sufficient to resolve the matter.

Sincerely,



Robert J. Waldrop
Vice President

cc: William A. White, Esq.