



NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

DIVISION OF WASTE MANAGEMENT

February 21, 2000

JAMES B. HUNT JR.
GOVERNOR

BILL HOLMAN
SECRETARY

WILLIAM L. MEYER
DIRECTOR

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IMMINENT HAZARD
NOTICE OF VIOLATION
Docket # 2000-083

Former A.J. Tate and Son Oil Company
c/o Ms. Hazel Poteat
P.O. Box 3452
Burlington, N.C. 27215

CONCERNING: A.J. Tate and Son Oil Company
3148 Fleming-Graham Road
Burlington, Alamance County, N.C.

Dear Ms. Poteat:

On December 18, 1980, the State of North Carolina, Hazardous Waste Section (Section) was authorized to operate the State Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program under the Solid Waste Management Act, (Act) N.C.G.S. 130A, Article 9 and rules promulgated thereto at 15A NCAC 13A (Rules) in lieu of the federal RCRA program.

On September 23, 1999, Mr. Brent Rockett, Waste Management Specialist with the NCDENR Winston-Salem Office conducted an initial investigation of the A.J. Tate and Son Oil Company property due to a complaint being filed with the Section. The property is located at 3148 Fleming-Graham Road near Burlington in Alamance County, N.C. Mr. Rockett observed areas where materials suspected to be used oil had been released onto the land surface. Mr. Rockett also noted that the facility was in violation of requirements as outlined in 40 CFR 279.40 through 40 CFR 279.47 (Subpart E), "Standards for Used Oil Transporter and Transfer Facilities". On October 19, 1999, Mr. Rockett met with Mr. and Mrs. A.J. Tate to inform them of his findings and to provide them information to bring the facility into compliance. On or about late November or December 1999, the Section was informed that A.J. Tate and Son Oil Company ceased operations. Due to the closure of the facility you were sent by certified mail correspondence dated December 2, 1999 which outlined specific closure recommendations required to properly close the facility. The correspondence directed that the closure activities be completed within thirty (30) days.

On February 9, 2000, Mr. Jesse Wells, Western Compliance Supervisor and Mr. Steve Phibbs, Waste Management Specialist with the NCDENR Winston-Salem



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Office, inspected the property of the former A.J. Tate and Son Oil Company. Mr. Wells and Mr. Phibbs were met by you and Mr. John Blackwell on the property at the time of the inspection. It appeared that no closure activities had been initiated as outlined in Mr. Rockett's December correspondence. Mr. Wells and Mr. Phibbs observed approximately seventeen aboveground storage tanks, approximately three 55-gallon containers, one mobile storage tank marked "Waste Oil" and several other containers of various sizes around the mobile storage tank. You and Mr. Blackwell stated that some of the containers hold used oil and antifreeze. None of the containers were labeled as to their contents except for the mobile trailer.

Mr. Wells and Mr. Phibbs observed areas in and around the containers where materials (suspected used oils) had either leaked out of the containers or materials had been released onto the land surface. An area of discharge was also noted at the top of the slope on the right hand side of the entrance road that leads into the property. At the time of the inspection you and Mr. Blackwell reported that this discharge was on the adjacent property and a "property" marker was pointed out. A call to a representative of the adjacent property owner identified this marker as an easement marker and that the area of release begins on the Tate property and extends down the slope of the land surface.

- A. 40 CFR 261.1(a), adopted by reference at 15A NCAC 13A .0106, states that this part identifies those solid wastes which are subject to regulation as hazardous wastes under Parts 262 through 265 and Parts 270, 271, and 124 of this Chapter and which are subject to the notification requirements of Section 3010 of RCRA.
- B. 40 CFR 261.2(b), adopted by reference at 15A NCAC 13A .0106, states that materials are solid waste if they are abandoned by being [1] disposed of, or [2] burned or incinerated; or [3] accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.
- C. 40 CFR 261.3(a), adopted by reference at 15A NCAC 13A .0106, states that a solid waste, as defined in Section 261.2 is a hazardous waste if:
 1. It is not excluded from regulation as a hazardous waste under Section 261.4(b); and
 2. It meets any of the following criteria:
 - i. It exhibits the characteristics of hazardous waste identified in Subpart C.
 - ii. It is listed in Subpart D and has not been excluded from the lists in Subpart D under Sections 260.20, and 260.22 of this chapter.
 - iii. It is a mixture of solid waste and hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous

waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.

- iv. It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under Sections 260.20 and 260.22 of this chapter.
- D. GS 130A-290(6), defines "Disposal" as the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.
- E. GS 130A-290(41), defines "Storage" as the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
- F. It is the determination of the Section that the disposal/storage of used oil, antifreeze and unknowns at A.J. Tate and Son Oil Company, Burlington, North Carolina constitutes storage and disposal of solid/hazardous waste subject to all applicable requirements of 40 CFR 261 through 265 and 270. Specifically:
- 1. 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107, states that a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:
 - a. He should first determine if the waste is excluded from regulation under 40 CFR 261.4.
 - b. He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 CFR Part 261.
 - c. If the waste is not listed as a hazardous waste in Subpart D of 40 CFR Part 261, he must determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:
 - i. Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or
 - ii. Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

A.J. Tate and Son Oil Company is in violation of 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107, in that it generated a solid waste, as defined in 40 CFR 261.2, and did not determine if that waste is a hazardous waste.

2. 40 CFR 262.12, adopted by reference at 15A NCAC 13A .0107, states that:
 - a. a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the State.
 - b. a generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

A.J. Tate and Son Oil Company is in violation of 40 CFR 262.12, adopted by reference at 15A NCAC 13A .0107, in that hazardous waste was stored and/or disposed of without the site having received an EPA identification number from the Section. Also A.J. Tate and Son Oil Company is in violation of 40 CFR 279.42, adopted by reference at 15A NCAC 13A .0118 for failure to obtain an EPA identification number as a transporter of used oil.

3. 15A NCAC 13A .0109(a), states that any person who treats, stores, or disposes of hazardous waste shall comply with the requirements set forth in this section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in this section.

A.J Tate and Son Oil Company is in violation of 15A NCAC 13A .0109(a), in that hazardous waste has been stored and/or disposed without complying with the requirements set forth in this section.

COMPLIANCE SCHEDULE

By the dates specified below, A.J. Tate and Son Oil Company, Burlington, North Carolina site shall comply with the following requirements:

1. Comply with 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107. An immediate determination and/or analysis of uncontrolled releases, affected soils and liquids being stored in containers, must be completed to ensure proper characterization and disposition. Due to suspected or known releases of used oil and potentially other unknown materials, a comprehensive site characterization is required.

By April 7, 2000, A.J. Tate and Son Oil Company must develop and submit to this office, a comprehensive sampling and analysis report (inorganic and organic) which characterizes the waste in question.. This characterization must include identifying the sources of contamination, the nature and extent of contamination, determining site hydrogeologic conditions, evaluation of fate/transport of the contaminants, pathways for

migration, and identifying potential human and environmental receptors. The report must also include an assessment of the area at the top of the slope along the right hand side of the entrance road into the property where a release was also observed.

The comprehensive sampling and analysis report will be reviewed by the Hazardous Waste Section's Compliance Chemist to determine its completeness. If it is determined to be complete the Chemist will determine whether the project will be managed as a generator closure under the guidance of the Section's Compliance Branch or be referred to the Programs Branch. If the remediation of the site remains with the Compliance Branch, a Remediation Plan must be developed and submitted to this office within 45 days of the chemist's determination. Elements required in the development of a remediation plan are outlined in the attached Phase II/Remediation document. The Remediation Plan must fully describe all facets of the remediation, a schedule of activities, sampling and analysis methods, and proposed cleanup standards.

Failure by A.J. Tate and Son Oil Company to complete an effective site remediation may subject the site to additional requirements including closure plans, financial assurance for closure/post-closure and ground water monitoring.

Upon verification that hazardous waste or other wastes (used oil/antifreeze) has been disposed, A.J. Tate and Son Oil Company must immediately cease the discharge/disposal of hazardous waste or other wastes to the environment and all hazardous waste or other wastes determined to have been discharged/disposed shall be removed and manifested to a permitted hazardous waste treatment, storage or disposal facility or other approved facilities. The removal of all wastes must be completed by June 1, 2000.

2. Comply with 40 CFR 262.12, adopted by reference at 15A NCAC 13A .0107. Prior to shipment of any hazardous waste, an EPA Identification Number must be obtained for this site. You may contact Mr. Jim Edwards with this office at (919) 733-2178 ext.209 to make provisions for obtaining the I.D. number.
3. Comply with 15A NCAC 13A .0109(a). A.J. Tate and Son Oil Company shall no longer store or dispose of hazardous waste without full compliance with this section or if the stored material is determined to be used oil A.J. Tate and Son Oil Company must be in full compliance with 40 CFR 279.40 through 40 CFR 279.47, adopted by reference at 15A NCAC 13A .0118, (Subpart E), "Standards for Used Oil Transporter and Transfer Facilities". During the interim, pending shipment of the waste, A.J. Tate and Son Oil Company must comply with 40 CFR 262.34(a), adopted by reference at 15A NCAC 13A .0107 which states that:
 - a. If the waste is placed in containers the generator must comply with Subpart I of 40 CFR Part 265 or if the waste is placed in tanks, the generator must comply with

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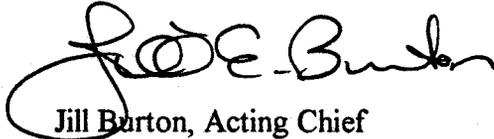
Subpart J of 40 CFR Part 265 except 265.197 and 265.200.

- b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
- c. While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste" or "Used Oil"; and
- d. The generator complies with the requirements for owners or operators in Subparts C & D in 40 CFR part 265, Section 265.16 and 268.7(a)(4).

If the requirements above are not met, pursuant to N.C.G.S. 130A-22(a) and 15A NCAC 13B .0701 - .0707, an administrative penalty of up to \$25,000.00 per day may be assessed for violation of the hazardous waste law or regulations.

If you should have questions concerning this matter, you may contact Roberta Proctor, Compliance Branch Chemist at 828-625-0171.

Sincerely,



Jill Burton, Acting Chief
Hazardous Waste Section

cc: Central Files
Jesse Wells, Western Supervisor
Roberta Proctor, Western Chemist
Ms. Dorian Tate