

ENFORCEMENT  
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SHACKELFORD  
GREENE CO  
To: Helen  
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STATE OF NORTH CAROLINA  
COUNTY OF GREENE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
2002 CVS 185

STATE OF NORTH CAROLINA, *ex rel.*, )  
WILLIAM G. ROSS, JR., Secretary, )  
North Carolina Department of )  
Environment and Natural )  
Resources, )  
Plaintiff, )  
v. )  
JAMES O. SHACKELFORD, JR. and )  
PAULINE SHACKELFORD, )  
Defendants . )

**DEFAULT JUDGMENT GRANTING**  
**PERMANENT INJUNCTION**

This matter was heard by the undersigned on October 7, 2002, in Greene County Superior Court in Snow Hill, North Carolina on Plaintiff's Motions for Default Judgment filed against both defendants. After hearing the arguments and evidence of the parties, it is the opinion of the undersigned that the Plaintiff's Motions for Default Judgment should be granted.

In support of this Default Judgment, the undersigned makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. On June 10, 2002, Plaintiff filed this action which seeks injunctive relief against defendants for environmental harm and hazards created by the defendants. The Complaint and Summons in this action were properly served on the defendants on June 12, 2002. Defendants failed to answer the Complaint, and Plaintiff obtained entries of default against both Defendants on September 19, 2002. On September 24, 2002, Plaintiff served on both Defendants Motions for

Default Judgment and Notice of Hearing. Plaintiff's Motions for Default Judgment were filed on September 25, 2002.

2. The plaintiff is the sovereign State of North Carolina. The Department of Environment and Natural Resources (DENR or the Department) is an agency of the State established pursuant to the provisions of N.C. Gen. Stat. § 143B-279.1, et seq. William Ross is the Secretary of DENR (the Secretary).

3. The defendants are individuals who reside and do business in the State of North Carolina and are persons as defined in N.C.G.S. § 130A-290(22), 15A NCAC 13A .0102, and N.C.G.S. § 143-215.77(13).

4. Pursuant to N.C. Gen. Stat. §§ 1-485, 1-493, 7A-245, 130A-18, 143-215.6C, the Superior Court has jurisdiction of this action for injunctive relief against the existing or threatened violations of the environmental laws and rules of the State of North Carolina alleged herein.

Greene County is a proper venue for this action because the defendants reside in Greene County, Wake County, North Carolina, have their principal place of business in Greene County, and the violations alleged herein have occurred and are occurring in Greene County, North Carolina.

5. James O. Shackelford, Jr. and Pauline Shackelford are and have been engaged in the business of removing used underground storage tanks (USTs) and aboveground storage tanks (ASTs) from gas stations and similar entities and transporting these USTs and ASTs to an open dump ("the Site") which they operate on a parcel of real property ("the Site") owned by Nora Lee Newton and located near Highway 903 in Greene County, North Carolina. This real property on which the Site is located is specifically described in a deed recorded in Book 323, Page 118, of the

Greene County Registry. James O. Shackelford, Jr. d/b/a Shackelford Tank Disposal began leasing this real property from Lawrence Newton in April 1996 and have continued to lease the property from his wife, Nora Lee Newton, after Mr. Newton's death on October 12, 1999 until the present. At this Site, James O. Shackelford, Jr. and Pauline Shackelford have managed and continue to manage the USTs and ASTs deposited at the Site. James O. Shackelford and Pauline Shackelford have transferred contents of some of these USTs and ASTs to drums and other containers on the Site, have allowed these USTs, ASTs, drums and other containers to remain on the ground and corrode and to leak oil and hazardous substances onto the ground in proximity to the groundwaters of this State.

6. On June 11, 1998, Mr. Keith Starner, Hydrogeologist with the North Carolina Groundwater Section, Division of Water Quality, Washington Regional Office investigated a citizen's complaint about activities at the Site. After visiting the Site, Mr. Starner contacted the Department's Hazardous Waste Section of the Division of Waste Management.

7. On November 24, 1999, Mr. Larry Perry, Plaintiff's Eastern Supervisor with the Plaintiff's Division of Waste Management and Dick Denton, a Waste Management Specialist with the Plaintiff's Division of Waste Management visited the Site. Mr. Perry and Mr. Denton observed that drums, other containers, and numerous above-ground storage tanks and numerous underground storage tanks from 250 up to 10,000 gallon sizes had been dumped at the Site. They also observed that the Site was approximately less than 100 yards up gradient of a creek. They also observed oil on the ground under many of the USTs deposited at the Site.

8. On December 6, 1999, a sampling team from the Hazardous Waste Section along with Mr. Starner visited the site to sample tanks and drums at the Site. Five tanks, three 55-gallon

drums and one 5-gallon bucket were sampled. The analytical results revealed one tank (sample set T-5) contained material that was identified as a RCRA ignitable hazardous waste (waste code D001). In addition, an inorganic TCLP analysis of samples from several drums showed that these drums contained levels of arsenic (hazardous waste code D004), chromium (hazardous waste code D007) and lead (hazardous waste code D008) in excess of the toxicity characteristic regulatory levels for these substances as set forth in 40 CFR 261.24. See Table I below for the TCLP levels in these drums and tanks which were found in excess of the maximum concentration for the toxicity characteristic for arsenic, chromium and lead:

**Table I (TCLP Results)\*\*\*\***

Sample	Arsenic	Chromium	Lead
T-1			10 mg/L
T-2			
T-4			17 mg/L
T-5			
D-2	13 mg/L	45 mg/L	310 mg/L
D-3			72 mg/L

\*\*\*\*Pursuant to 40 CFR 261.24, Table 1, the toxicity characteristic maximum concentration levels for these substances are as follows: chromium: 5.0 mg/L; arsenic: 5.0 mg/L; lead 5.0 mg/L.

9. As set forth above, the defendants operate and have in the past operated an open dump on real property located near Highway 903 in Greene County, North Carolina (the Site). The defendants have stored and disposed of leaking, discarded fuel storage tanks (former aboveground storage tanks and former underground storage tanks) at the Site. They have also stored and

disposed of drums and other containers at the Site. Some of these discarded tanks, drums, and other containers contain toxic materials which are being deposited onto the soil in proximity to groundwater. This open dump operated and maintained by the defendants poses a potential public health and safety hazard and threatens the integrity and purity of the ground waters and streams of this State.

10. James O. Shackelford and Pauline Shackelford are unlawfully operating and maintaining an "open dump" landfill by storing and disposing of waste USTs and ASTs. This open dump has never been permitted by the Division as a Solid Waste facility or as a Hazardous Waste facility

### **CONCLUSIONS OF LAW**

1. In their operation of an open dump at the Site as set forth above, the defendants James O. Shackelford, Jr. and Pauline Shackelford have violated the North Carolina Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9 (the "Act"); the North Carolina Hazardous Waste Management Rules, 15A N.C.A.C. 13A (the "Hazardous Waste Rules"); the North Carolina Solid Waste Management Rules, 15A N.C.A.C. 13B (the "Solid Waste Rules"); the Oil Pollution and Hazardous Substances Control Act (OPHSCA), Chapter 143, Article 21A, N.C.G.S. 143-215.83 et seq.; and the Groundwater Classification and Standards Rules codified at 15A N.C.A.C. 2L (the "2L Rules").

### **SOLID WASTE VIOLATIONS**

2. Article 1 and 9 of Chapter 130A of the North Carolina General Statutes and the North Carolina Solid Waste Management Rules codified at 15A NCAC Chapter 13B ("Solid Waste Rules") govern the management of solid waste in this State and constitute the State Solid Waste Management Program.

3. Pursuant to N.C. Gen. Stat. § 130A-294(a) and (b) and § 143B-279.1, DENR is authorized and required to enforce the laws and rules which constitute the State Solid Waste Management Program.

4. N.C. Gen. Stat. § 130A-18 authorizes the Secretary of DENR to institute an action in superior court for injunctive relief to enforce the North Carolina Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9 (the "Act"), and the Solid Waste Rules.

5. The Solid Waste Management Act, Article 9, Chapter 130A-290 et seq. authorizes the Department to establish and administer a comprehensive Solid Waste Management Program. The Department, through its Division of Waste Management, Solid Waste Section, administers the State Solid Waste Management Program under Article 9 of Chapter 130A of the General Statutes, N.C. Gen. Stat. 130A-290 et seq., and under rules adopted by the Commission for Health Services, codified at 15A North Carolina Administrative Code (N.C.A.C.) , Chapter 13B.

6. The Solid Waste Management Rules (the Solid Waste Rules) codified at 15A N.C.A.C. 13B, contain standards and requirements applicable to the proper management of solid waste.

7. The Department regulates solid waste management facilities pursuant to 15A N.C.A.C. 13B .0200 et. seq. The Department regulates solid waste disposal pursuant to 15A N.C.A.C. 13B .0501 et seq.

8. N.C.G. S. § 130A-290(36) defines the term "solid waste disposal site" as "any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method."

9. Pursuant to N.C.G.S. § 130A-290(35), the term "solid waste" includes any "material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has

served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations and from community activities” except for those materials specifically excluded in N.C.G.S. § 130A-290(35)(a to f).

10. N.C.G.S § 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 groundwaters.”

11. A solid waste management facility means “land, personnel, and equipment used in the management of solid waste.” N.C.G.S. § 130A-290(a)(39).

12. Solid waste management refers to the “purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.” N.C.G.S. § 130A-290(a)(38).

13. N.C.G.S. 130A-290(21) defines “operator” as “any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.”

14. N.C.G.S. § 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.”

15. 15A NCAC 13B .0103(a) provides, in pertinent part, that “[a]ll solid waste shall be stored, collected, transported, separated, processed, recycled, recovered, and disposed of in a manner consistent with the requirements of these [the Solid Waste] rules.”

16. Pursuant to 15A N.C.A.C. 13B .0501, the Department authorizes the disposal of solid waste by four methods: sanitary landfill, land clearing and inert debris landfill, incineration, or other sanitary methods which may be developed and demonstrated to be capable of fulfilling the basic requirements of the solid waste management rules. A landfill is defined as “a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.” N.C.G.S. § 130A-290(a)(16).

17. Pursuant to N.C.G.S. 130A-309.27(b), “every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law.”

18. 15A N.C.A.C. 13B .0201 of the Solid Waste Rules provides that “[n]o person shall establish or allow to be established on his land, a solid waste management facility, or otherwise treat, store, or dispose of solid waste unless a permit for the facility has been obtained from the Division.”

19. A facility or site operated or maintained without a permit in violation of 15A N.C.A.C. 13B .0201(a) is an “open dump” landfill. An “open dump” is “any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a facility for the disposal of hazardous waste.” N.C.G.S. § 130A-290(a)(2).

20. 15A N.C.A.C. 13B .0502 requires that “a person operating or having operated an open dump for disposal of solid waste or a person who owns land on which such an open dump is or has been operating shall immediately close the site . . .” in accordance with specified conditions, including the removal and placement of solid waste in an approved disposal site or facility.

21. Pursuant to 15A N.C.A.C. 13B .0201(f), it is unlawful to operate a solid waste management facility in such a manner as to create a nuisance, unsanitary conditions, or potential

public health hazard.

22. James O. Shackelford, Jr. and Pauline Shackelford have violated and continue to violate 15A N.C.A.C. 13B .0201 in that they have stored and disposed of solid waste and continue to store and dispose of solid waste at the Site without obtaining a permit for the facility from the Division.

23. James O. Shackelford, Jr. and Pauline Shackelford have operated and continue to operate an open dump as defined in N.C.G.S. § 130A-290(a)(2).

24. James O. Shackelford, Jr. and Pauline Shackelford have violated and continue to violate 15A NCAC 13B .0103(a) in that they have stored, collected, transported and disposed of solid waste in a manner which is not consistent with the requirements of the Solid Waste rules.

#### HAZARDOUS WASTE VIOLATIONS

25. Articles 1 and 9 of Chapter 130A of the North Carolina General Statutes and the rules promulgated thereunder and codified at 15A N.C. Admin. Code 13A (“Hazardous Waste Management Rules”), govern the management of hazardous waste in this State and constitute the State Hazardous Waste Management Program.

26. Pursuant to 42 U.S.C. § 6926 and 40 CFR Part 271, the United States Environmental Protection Agency has authorized the State to carry out the State Hazardous Waste Program in North Carolina in lieu of the federal Resource Conservation and Recovery Act (“RCRA”) program.

27. Pursuant to N.C. Gen. Stat. §§ 130A-294(c) and 143B-279.1, DENR is authorized and required to enforce the laws and rules which constitute the State Hazardous Waste Management Program.

28. N.C. Gen. Stat. § 130A-18 authorizes the Secretary of the Department of

Environment and Natural Resources to institute an action in superior court for injunctive relief to enforce the North Carolina Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9 (the "Act"), and the North Carolina Hazardous Waste Management Rules, 15A NCAC 13A (the "Hazardous Waste Rules").

29. Pursuant to 40 CFR 261.2(a)(1), adopted by reference at 15A NCAC 13A .0106(a), a "solid waste" is any discarded material that is not excluded by 40 CFR 261.4(a) or by variance. Section 261.2(a)(2) defines a discarded material as any material which is abandoned as described in Section 261.2(b). 40 CFR 261.2(b)(3), adopted by reference by at 15A NCAC 13A .0106, states in part that materials are solid waste if they are abandoned by being accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated.

30. Pursuant to 40 CFR 261.3, adopted by reference at 15A NCAC 13A .0106(a), hazardous wastes include solid wastes (as defined in Section 261.2) which are not excluded from regulation as hazardous wastes under Section 261.4(b) and: (1) exhibit any of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261; or (2) are listed in Subpart D of 40 CFR Part 261 and have not been excluded under Sections 260.20 or 260.22.

31. Pursuant to 40 CFR 261.24, adopted by reference at 15A N.C.A.C. 13A .0106(c), a solid waste exhibits the characteristic of "toxicity" if, using the Toxicity Characteristic Leaching Procedure ("TCLP") described in the rule, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 261.24 at the concentration equal to or greater than the respective value given in that table. The waste is assigned the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant

causing it to be hazardous.

32. Pursuant to 40 CFR 261.21, adopted by reference at 15A N.C.A.C. .0106(c), a solid waste exhibits the characteristic of ignitability if a representative sample of the waste is a liquid (other than an aqueous solution containing less than 24 percent alcohol by volume) and has a flash point less than 60 C (140 F), as determined by the test methods specified in 40 CFR 262.21. Such a waste is assigned the EPA Hazardous Waste Number of D001.

33. Pursuant to 40 CFR 261.24, Table 1, adopted by reference at 15A N.C. Admin. Code 13A .0106(c), a solid waste exhibits the characteristic of toxicity for lead if, using the TCLP procedure, the extract from a representative sample of the waste contains lead at a concentration equal to or greater than 5.0 mg/L. Such waste would be assigned EPA Hazardous Waste Number of D008. Pursuant to 40 CFR 261.24, Table 1, adopted by reference at 15A N.C. Admin. Code 13A .0106(c), a solid waste exhibits the characteristic of toxicity for arsenic if, using the TCLP procedure, the extract from a representative sample of the waste contains arsenic at a concentration equal to or greater than 5.0 mg/L. Such waste would be assigned EPA Hazardous Waste Number of D004. Pursuant to 40 CFR 261.24, Table 1, adopted by reference at 15A N.C. Admin. Code 13A .0106(c), a solid waste exhibits the characteristic of toxicity for chromium if, using the TCLP procedure, the extract from a representative sample of the waste contains chromium at a concentration equal to or greater than 5.0 mg/L. Such waste would be assigned EPA Hazardous Waste Number of D007.

34. N.C.G.S § 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 groundwaters.”

35. N.C.G.S. § 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.”

36. 40 CFR 260.10, defines "container" as “any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.”

37. 40 CFR 260.10, adopted by reference at 15A NCAC 13A .0102(b), defines “facility,” in pertinent part, as “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).”

38. 15A N.C. Admin. Code 13A .0109(a) provides that any person who treats, stores, or disposes of hazardous waste shall comply with the requirements set forth in requirements set forth in Section .0100 of Subchapter 13A of Title 15A of the N.C. Administrative Code. The treatment, storage or disposal of hazardous waste is prohibited except as provided in that Section.

39. Pursuant to 40 CFR 270.1(c), adopted by reference at 15A N.C. Admin Code 13A .0113(a), no person may treat, store or dispose of hazardous waste without a hazardous waste management permit.

40. James O. Shackelford, Jr. and Pauline Shackelford have violated and continue to violate 15A NCAC 13A .0109(a) in that they have stored and disposed of hazardous waste and continue to store and dispose of hazardous waste at the Site without complying with the requirements set forth in this Section.

## OIL POLLUTION AND HAZARDOUS SUBSTANCES ACT VIOLATIONS

41. Article 21A of Chapter 143 of the North Carolina General Statutes and the rules promulgated thereunder governs oil pollution control in this State and constitute the State Oil Pollution Control Program.

42. Pursuant to N.C. Gen. Stat. § 143B-279.1 and 143-215.78, DENR is authorized and required to enforce the laws and rules which constitute the State Oil Pollution Control Program.

43. Pursuant to N.C.G.S. § 1-485, a superior court may issue a preliminary injunction upon a finding that a plaintiff is entitled to the relief requested and the relief consists, at least in part, of injunctive relief. In addition, pursuant to N.C.G.S. § 7A-245, a superior court may grant injunctive relief to compel enforcement of any statute, ordinance, or regulation.

44. N.C.G.S. § 143-215.6C provides that when there is a violation or threatened violation of any of the provisions of Part 1 of Article 21 of Chapter 143, or a rule implementing that Part, the Department may request the Attorney General to commence an action for injunctive relief. The statute provides that:

Upon a determination by the court that the alleged violation ...has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation.

45. N.C.G.S. § 143-215.83, of Chapter 143, Article 21A, prohibits the unlawful discharge of oil and other hazardous substances. This Section provides that

“[i]t shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil or other hazardous substances into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or

other cause.”

46. N.C.G.S. § 143-215.84 requires any person having control over oil or other hazardous substances discharged in violation of Chapter 143, Article 21A “to immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge.”

47. N.C.G.S. § 143-215.77(13) defines “person” as including, but not limited to, “any and all natural persons.” James and Pauline Shackelford are persons as defined in N.C.G.S. § 143-215.77(13).

48. James O. Shackelford, Jr. and Pauline Shackelford have violated and continue to violate N.C.G.S. § 143-215.83 in that they have discharged, or have caused to be discharged oil into or upon any waters and/or lands of this State.

#### 15A NCAC CHAPTER 2L VIOLATIONS

49. N.C. Gen. Stat. § 143-214.1, which is found in Article 21 of Chapter 143, directs the Commission to develop and adopt a series of classifications and standards for classifying the waters of the State. The Commission has adopted, among other rules, rules codified at 15A NCAC 2L (the 2L Rules). These rules “establish a series of classifications and water quality standards applicable to the groundwaters of the state.” 15A NCAC 2L .0101(a). 15A NCAC 2L Section .0200 establishes underground water standards and classifications.

50. Pursuant to the 2L Rules, “[a]ny person conducting or controlling an activity which results in the discharge of a waste or hazardous substance or oil to the groundwaters of the State, or in proximity thereto, shall take immediate action to terminate and control the discharge, mitigate the hazards resulting from exposure to the pollutants, and notify the Division of the

discharge.” 15A NCAC 2L .0106(b).

51. Pursuant to the 2L Rules, “[a]ny person conducting or controlling an activity which has not been permitted by the Division and which results in an increase in the concentration of a substance in excess of the standard, other than agricultural operations, shall:

- (1) immediately notify the Division of the activity that has resulted in the increase and the contaminant concentration levels;
- (2) take immediate action to eliminate the source or sources of contamination;
- (3) submit a report to the Director assessing the cause, significance and extent of the violation; and
- (4) implement an approved corrective action plan for restoration of groundwater quality in accordance with a schedule established by the Director or his designee. 15A NCAC 2L .0106(c).

52. 15A NCAC 2L .0106(g) sets forth items which shall be included in a site assessment conducted pursuant to 15A NCAC 2L .0106(c).

53. 15A NCAC 2L .0106(c)(f)(h) & (j) sets forth the specific corrective action requirements for discharges covered by the 2L Rules.

54. James O. Shackelford, Jr. and Pauline Shackelford have violated and continue to violate 15A NCAC 2L .0106 in that they have conducted or controlled and continue to conduct or control activities which have resulted and continue to result in the discharge of oil to the groundwaters of the State, or in proximity thereto.

#### INJUNCTIVE RELIEF

1. Pursuant to N.C. Gen. Stat. §§ 1-485, 7A-245, 130A-18, and 143-215.6C, upon a determination by this Court that the violations alleged in the Complaint have occurred, the Court shall grant injunctive relief necessary to prevent and/or abate the violations. By failing to answer

the Complaint in this action and thereby allowing Plaintiff to obtain an entries of default against them, the defendants have admitted the allegations of the Complaint. These entries of default against the defendants and other evidence presented by the Plaintiff establish that the defendants have violated the State Solid Waste and Hazardous Waste laws and rules, the Oil Pollution and Hazardous Substances Act, and the 15A NCAC Chapter 2L rules. These entries of default against the defendants and other evidence presented by the Plaintiff also establish that the defendants' violations of these environmental laws and rules adversely affect the public interest due to the harm caused to public health and the environment by the continued, unmitigated operation and existence of this open dump. In order to protect human health and the environment, it is necessary for the defendants immediately to cease dumping, storage and disposal operations, to steps to prevent unauthorized entry of the Site, and to assess the wastes, contamination and conditions at the Site.

2. The undersigned hereby enters this default judgment against the defendants and orders the defendants James O. Shackelford, Jr. and Pauline Shackelford to do the following:

- a. James O. Shackelford, Jr. and Pauline Shackelford shall immediately stop moving USTs, ASTs, drums, other containers, other wastes, and petroleum substances onto the Site and shall not resume these activities unless approved to do so by the Department's Division of Waste Management (DWM).
- b. Within three (3) days of the entry of the preliminary injunction order, James O. Shackelford, Jr. and Pauline Shackelford shall prevent unauthorized entry to the Site by installing gates, chains, berms, or fences, and post signs stating that the site is closed and that no dumping is permitted. These signs and entry barriers shall remain in place until such time that the DWM authorizes their removal.
- c. Within three (3) days of the entry of this Preliminary Injunction Order, James O. Shackelford, Jr. and Pauline Shackelford, shall assess whether any of the wastes or conditions at the Site pose an immediate threat to public health or to the environment and inform the DWM immediately of any such threat. Within 24 hours after receiving notification by the DWM that immediate action is needed in

regard to any such threat, James O. Shackelford, Jr. and Pauline Shackelford shall mitigate or remove the conditions posing such threat in accordance with directions provided by the DWM and in accordance with all applicable environmental laws, rules and regulations. James O. Shackelford, Jr. and Pauline Shackelford shall not remove wastes or otherwise alter site conditions without consulting with the DWM and complying with the specific directions of the DWM.

- d. Within thirty (30) days of the Court's order, James O. Shackelford, Jr. and Pauline Shackelford shall develop and submit to the DWM for approval a Comprehensive Sampling, Analysis, and Assessment Plan and a schedule for completion of the Plan. This Plan shall characterize the known contents of tanks, drums and any other containers at the Site and shall describe actions to be taken to fully determine and characterize the contents of all others tanks, drums, and any other containers at the Site. Actions to characterize the contents of tanks, drums, and any other containers or waste at the Site shall include performance of a waste determination pursuant to 15A NCAC 13B .0102(d) and 15A NCAC 13A .0109(c) in accordance with the DWM's "Procedure and Criteria for Waste Determination" to determine whether the wastes at the Site are (i) hazardous as defined by 15A NCAC 13A and (ii) suitable for disposal at a solid waste management disposal facility." The Comprehensive Sampling, Analysis and Assessment plan shall also describe actions to be taken to fully characterize suspected or known releases at the Site. Actions taken to characterize suspected or known releases at the Site shall 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. This Comprehensive Sampling, Analysis and Assessment plan shall also include a determination of whether activities at the Site have resulted in an increase in the concentration of any substance in excess of the groundwater quality standards as specified in 15A NCAC 2L .0202. To the extent that the activities as alleged herein at the Site have resulted in an increase in the concentration of any substance in excess of the groundwater quality standards as specified in 15A NCAC 2L .0202, James O. Shackelford, Jr. and Pauline Shackelford shall: (1) immediately notify the Division of the activity that has resulted in the increase and the contaminant concentration levels; (2) take immediate action to mitigate the contamination and hazards resulting from exposure to the pollutants and eliminate the source or sources of contamination on a date, at a time, and in a manner approved by the DWM; (3) submit as part of the Comprehensive Sampling, Analysis and Assessment, a Plan assessing the cause, significance and extent of the 15A NCAC 2L .0202 violation(s) in accordance with the specific requirements of 15A NCAC 2L .0106(c)(3) and .0106(g).

- e. Within forty-five (45) days after the DWM approves the Comprehensive Sampling, Analysis, and Assessment Plan and schedule as described above, James O. Shackelford, Jr. and Pauline Shackelford shall complete performance of the Plan and submit a Comprehensive Sampling, Analysis and Assessment Report, a Remediation Plan, and a Remediation Schedule to the DWM for approval. The Comprehensive Sampling, Analysis and Assessment Report shall include all items specified in the Comprehensive Sampling, Analysis and Assessment Plan approved by the Division. The Remediation Plan and Remediation Schedule shall include plans to remove all solid waste at the Site which is not hazardous waste and to dispose of it at an approved disposal site or facility in a manner approved of by the Division. This Remediation Plan and Remediation Schedule shall also include plans to remove all hazardous waste from the Site and to manifest all hazardous waste to a permitted hazardous waste treatment, storage or disposal facility or other disposal facility approved by the Division. Any hazardous waste transported from the Site pursuant to this Plan must be transported by a transporter authorized to transport hazardous waste under the Act and Rules. This Remediation Plan and Remediation Schedule shall also include plans to comply with N.C.G.S. §§ 143-215.83 and 143-215.84 by collecting and removing the discharge of oil and other hazardous substances and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge as required by N.C.G.S. § 143-215.84. If the activities as alleged herein at the Site have resulted in an increase in the concentration of any substance in excess of the groundwater quality standards as specified in 15A NCAC 2L .0202, this Remediation Plan and Remediation Schedule shall also include plans to restore the groundwater quality to a condition and in a manner which is compliant with 15A NCAC 2L .0106 and which is approved by the DWM.
- f. Within ninety (90) days after the DWM approves the Site Remediation Plan and Remediation Schedule, James O. Shackelford, Jr. and Pauline Shackelford shall complete the Remediation Plan and submit to the DWM a Remediation Completion Report which describes all remediation performed. To the extent that the approved Remediation Plan requires groundwater monitoring or other monitoring activities beyond the date on which this Remediation Completion Report is required to be submitted, reports of these additional monitoring activities may submitted subsequent to the date the Remediation Completion Report is submitted but must be submitted in accordance with any monitoring schedules and deadlines set forth in the Remediation Plan approved by the Division.
- g. In performing the obligations under the Court's order, James O. Shackelford, Jr. and Pauline Shackelford shall comply with all of the requirements the Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9; the Hazardous Waste Rules, 15A N.C.A.C. 13A; the Solid Waste Rules, 15A N.C.A.C. 13B; the Oil Pollution

and Hazardous Substances Control Act (OPHSCA), Chapter 143, Article 21A, N.C.G.S. 143-215.83 et seq.; and the 2L Rules, 15A N.C.A.C. 2L.

3. This Judgment shall be enforceable by and through the contempt powers of this Court pursuant to Chapter 5A of the North Carolina General Statutes.

4. This Court retains jurisdiction of this matter for such further orders as may be required to insure full compliance with the North Carolina Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9 (the "Act"), and the North Carolina Hazardous Waste Management Rules, 15A NCAC 13A (the "Rules"), the North Carolina Solid Waste Management Rules, and the Oil Pollution and Hazardous Substances Control Act (OPHSCA), the 2L Rules (15A NCAC 2L) and any Orders promulgated thereunder.

5. The defendants are taxed with the costs of this action.

This the ~~7th~~ day of October, 2002.



Superior Court Judge Presiding