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## North Carolina Department of Environment and Natural Resources

Dexter R. Matthews, Director

Division of Waste Management  
February 8, 2005

Michael F. Easley, Governor  
William G. Ross Jr., Secretary

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**IMMEDIATE ACTION**  
**NOTICE OF VIOLATION**  
*Docket #2005-100*

Mr. Fran Law  
11 Creek View Court  
Merritt, NC 28556

Dear Mr. Law:

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 January 20 and 26, 2005, Mr. Dick Denton, Waste Management Specialist, with this office, inspected a lot owned by Mr. Fran Law. The lot is located adjacent to a residence located at 3517 Whortonsville Road in Merritt, North Carolina. The January 20, 2005 inspection was conducted in response to a complaint alleging the improper storage and disposal of unknown liquids and pressure treated building materials at the property. The January 26, 2005 inspection was conducted in response to a fire started by Mr. Law January 25, 2005 in which pressure treated building materials were burned.

### **Statement of Facts Related to Respondent's Management of Hazardous Waste**

During the inspection of the property, January 20, 2005, Mr. Denton observed 12 fifty-five gallon containers containing liquids stored on the property. The containers were observed to be rusting and in poor condition. A five gallon container containing oily rags had been overturned and stained the ground with oil. Approximately six lead acid batteries were observed stored on the ground and a vehicle fuel tank, partially full, had been discarded. The inspection also revealed that Mr. Law was using the property to store or dispose of land clearing debris, scrap building materials, scrap pressure treated lumber including pilings, and dimensional lumber treated with chromated copper arsenate (CCA) and cresol, abandoned vehicles and scrap metal.

On January 25, 2005 Mr. Denton received a report concerning an illegal open burning that was occurring on Mr. Law's property located in Whortonsville Road, Merritt, NC. Mr. Denton performed an inspection January 26, 2005 and discovered approximately two acres of burned land clearing debris, building materials, pressure treated pilings and scrap metal. Mr. Law stated that he was responsible for burning the material and that he had removed as much of the pressure treated lumber as he could but he knew he could not have removed all of the treated material from the burn pile prior to starting the fire.

Prior to the fire Mr. Law loaded fifty-five gallon containers onto a truck. Mr. Law stated that the drums contained bilge water and contaminated diesel fuel which had been removed from his boat and that he was taking the material to his shop for a used oil contractor to manage.

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**Statutory and Regulatory Background**

- A. 40 CFR 260.10, adopted by reference at 15A NCAC 13A .0102, defines "Owner" as the person who owns a facility or part of a facility.
- B. 40 CFR 260.10, adopted by reference at 15A NCAC 13A .0102, defines "Operator" as the person responsible for the overall operation of a facility.
- C. 40 CFR 261.1(a), adopted by reference at 15A NCAC 13A .0106, 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.
- D. 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.
- E. 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.
- F. 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.

**Violations Requiring Immediate Action**

G. It is the determination of the Section that the containers and releases from the fire, located on property owned by Mr. Fran Law, in Merritt, North Carolina, constitute storage, abandonment 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, requires 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.

Mr. Fran Law is in violation of 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107, in that a solid waste was generated as defined in 40 CFR 261.2 and abandoned. Mr. Fran Law did not determine if that waste was a hazardous waste.

2. 15A NCAC 13A .0109(a), requires 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.

Mr. Fran Law is in violation of 15A NCAC 13A .0109(a), in that hazardous waste has been disposed without complying with the requirements set forth in this section.

**COMPLIANCE SCHEDULE**

By the dates specified below, Mr. Fran Law 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 the contents of the drums and all impacted soil must be completed to ensure proper characterization and disposition. Due to a suspected or known release of

hazardous waste (residues from the burned treated wood), a comprehensive site characterization is required.

Within 30 days of the effective date of this Notice, develop and submit to the Branch Chemist, two (2) copies of an Initial Site Sampling Plan that characterizes the wastes and release(s) in question. This characterization must comply with the requirements set forth in the Hazardous Waste Section Generator Closure guidance document. (Summary attached). It 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 Initial Site Sampling Plan will be reviewed by the Branch 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, two (2) copies of an Assessment and Clean-up Plan must be developed and submitted to this office within 30 days of the Chemist's approval of the Initial Site Sampling Plan. Elements required in the development of an Assessment and Clean-up Plan are outlined in the attached summary of the Generator Closure Guidelines. The Assessment and Clean-up Plan must fully describe all facets of the remediation, a schedule of activities, sampling and analysis methods, and proposed cleanup standards. Failure by Mr. Fran Law to complete an effective site remediation may subject the site to additional requirements including closure plans, financial assurance for closure/post-closure and groundwater monitoring.

Upon verification that hazardous waste has been disposed, Mr. Fran Law must immediately cease the discharge/disposal of hazardous waste to the environment and all hazardous wastes discharged shall be removed and manifested to a permitted hazardous waste treatment, storage or disposal facility. The removal must be completed and two (2) copies of a Closure Report submitted to the Branch Chemist within the time frame set forth in the approved schedule submitted in the Assessment and Clean-up Plan and no later than 180 days from the date of the approval of the Assessment and Clean-up Plan.

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). Mr. Fran Law shall no longer store or dispose of hazardous waste without full compliance with this section. During the interim, pending shipment of hazardous waste, Mr. Fran Law, 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 Subpart J of 40 CFR Part 265 except 265.197(c) and 265.200. No waste piles are allowed.
  - b. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

- c. While being accumulated on-site, each container and tank must be labeled or marked clearly with the words, "Hazardous Waste"; and
- d. The generator must comply with the requirements for owners or operators in Subparts C and D in 40 CFR part 265, Section 265.16 and 268.7(a)(4).

**Potential Consequences of Failure to Comply**

Failure to comply with this Notice may subject you to these and additional violations in a subsequent Compliance Order with Administrative Penalty from this office. 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.

All reports should be sent to: Roberta Proctor, Environmental Chemist, P.O. Box 384, Lake Lure, NC 28746.

If you should have questions concerning this Notice, you may contact Mr. Dick Denton at (252) 758-9647. Questions concerning the site characterization and remediation should be addressed to Ms. Roberta Proctor, Compliance Branch Chemist at 828-625-0171.

Sincerely,



Elizabeth Cannon, Chief  
Hazardous Waste Section

Attachment: Summary - Generator Closure Guidance

cc: Central Files  
Doug Holyfield, Compliance Branch Supervisor  
Mike Williford, Eastern Area Supervisor  
Roberta Proctor, Chemist  
Dick Denton, Waste Management Specialist



