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North Carolina Department of Environment and Natural Resources

Dexter R. Matthews, Director

Division of Waste Management

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

NCS 000000661

April 29, 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

**IMMEDIATE ACTION
NOTICE OF VIOLATION
Docket # 2008-080**

Mr. Bruce Hubbard
Hubbard Realty
2110 Cloverdale Avenue, Unit 2C
Winston-Salem, NC 27103-2516

RE: 5636 Pine View Drive Site

Dear Mr. Hubbard :

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 April 21, 2008, Mr. Ernest Lawrence, Environmental Senior Specialist with this office, visited 5636 Pine View Drive, Winston-Salem, North Carolina, in response to a complaint forwarded by Forsyth County Environmental Affairs on April 18, 2008. The information provided stated that a number of drums of waste had been uncovered when a pile of scrap tires had been removed during the cleanup of auto salvage waste.

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

A number of 55-gallon containers of unknown waste were discovered under a pile of scrap tires during the cleanup of an abandoned auto salvage site. The site is located in a wooded area down a dirt road at 5636 Pine View Drive in Winston-Salem. An anonymous complaint about this waste was made to Mike Settle at Forsyth County Environmental Affairs ((336) 703-2440).

The property is owned by Hubbard Realty, who leases it to Randy Moore, Hemrick Auto, 1155 Old Hollow Road, Winston-Salem, NC 27105 (336-767-1788).

There were approximately eighty 55-gallon containers over an area that was an estimated 100 X 100 feet. Many of the containers were in various stages of deterioration, and some of the adjacent soil was discolored due to releases of the contents. Some of the waste appeared to be used oil.

Some of the containers had motor oil, antifreeze, or transmission fluid labels. One container labeled "Industrial Cleaner" was observed. Two containers labeled "Nitromethane 99%" were observed. One of the 55-gallon containers labeled "Antifreeze" had a bulging top.

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A number of 1-gallon paint cans, 5-gallon transmission fluid containers, and old gasoline tanks from vehicles were also observed. Also, an additional twenty 55-gallon containers of unknown waste had been moved to a location next to the road. Some evidence of releases in this area was also observed.

Statutory and Regulatory Background

- A. 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, 279, 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. NCGS 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. 40 CFR 124.2, defines "Owner" or "Operator" as owner or operator of any "facility or activity" subject to regulation under the RCRA program.
- F. NCGS 130A-290(22), defines "Person" as an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- G. NCGS 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.

- H. 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b), defines a "generator" as "any person, by site, whose act or process produces hazardous waste identified or listed in part 261 or whose act first causes a hazardous waste to become subject to regulation." The EPA has long recognized that, in the event of a violation of RCRA and the hazardous waste rules, "co-generators" of hazardous waste can be jointly and severally liable for improper management of hazardous waste. 45 FR 72024, 72026 (October 30, 1980).

Violations Requiring Immediate Action

- I. It is the determination of the Section that the containers of waste chemicals located at 5636 Pine View Drive, Winston-Salem, NC constitutes storage and disposal of solid/hazardous waste subject to all applicable requirements of 40 CFR 261 through 265 and 270 and 279. 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.

Hubbard Realty is in violation of 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107, in that a solid waste was generated, stored, and spilled on the subject property as defined in 40 CFR 261.2 and a determination was not made 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 40 CFR Parts 264 and 265, adopted by reference in 15A NCAC 13A .0109 and .0110.

Hubbard Realty 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, Hubbard Realty 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 waste and all impacted soil must be completed to ensure proper characterization and disposition. Due to a suspected or known release of hazardous waste, a comprehensive site characterization is required. The characterization must include the area adjacent and directly beneath the containers uncovered when the tire pile was removed and beneath the containers moved near the road.

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 Hubbard Realty 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, Hubbard Realty must immediately cease the discharge/disposal of hazardous waste to the environment and all hazardous wastes 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) 508-8539 to make provisions for obtaining the I.D. number.
3. Comply with 15A NCAC 13A .0109(a). Hubbard Realty shall no longer store or dispose of hazardous waste without full compliance with this section. During the interim, pending shipment of hazardous waste, Hubbard Realty 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).
4. Comply with 15A NCAC 13A .0118. Hubbard Realty shall no longer store waste without full compliance with this section. Hubbard Realty must comply with 40 CFR 279.22 (c)(1), adopted by reference at 15A NCAC 13A .0118 which states that used oil containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil." Hubbard Realty must comply with 40 CFR 279.22(d) which states that upon detection of a release of used oil to the environment that is not subject to the requirements of Part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following steps: (1) Stop the release; (2) Contain the released used oil; (3) Clean up and manage properly the released used oil and other materials and (4) If necessary, repair or replace any leaking used oil containers or tanks prior to returning them to service.

Potential Consequences of Failure to Comply

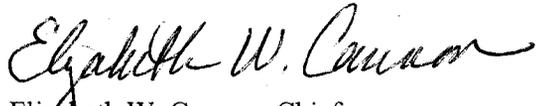
You must comply with each requirement of this Immediate Action Notice of Violation (IANOV); however, compliance will not divest the Section of its authority to issue an administrative penalty for the violations cited in this IANOV and additional violations cited in a subsequent Compliance Order with Administrative Penalty. In accordance with NCGS 130A-22(a), the penalty shall not exceed thirty two thousand five hundred dollars (\$32,500.00) per day in the case of a first violation. Each day of a continuing violation shall constitute a separate violation.

Pursuant to NCGS 130A-18, a violation of any provision of the Act or the Rules may also result in the Section initiating an action for injunctive relief. If an injunction is obtained, you will be subject to both the civil and criminal contempt powers of the North Carolina General Courts of Justice.

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

If you should have questions concerning the issuance of this IANOV, you may contact Mr. Ernest Lawrence at 336-352-5742; however, any questions concerning the site characterization and remediation should be addressed directly to Ms. Roberta Proctor, Compliance Branch Chemist at 828-625-0171.

Sincerely,



Elizabeth W. Cannon, Chief
Hazardous Waste Section

Attachment: Summary - Generator Closure Guidance

cc: Central Files
Mike Williford
Brent Burch
Roberta Proctor, Chemist
Ernest Lawrence, Waste Management Specialist
Mike Settle, Forsyth County Environmental Affairs