



File

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

June 2, 2008

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**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

**IMMEDIATE ACTION
NOTICE OF VIOLATION
Docket # 2008-087**

Mr. Gary Northrup- Site Manager
Mr. Mike DePalma- Environmental Engineer
Piedmont Natural Gas Company
PO Box 33068
Charlotte, NC 28233

REP: 11001 McCoy Road site

Dear Mr. Northrup & DePalma :

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 May 22, 2008, Mr. Mark Burnette and Mr. Sean Morris, Environmental Senior Specialists with this office, visited the Piedmont Natural Gas site located at 11001 McCoy Road, Huntersville, North Carolina, in response to a complaint received by the Hazardous Waste Section-Compliance Branch on May 19, 2008. The information provided stated that waste filter material (ceramic beads) had been buried on-site approximately five years ago.

Findings Related to the Violations

During the site visit, there was an area observed in the woods on the facility's property where material had been buried. The area was approximately 20 feet by 20 feet. The area was located off of a right of way in a heavily wooded parcel. There was a small trail/dirt road accessing the burial, and this area was the only place in the woods without vegetation. There was also evidence of the small ceramic pellet filter material on the ground surface in this area. Pictures were taken to document the findings.

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.

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.

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 waste filter material buried at Piedmont Natural Gas located at 11001 McCoy Road, Huntersville, NC constitutes 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.

Piedmont Natural Gas 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 buried on the 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.

Piedmont Natural Gas 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, Piedmont Natural Gas 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 burial site of the filter material.

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 Piedmont Natural Gas 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, Piedmont Natural Gas 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). Piedmont Natural Gas shall no longer store or dispose of hazardous waste without full compliance with this section. During the interim, pending shipment of hazardous waste, Piedmont Natural Gas 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 & D in 40 CFR part 265, Section 265.16 and 268.7(a)(4).

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. Mark Burnette at 704-776-4780; 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
Mark Burnette, Environmental Senior Specialist