

North Carolina
Department of Environment and Natural Resources

Division of Waste Management

Michael F. Easley, Governor
William G. Ross Jr., Secretary
Dexter R. Matthews, Director



January 17, 2002

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

JR
**IMMINENT HAZARD
NOTICE OF VIOLATION**
Docket #2002-067

Mr. Johnny Robinson
IEM Fabricators
P.O. Box 1630
Marion, NC 28752

NCS 000000757

Dear Mr. Robinson:

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 9, 2002, Mr. Brent Burch, Waste Management Specialist with this office, conducted a complaint investigation at IEM Fabricators, McDowell County, Marion, North Carolina. Mr. Burch was met at the site by Mr. Johnny Robinson, owner of the property. According to Mr. Robinson, the facility fabricates metal pieces to be used as handrails, gates, and fences. As part of the operations the facility spray paints a primer on the metal parts. The painting of parts is done outside the facility. Mr. Burch observed a graveled area approximately 30' x 30' on the west side of the facility where spray painting of metal parts was being conducted. A 10' x 10' area was also observed on the south side of the building. The soil/gravel in both areas was covered in red and black primer. According to Mr. Robinson the facility has been in operation approximately six to eight months. A waterborne primer is presently being used but oil based primers had reportedly been used in the past. Mr. Robinson did not have material safety data sheets (MSDS) available on site for the primers or solvent blends being used in the operation. Water is presently being used to thin the primer and to clean spray gun lines. Mineral spirits had been used in the past to thin the oil based primers and to clean the spray gun lines. The two areas identified as having been impacted from primer overspray were also reportedly used to dispose of spray gun flush waste. Mr. Burch visited Caraway's Paint Store to obtain MSDS for materials used at IEM Fabricators. According to the MSDS the primers contained xylene, vmp naphtha and mineral spirits.

A. 40 CFR 261.1(a), adopted by reference at 15A NCAC 13A .0106, identifies those solid

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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 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. It is the determination of the Section that the spray painting of metal parts, and cleaning spray gun parts on the gravel/soil areas outside at IEM Fabricators in Marion, North Carolina, constitutes 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.

IEM Fabricators 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 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.

IEM Fabricators is in violation of 40 CFR 262.12, adopted by reference at 15A NCAC 13A .0107, in that hazardous waste was disposed on site without the site having received an EPA identification number from the Section.

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.

IEM Fabricators is in violation of 15A NCAC 13A .0109(a), in that hazardous waste has been disposed on-site without complying with the requirements set forth

in this section.

COMPLIANCE SCHEDULE

By the dates specified below, IEM Fabricators, Marion, 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 all unknown waste in the soil/gravel outside the facility 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.

Within 30 days of receipt of this Notice, develop and submit to this office, 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 or 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 Section to determine its completeness. If it is determined to be complete, a determination will be made 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, an Assessment and Clean-up Plan must be developed and submitted to this office within 30 days of the determination. 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 IEM Fabricators 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.

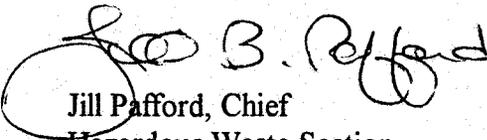
Upon verification that hazardous waste has been disposed, IEM Fabricators must immediately cease the disposal of hazardous waste to the environment and all hazardous wastes disposed shall be removed and manifested to a permitted hazardous waste treatment, storage, or disposal facility. The removal must be completed and a Closure Report submitted to the Section within the time frame set forth in the approved schedule submitted in 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). IEM Fabricators shall no longer dispose of hazardous waste without full compliance with this section.

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 Notice, you may contact Mr. Brent Burch at (828) 251-6784. Questions concerning site characterization and remediation should be addressed to Ms. Roberta Proctor, Compliance Branch Chemist at 828-625-0171.

Sincerely,



Jill Pafford, Chief
Hazardous Waste Section

cc: Central Files
Jesse Wells, Western Supervisor
Roberta Proctor, Chemist
Brent Burch, Waste Management Specialist