

ENFORCEMENT
NCS000000 273
SHACKELFORD TANK -
Greene Co.

STATE OF NORTH CAROLINA
COUNTY OF GREENE

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

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 .)

COMPLAINT AND
MOTION FOR PRELIMINARY INJUNCTION

The State of North Carolina, complaining of the defendants, alleges and says:

SUMMARY

1. This complaint seeks injunctive relief against defendants for environmental harm and hazards created by defendants James O. Shackelford, Jr. and Pauline Shackelford. 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. The open dump operated and maintained by the defendants has not been permitted by the Division, poses a potential public health and safety hazard and threatens the integrity and purity of the groundwaters

and streams of this State.

2. Inspections and investigations performed at this Site by staff of the North Carolina Department of Environment and Natural Resources, Division of Waste Management and the Division of Water Quality show that 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").

PARTIES

3. 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).

4. Upon information and belief, the defendants are individuals who reside and do business in the State of North Carolina.

JURISDICTION AND VENUE

5. 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.

6. 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.

GENERAL ALLEGATIONS

Framework for Enforcement of State Solid Waste Management Program

7. 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.

8. 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.

9. 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.

Applicable Laws and Regulations Governing Solid Waste Management

10. 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.

11. 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.

12. Dexter Matthews, Director of the Division of Waste Management, Department of Environment and Natural Resources, and James Coffey, Chief of the Solid Waste Section, Division of Waste Management, Department of Environment and Natural Resources, have been delegated the authority to implement the program.

13. 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.

14. 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."

15. 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).

16. 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."

17. 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).

18. 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).

19. 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.”

20. 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.”

21. 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.”

22. 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).

23. 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.”

24. 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.”

25. 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).

26. 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.

27. 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.

Framework for Enforcement of State Hazardous Waste Management Program

28. 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.

29. 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.

30. 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. Dexter Matthews, Director of the Division of Waste Management, Department of Environment and Natural Resources, and Jill Pafford, Chief of the Hazardous Waste Section, Division of Waste Management, Department of Environment and Natural Resources, have been delegated the authority to implement the program.

31. 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").

Applicable Laws and Regulations Governing Hazardous Waste Management

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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."

38. 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."

39. 40 CFR 260.10, defines "container" as "any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."

40. 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)."

41. 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.

42. 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.

Framework for Enforcement of State Oil Pollution Control Program

43. 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.

44. 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.

45. 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.

46. 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.

Applicable Laws and Regulations Governing Enforcement of the Oil Pollution and Hazardous Substances Act

47. 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.”

48. 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.”

49. N.C.G.S. 143-215.77(13) defines “person” as including, but not limited to, “any and all natural persons.”

Applicable Laws and Regulations Governing Enforcement of 15A NCAC Chapter 2L

50. 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.

51. 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).

52. 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).

53. 15A NCAC 2L .0106(g) sets forth items which shall be included in a site assessment conducted pursuant to 15A NCAC 2L .0106(c).

54. 15A NCAC 2L .0106(c)(f)(h) & (j) sets forth the specific corrective action requirements for discharges covered by the 2L Rules.

FACTUAL ALLEGATIONS

55. The allegations contained in paragraphs 1 through 54 are incorporated into this claim as if fully set forth herein.

56. James O. Shackelford, Jr. and Pauline Shackelford 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).

57. 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. 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.

58. On April 4, 1998, a citizen contacted the Washington Regional Office and reported that there was an open dump at the Site.

59. On June 11, 1998, Mr. Keith Starner, Hydrogeologist with the North Carolina Groundwater Section, Division of Water Quality, Washington Regional Office investigated the citizen's complaint. Mr. Starner visited the Site and found 50 to 75 USTs and ASTs ranging in size from 250 - 10,000 gallons. He also observed that drums had been deposited at the Site. Mr. Starner observed that some of the tanks were leaking and were in various degrees of structural decay. He further observed that many of the tanks appeared to have been penetrated by rust or by backhoe buckets and that many of the tanks had been crushed. Mr. Starner smelled a strong petroleum odor

at the Site and observed oil-stained soil present beneath more than one tank.

60. On June 12, 1998, Mr. Starner contacted Mrs. Nora Lee Newton, the owner of the Site. Mrs. Newton informed Mr. Starner that the property was leased to James O. Shackelford, Jr.

61. 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. They 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.

62. 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.

63. During this December 6, 1999 visit to the Site, Mr. Perry noticed that some of the tanks on site were marked with words indicated that they were commercial tanks.

64. On September 24, 2001, Mr. Perry met with Pauline Shackelford. During this meeting Mrs. Shackelford informed Mr. Perry that she and her husband, James O. Shackelford, are in charge of the tank dump operation at the Site and that they handled both commercial gas tanks and home heating oil tanks at the Site.

65. 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.

CLAIMS FOR INJUNCTIVE RELIEF

66. The allegations contained in paragraphs 1 through 65 are incorporated into this

claim for relief as if fully set forth herein.

67. 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 the relief necessary to prevent and/or abate the violations.

Solid Waste Claim for Injunctive Relief

68. 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.

69. 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.

70. Unless the Court issues injunctions as herein requested, James O. Shackelford, Jr. and Pauline Shackelford will continue to violate the Solid Waste Rules. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth more specifically hereinafter in the prayer for relief.

Hazardous Waste Claim for Injunctive Relief

71. 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.

72. Unless the Court issues injunctions as herein requested, James O. Shackelford,

Jr. and Pauline Shackelford will continue to violate the Hazardous Waste Rules. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth more specifically hereinafter in the prayer for relief.

Oil Pollution and Hazardous Substances Control Act

73. James O. Shackelford, Jr. and Pauline Shackelford are persons as defined in N.C.G.S. § 143-215.77(13).

74. 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.

75. Unless the Court issues injunctions as herein requested, James O. Shackelford, Jr. and Pauline Shackelford will continue to violate N.C.G.S. § 143-215.83. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth more specifically hereinafter in the prayer for relief.

15A NCAC 2L Claim for Injunctive Relief

76. 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.

77. Unless the Court issues injunctions as herein requested, James O. Shackelford, Jr. and Pauline Shackelford will continue to violate the 2L Rules. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth more specifically hereinafter in the prayer for relief.

PRAAYER FOR RELIEF

WHEREFORE, the Plaintiff, State of North Carolina, prays that the Court grant to it the following relief:

1. That the Court enter a preliminary, prohibitory, mandatory injunction requiring the defendants James O. Shackelford, Jr. and Pauline Shackelford immediately to take the following actions.
 - 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 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.
2. That the Court enter a permanent, prohibitory, mandatory injunction requiring the defendants James O. Shackelford, Jr. and Pauline Shackelford to take the following actions within the time frames set forth below:
 - 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 DWM.
 - b. Within three (3) days of the entry of the permanent injunction order, James O. Shackelford, Jr. and Pauline Shackelford, if they have not already done so in response to a preliminary injunction order, 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 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 other 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 Division'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 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).

- d. 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.

- e. 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 be 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.
- f. 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. That the Court's orders provide that the preliminary and permanent injunctions shall be enforceable by and through the contempt powers of this Court pursuant to Chapter 5A of the North Carolina General Statutes.

4. That the defendants be taxed with the cost of this action.

5. That this Court retain 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.

6. Any other and further relief that the Court deems to be just and proper.

This the 6th day of June, 2002.

ROY COOPER
Attorney General


Allison S. Corum
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ENFORCEMENT

NCS 00000 108

SHACKELFORD TRUCK

cc: Mike W.
Dick
Doug
Bud
Helen



State of North Carolina

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

REPLY TO:
Allison S. Corum
Environmental Division
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Facsimile: 919/716-6969

ROY COOPER
ATTORNEY GENERAL

June 11, 2002

MEMORANDUM

TO: Dan Oakley, General Counsel, DENR
Dexter Matthews, Director, Waste Management Division
✓ Bill Pafford, Section Chief, Hazardous Waste Section

FROM: Allison Corum *AC*
Assistant Attorney General

RE: DENR v. JAMES O. AND PAULINE SHACKELFORD (Greene County)
DENR v. WILMA L., JAMES O., AND PAULINE SHACKELFORD (Pitt Co.)

Enclosed are copies of the Complaint and Motion for Preliminary Injunction that were mailed for filing last week in the above cases.

Enc.

STATE OF NORTH CAROLINA
COUNTY OF PITT

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

STATE OF NORTH CAROLINA, *ex rel.*,)
WILLIAM G. ROSS, JR., Secretary,)
North Carolina Department of)
Environment and Natural)
Resources,)

Plaintiff,)

v.)

WILMA L. SHACKELFORD,)
JAMES O. SHACKELFORD, JR. and)
PAULINE SHACKELFORD,)

Defendants .)

COMPLAINT AND
MOTION FOR PRELIMINARY INJUNCTION

The State of North Carolina, complaining of the defendant, alleges and says:

SUMMARY

1. This complaint seeks injunctive relief against defendants Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford for environmental harm and hazards created by the defendants. The defendant Wilma L. Shackelford owns a parcel of real party ("the Site") located on Moye Turnage Road, near Farmville, Pitt County, North Carolina. The defendant Wilma L. Shackelford, and defendants James O. Shackelford, Jr. and Pauline Shackelford operate and have in the past operated an open dump on the Site. At this site, the defendants have stored and disposed of and/or have allowed others to store and dispose of leaking, discarded fuel storage tanks (former aboveground storage tanks and former underground storage tanks), waste drums, and waste containers at this Site. Some of these discarded tanks, waste drums, and waste containers contain toxic materials and/or oil which have been deposited onto the soil in

proximity to groundwater. The Site is an open dump which has not been permitted by the Division. This Site poses a potential public health and safety hazard and threatens the integrity and purity of the groundwaters and streams of this State.

2. Inspections and investigations performed at this Site by staff of the North Carolina Department of Environment and Natural Resources, Division of Waste Management and the Division of Water Quality show that the defendants 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").

PARTIES

3. 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).

4. The defendant Wilma L. Shackelford owns real property located on Moye Turnage Road, Farmville, Pitt County, North Carolina, which real property is recorded in Book 452, Page 746, Pitt County Registry. Upon information and belief, the defendant Wilma L. Shackelford is a resident of Columbia, Richland County, South Carolina.

5. The defendants James O. Shackelford, Jr. and Pauline Shackelford, are

individuals who reside and do business in the State of North Carolina.

JURISDICTION AND VENUE

6. 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.

7. The Superior Court has personal jurisdiction over the defendant Wilma L. Shackelford pursuant to N.C.G.S. § 1-75.4(3) because the defendant has committed acts and omissions within this State which have resulted in injuries to property in this State as follows: the defendant has stored and disposed of and/or has allowed others to store and dispose of leaking, discarded fuel storage tanks (former aboveground storage tanks and former underground storage tanks), waste drums, and waste containers at this Site and has allowed these tanks, drums and containers to leak hazardous waste and oil onto the soil in proximity to groundwater.

8. The Superior Court has personal jurisdiction over the defendants James O. Shackelford, Jr. and Pauline Shackelford pursuant to N.C.G.S. § 1-75.4(1) in that they are both natural persons domiciled within North Carolina.

9. Pursuant to N.C.G.S. §§ 130A-18 and 143-215.6C, Pitt County is a proper venue for this action because the violations alleged herein have occurred and are occurring on real property located in Pitt County, North Carolina.

GENERAL ALLEGATIONS

Framework for Enforcement of State Solid Waste Management Program

10. 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.

11. 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.

12. 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.

Applicable Laws and Regulations Governing Solid Waste Management

13. 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.

14. 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.

15. Dexter Matthews, Director of the Division of Waste Management, Department of Environment and Natural Resources, and James Coffey, Chief of the Solid Waste Section, Division

of Waste Management, Department of Environment and Natural Resources, have been delegated the authority to implement the program.

16. 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.

17. 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."

18. 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).

19. 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."

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

21. 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).

22. 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."

23. 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."

24. 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."

25. 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).

26. 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." The statute defines owner to include any owner of record interest in land or on which a landfill is or has been sited. N.C.G.S. § 130A-309.27(a).

27. 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.”

28. 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).

29. 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.

30. 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.

Framework for Enforcement of State Hazardous Waste Management Program

31. 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.

32. 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.

33. 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. Dexter Matthews, Director of the Division of Waste Management, Department of Environment and Natural Resources, and Jill Pafford, Chief of the Hazardous Waste Section, Division of Waste Management, Department of Environment and Natural Resources, have been delegated the authority to implement the program.

34. 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").

Applicable Laws and Regulations Governing Hazardous Waste Management

35. 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.

36. 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.

37. 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.

38. 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 barium if, using the TCLP procedure, the extract from a representative sample of the waste contains barium at a concentration equal to or greater than 100 mg/L. Such waste would be assigned EPA Hazardous Waste Number of D005.

39. 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."

40. 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.”

41. 40 CFR 260.10, defines "container" as “any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.”

42. 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).”

43. 40 CFR 260.10, adopted by reference at 15A NCAC 13A .0102(b), defines “owner” as “the person who owns a facility or part of a facility.”

44. 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.

45. 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.

Framework for Enforcement of State Oil Pollution Control Program

46. 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.

47. 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.

48. 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.

49. 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.

Applicable Laws and Regulations Governing Enforcement of the Oil Pollution and Hazardous Substances Act

50. 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.”

51. 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.”

52. N.C.G.S. 143-215.77(13) defines “person” as including, but not limited to, “any and all natural persons.”

Applicable Laws and Regulations Governing Enforcement of 15A NCAC Chapter 2L

53. 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.

54. 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).

55. 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).

56. 15A NCAC 2L .0106(g) sets forth items which shall be included in a site assessment conducted pursuant to 15A NCAC 2L .0106(d).

57. 15A NCAC 2L .0106(c)(f)(h) & (j) sets forth the specific corrective action requirements for discharges covered by the 2L Rules.

FACTUAL ALLEGATIONS

58. The allegations contained in paragraphs 1 through 57 are incorporated into this claim as if fully set forth herein.

59. Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford are persons as defined in N.C.G.S. §§ 130A-290(22), 143-215.77(13), and 15A NCAC 13A .0102.

60. Wilma L. Shackelford owns an open dump on real property described in a deed recorded in Book 452, Page 746 of the Pitt County Registry ("the Site"). Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford store and dispose of and/or allow others to store and dispose of used fuel storage tanks (former underground storage tanks and above ground storage tanks), waste drums and other waste containers at the Site. Some of these tanks and drums contain hazardous waste. In addition, waste oil has leaked onto the soil from some of these tanks and drums. This open dump has never been permitted by the Division as a Solid Waste

facility or as a Hazardous Waste facility.

61. In October 1995, Wilma L. Shackelford contacted the Department's Wilmington Regional Office regarding the Site. In response to this call, staff of the Department's Division of Water Quality visited the Site and took soil samples. The Division of Water Quality subsequently requested assistance from staff of the Department's Division of Waste Management, Hazardous Waste Section.

62. On May 28, 1997, Larry Perry, Eastern Supervisor with the Division and Dick Denton, Waste Management Specialist with the Division visited the Site. On this date, Perry and Denton observed approximately 252 USTs ranging in sizes of 300 gallons to 10,000 gallons and 21 55-gallon drums at the Site. These drums did not contain labels identifying their contents. Perry and Denton observed lead batteries, and containers of hydraulic fluids and lubricants at the Site. Perry and Denton smelled a strong petroleum odor at the Site. They observed soils stained by petroleum and areas of liquid petroleum pooling on the surface near where the tanks were stored. Perry and Denton also observed that surface water at the Site had an oily sheen and that the soil was discolored.

63. On July 2, 15, 17, and August 19, 1997, Mr. Perry, Mr. Pierre Lauffer, and other representatives of the Division conducted a multi-media sampling event at the Site. This sampling event was conducted in the following phases: (1) soil sampling; (2) drum sampling; (3) storage tank sampling; and (4) flashpoint determinations. A total of nine tanks and nine drums were sampled.

64. An inorganic chemical TCLP analysis of sample set D-17 (taken from a drum at the Site on July 15, 1997) performed at the State Laboratory of Public Health ("State Lab") indicated that this sample set contained barium and lead in excess of the toxicity characteristic regulatory

levels for these substances as set forth in 40 CFR 261.24. The levels of these substances in sample set D-17 were as follows: 590 mg/L barium (waste code D005) and 21,000 mg/L lead (waste code D008).

65. An inorganic TCLP chemical analysis of sample set T-3 (taken from a tank at the Site on July 17, 1997) performed at the State Lab indicated that this sample set contained barium and lead in excess of the toxicity characteristic regulatory levels for these substances as set forth in 40 CFR 261.24. The levels of these substances in sample set T-3 were as follows: 630 mg/L barium (waste code D005) and 13,000 mg/L lead (waste code D008).

66. An inorganic TCLP chemical analysis of sample set T-8 (taken from a tank at the Site on July 17, 1997) performed at the State Lab indicated that this sample set contained barium and lead in excess of the toxicity characteristic regulatory levels for these substances as set forth in 40 CFR 261.24. The levels of these substances in sample set T-8 were as follows: 150 mg/L barium (waste code D005) and 1800 mg/L lead (waste code D008).

67. An inorganic TCLP chemical analysis of sample set T-11 (taken from a tank at the Site on July 17, 1997) performed at the State Lab indicated that this sample set contained lead in excess of the toxicity characteristic regulatory levels for these substances as set forth in 40 CFR 261.24. The levels of these substances in sample set T-11 were as follows: 200 mg/L lead (waste code D008).

CLAIMS FOR INJUNCTIVE RELIEF

68. The allegations contained in paragraphs 1 through 67 are incorporated into this claim for relief as if fully set forth herein.

69. 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 the relief necessary to prevent and/or abate the violations.

Solid Waste Claim for Injunctive Relief

70. As owner of the Site, as an operator of the open dump at the Site, and as a person is storing and disposing of solid waste in violation of the Solid Waste Rules, Wilma L. Shackelford is liable for the open dump located on her property, including the proper closing of this open dump by removing the solid waste present and by placing the solid waste in an approved disposal site or facility.

71. As operators of the open dump at the Site and as persons who are storing and disposing of solid waste in violation of the Solid Waste Rules, James O. Shackelford, Jr. and Pauline Shackelford are liable for the open dump at the Site, including the proper closing of this open dump by removing the solid waste present and by placing the solid waste in an approved disposal site or facility.

72. Wilma L. Shackelford, 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.

73. Wilma L. Shackelford, 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.

74. Unless the Court issues an injunction as herein requested, Wilma L. Shackelford,

James O. Shackelford, Jr. and Pauline Shackelford will continue to violate the Solid Waste Rules. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth more specifically hereinafter in the prayer for relief.

Hazardous Waste Claim for Injunctive Relief

75. Wilma L. Shackelford, 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.

76. Unless the Court issues injunctions as herein requested, Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford will continue to violate the Hazardous Waste Rules. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth more specifically hereinafter in the prayer for relief.

Oil Pollution and Hazardous Substances Control Act

Claim for Injunctive Relief

77. Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford are persons as defined in N.C.G.S. § 143-215.77(13).

78. Wilma L. Shackelford, 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.

79. Unless the Court issues injunctions as herein requested, Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford will continue to violate N.C.G.S. § 143-215.83. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth

more specifically hereinafter in the prayer for relief.

15A NCAC 2L Claim for Injunctive Relief

80. Wilma L. Shackelford 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.

81. Unless the Court issues injunctions as herein requested, Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford will continue to violate the 2L Rules. Plaintiff is entitled to a preliminary and permanent injunction against these violations as set forth more specifically hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, State of North Carolina, prays that the Court grant to it the following relief:

1. That the Court enter a preliminary, prohibitory, mandatory injunction requiring the defendants Wilma L. Shackelford, James O. Shackelford and Pauline Shackelford immediately to take the following actions.
 - a. Wilma L. Shackelford, 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 DWM.
 - b. Within three (3) days of the entry of the preliminary injunction order, Wilma L. Shackelford, 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.

2. That the Court enter a permanent, prohibitory, mandatory injunction requiring the defendants Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford to take the following actions within the time frames set forth below:
 - a. Wilma L. Shackelford, 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 DWM.
 - b. Within three (3) days of the entry of the preliminary injunction order, Wilma L. Shackelford, James O. Shackelford, Jr. and Pauline Shackelford, if they have not already done so in response to a preliminary injunction order, 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 thirty (30) days of the Court's order, Wilma L. Shackelford, 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 other 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 Division'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, Wilma L. Shackelford James O. Shackelford, Jr. and Pauline Shackelford shall 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) and submit as part of the Comprehensive Sampling, Analysis and Assessment Plan 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).

- d. Within forty-five (45) days after the DWM approves the Comprehensive Sampling, Analysis, and Assessment Plan and schedule as described above, Wilma L. Shackelford 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 in 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.
- e. Within ninety (90) days after the DWM approves the Site Remediation Plan and Remediation Schedule, Wilma L. Shackelford, 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 be 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.

- f. In performing the obligations under the Court's order, Wilma L. Shackelford, 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. That the Court's orders provide that the preliminary and permanent injunctions shall be enforceable by and through the contempt powers of this Court pursuant to Chapter 5A of the North Carolina General Statutes.

4. That the defendants be taxed with the cost of this action.

5. That this Court retain 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.

6. Any other and further relief that the Court deems to be just and proper.

This the 6th day of June, 2002.

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