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North Carolina Department of Environment and Natural Resources

Dexter R. Matthews, Director

Division of Waste Management

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

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December 10, 2003

NCB 000 000 031

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IMMEDIATE ACTION
NOTICE OF VIOLATION
Docket # 2004-048

(Handwritten circled '220')

Mr. Ron Burchette
Burchette and Burchette Hardwood Floors, LLC.
196 Austin Traphill Road
Elkin, NC 28621

Dear Mr. Burchette:

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 November 20, 2003, Mr. Ernest Lawrence and Mr. Sean Morris, Waste Management Specialists with this office, visited the facility located at 196 Austin Traphill Road in Elkin, NC to investigate a complaint that was received by the Section. The complaint alleged that company personnel returning from job sites disposed of paint related waste in an onsite dumpster. The caller said that the facility does not provide an area to collect and store waste stains, varnishes, and thinners.

During the inspection we observed two waste storage areas and one area for collecting waste returned from job sites. Waste is shipped to Clean Harbors as D001 hazardous waste. The waste contains acetone and toluene along with other constituents.

The dumpster held several one gallon containers that previously contained stains and other paint related material. Containers were observed to be open and empty. It was not possible to determine if all the containers were empty without entering the dumpster.

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Storage and Collection Areas

Waste is collected into a 55-gallon container that is located just outside a storage building. The container was closed but small amounts of waste had been spilled on top of the container. Rainwater was standing on top of the container and the gravel beside the container looked wet and may have been contaminated with waste material.

Paint/stain building

Strips of wood molding were being stained inside a shed that was approximately 15 X 30 feet. The stains are applied to the strips by brush and wipes. Gravel on the floor beneath the staining process was coated with stain or other paint related material.

We discussed with Mr. Burchette the hazards of soil contamination due to the release of material from the staining process. He said he had instructed his building contractor to put a plastic liner beneath the gravel to protect the ground, but he could not demonstrate its presence by excavating into the gravel. Additionally, there was evidence some of the material had splattered or run outside the building onto the ground. Products being used in this area included: Polyurethane wood finish containing ethyl toluenes – 0.2%, Klean-Strip paint thinner containing mineral spirits – 95-100% and trimethylbenzene – 0.2%, and Klean-Strip lacquer thinner containing methyl ethyl ketone 20-25% and toluene 5-10%

There are concerns about possible soil contamination in three areas: 1) the soil around the container in the waste collection area, 2) the soil beneath the gravel in the paint/stain building, and 3) the soil outside the door of the paint/stain building.

- 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, and 124 of this Chapter and which are subject to the notification requirements of Section 3010 of RCRA.
- B. 40 CFR 261.2(b), adopted by reference at 15A NCAC 13A .0106, states that materials are solid waste if they are abandoned by being [1] disposed of; or [2] burned or incinerated; or [3] accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.
- C. 40 CFR 261.3(a), adopted by reference at 15A NCAC 13A .0106, states that a solid waste, as defined in Section 261.2 is a hazardous waste if:
 - 1. It is not excluded from regulation as a hazardous waste under Section 261.4(b); and
 - 2. It meets any of the following criteria:

- i. It exhibits the characteristics of hazardous waste identified in Subpart C.
 - ii. It is listed in Subpart D and has not been excluded from the lists in Subpart D under Sections 260.20, and 260.22 of this chapter.
 - iii. It is a mixture of solid waste and hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.
 - iv. It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under Sections 260.20 and 260.22 of this chapter.
- D. 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. GS 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.
- F. It is the determination of the Section that the waste generation and storage activities on the property, owned by Ron Burchette at 196 Austin Traphill Road at the paint/stain building and waste collection area constitute storage and disposal of solid/hazardous waste subject to all applicable requirements of 40 CFR 261 through 265 and 270. Specifically:
 1. 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107, 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.

Burchette and Burchette Hardwood Floors, LLC 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. 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.

Burchette and Burchette Hardwood Floors, LLC is in violation of 15A NCAC 13A .0109(a), in that hazardous waste has been stored and/or disposed without complying with the requirements set forth in this section.

COMPLIANCE SCHEDULE

By the dates specified below, Burchette and Burchette Hardwood Floors, LLC 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 contaminated 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.

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

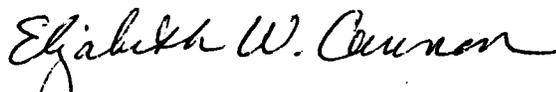
2. Comply with 40 CFR 262.12, adopted by reference at 15A NCAC 13A .0107. Prior to shipment of any hazardous waste, an EPA Identification Number must be obtained for this site. You may contact Mr. Jim Edwards with this office at (919) 733-2178 ext. 209 to make provisions for obtaining the I.D. number.
3. Comply with 15A NCAC 13A .0109(a). Burchette and Burchette Hardwood Floors, LLC shall no longer store or dispose of hazardous waste without full compliance with this section. During the interim, pending shipment of hazardous waste, Burchette and Burchette Hardwood Floors, LLC 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 is clearly marked and visible for inspection on each container.
 - c. While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and
 - d. The generator complies with the requirements for owners or operators in Subparts C & D in 40 CFR part 265, Section 265.16 and 268.7(a)(4).

Failure to comply with this Notice may subject you to these and additional violations in a subsequent Compliance Order with Administrative Penalty from this office. Pursuant to N.C.G.S. 130A-22(a) and 15A NCAC 13B .0701 - .0707, an administrative penalty of up to \$25,000.00 per day may be assessed for violation of the hazardous waste law or regulations.

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

If you should have questions concerning this Notice, you may contact Mr. Ernest Lawrence at 336-771-4608 extension 224. Questions concerning the site characterization and remediation should be addressed 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
Doug Holyfield
Jesse Wells
Roberta Proctor, Chemist
Ernest Lawrence, Waste Management Specialist