

**HAZARDOUS WASTE SECTION - COMPLIANCE BRANCH
FILE TRANSMITTAL & DATA ENTRY FORM**

Your Name: Robin Proctor

Facility ID Number: NCR000159038

Facility Name: Horsehead Metal Products, Inc.

Document Group: Enforcement (E)

Document Type: E - Immediate Action Notice of Violation (IANOV)

File Description/Comments: IANOV Docket # 2016-006 issued for CMP conducted 10/14/2015

Date of Document: 10/28/2015

Author(s) of Document: (Robin Proctor) Julie Woosley

Inspector ID #: NC066

Suborganization: Western Region

County (if not on report): Rutherford

For Violations:

Enforcement Date: 10/28/2015

Docket Number: 2016-006

Enforcement Type: IANOV

How many violations were there? 2

For IANOV or CO: The facility is a SNC (SNY Evaluation)

Outcome Measures for CSE for IANOV or CO:

Waste Involved	Volume	Exposure Media (a, gw, sw, s)	Distance to Residences	Number of People involved	Distance to On-site wells	Distance to Off-site wells

Violation #1:

Date Determined: 10/14/2015

Scheduled Return to Compliance: [Click here to enter a date.](#)

Actual Return to Compliance: [Click here to enter a date.](#)

Regulation Description: 40 CFR 262.11

Comment: Facility did not preform a waste determination for waste disposed of from the cell house containment area to the ground.

For CSE, Corrections to Violations were:

Violation #2:

Date Determined: 10/14/2015

Scheduled Return to Compliance: 11/28/2015

Actual Return to Compliance: [Click here to enter a date.](#)

Regulation Description: 15A NCAC 13A .0109(a)

Comment: Hazardous waste may have been disposed of and or treated without complying with permitting requirements of Parts 264 and 265

North Carolina Department of Environmental Quality

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

October 28, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IMMEDIATE ACTION
NOTICE OF VIOLATION
Docket # 2016-006

Anthony K. Staley
Horsehead Corporation
484 Hicks Grove Road
Mooresboro, N.C. 28114

SUBJECT: Immediate Action Notice of Violation
Horsehead Metals Products, Inc.
EPA ID# NCR000159038
Rutherford County

Dear Mr. Staley:

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.

Statement of Facts Related to Complaint Investigation

The Hazardous Waste Section was notified on September 9, 2015 via the USEPA that a release of waste to the storm water system had occurred at your facility. The released material was an undetermined quantity of liquid originating from the containment area around the cell house. This material seeped through a seal surrounding the tank and evidently migrated through the underlying rock and entered the storm drain through a crack in the storm drain. The liquid in the storm system traveled to the facility's storm water collection basins. A Notice of Violation addressing the release to the River has been issued by NC Department of Environmental Quality; Division of Water Resources (NOV 2015-DV-0188). The liquid released below the containment pad consisted of rain water and "cell liquid" that contains sulfuric acid, zinc, lead, cadmium, among other compounds. It is unknown whether all of the liquid migrated into the storm drain, if the material is still pooled under the containment area (or surrounding cement pad) or has migrated through an undetermined conduit under the cement pad/containment area.

Statutory and Regulatory Background

- A. 40 CFR 261.1(a), adopted by reference at 15A NCAC 13A .0106(a), 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(a), 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(a), 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 any of the characteristics of hazardous waste identified in Subpart C.
 - ii. It is listed in Subpart D and has not been excluded from the lists in Subpart D under Sections 260.20, and 260.22 of this chapter.
 - iii. It is a mixture of solid waste and hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.
 - iv. It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under Sections 260.20 and 260.22 of this chapter.
- D. NCGS 130A-290(6), defines "Disposal" as the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.
- E. 40 CFR 124.2, adopted by reference at 15A NCAC 13A .0105(a) defines "Owner" or "Operator" as the owner or operator of any "facility or activity" subject to regulation under the RCRA program.
- F. NCGS 130A-290(22), defines "Person" as an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- G. 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b), defines a "generator" as "any person, by site, whose act or process produces hazardous waste identified or listed in part

261 or whose act first causes a hazardous waste to become subject to regulation."

Violations Requiring Immediate Action

A. It is the determination of the Section that the release of the cell solution from the containment area to the ground by Horsehead Metal Products, Inc. constitutes the disposal of solid/hazardous waste subject to all applicable requirements of 40 CFR Part 261 through Part 265 and Part 270, incorporated by reference in 15A NCAC 13A .0106 through .0110 and .0113.

1. 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107(a), requires that a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if the 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.

Horsehead Metal Products, Inc. is in violation of 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107(a), in that solid waste was disposed of on the property as defined in 40 CFR 261.2 and a hazardous waste determination has not been made by the generator.

2. 15A NCAC 13A .0109(a), requires that any person who treats, stores, or disposes of hazardous waste shall comply with the requirements set forth in this section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in 40 CFR Parts 264 and 265, adopted by reference in 15A NCAC 13A .0109 and .0110.

Horsehead Metal Products, Inc. is in violation of this regulation in that hazardous waste may have been disposed without complying with the requirements set forth in 40 CFR Parts 264 and 265, adopted by reference in 15A NCAC 13A .0109 and .0110.

COMPLIANCE SCHEDULE

Within 30-days of receiving this Notice of Violation, Horsehead Metals, Inc., shall comply with the following requirements:

1. Horsehead Metal Products, Inc. must perform a comprehensive assessment to determine the extent of contaminated soil and/or groundwater under the cell house containment area. This assessment must be supervised by a qualified professional. A hazardous waste determination must be completed on all soil excavated in the areas of concern. Contaminated soil must be properly managed and disposed. Disposal options will be determined by the results of the hazardous waste determination. All of the above must be completed within 90-days of receipt of this Notice.

Prior to initiating any corrective actions, please contact Ms. Robin Proctor, Environmental Chemist at Roberta.Proctor@ncdenr.gov for assistance and instructions on how to proceed with the site assessment, hazardous waste determination, and final disposal. Failure by Horsehead Metals Products, Inc. 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.

2. Comply with 15A NCAC 13A .0109(a). Horsehead Metals Products, Inc. shall no longer store, or dispose of hazardous waste without full compliance with this section. Pending shipment of hazardous waste for proper disposal Horsehead Metals Products, Inc. must comply with 40 CFR 262.34(a), adopted by reference at 15A NCAC 13A .0107(c), which states that:
 - a. If the waste is placed in containers the generator must comply with Subpart I of 40 CFR Part 265 or if the waste is placed in tanks, the generator must comply with Subpart J of 40 CFR Part 265, except 265.197(c) and 265.200. No waste piles are allowed.
 - b. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.
 - c. While being accumulated on-site, each container and tank must be labeled or marked clearly with the words, "Hazardous Waste"; and
 - d. The generator must comply with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265, Section 265.16 and 268.7(a)(4).

Potential Consequences of Failure to Comply

You must comply with each requirement of this Immediate Action Notice of Violation (IANOV); however, compliance will not divest the Section of its authority to issue an administrative penalty for the violations cited in this IANOV and additional violations cited in a subsequent Compliance Order with Administrative Penalty. In accordance with NCGS 130A-22(a), the penalty shall not

exceed thirty two thousand five hundred dollars (\$32,500.00) per day in the case of a first violation. Each day of a continuing violation shall constitute a separate violation.

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

Questions regarding proper waste determination procedures and remediation or concerning the issuance of this IANOV should be directed to: Mrs. Roberta Proctor, Environmental Chemist at 828-625-0171 or Roberta.Proctor@ncdenr.gov.

Sincerely,



Julie S. Woosley, Chief
Hazardous Waste Section

cc: Central Files
Brent Burch
Jeff Menzel
Robin Proctor
Mark Wilkins
Rutherford County Health Director
Rutherford County Emergency Management Director