



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

January 31, 2008

Mr. Bruce L. Kirk
Chemserve Terminal, Inc.
P.O. Box 117
Wilmington, NC 28402

**Re: NOTICE OF REGULATORY REQUIREMENTS FOR CONTAMINANT ASSESSMENT
AND CLEANUP**

Former Wilmington Fertilizer
Wilmington, New Hanover County
Site I.D. No. Pending (Former DWQ Incident No. 5960)

Dear Mr. Kirk:

It is our understanding that you have provided information about the above-referenced site and may have been performing assessment and cleanup activities under the supervision of the Division of Water Quality Aquifer Protection Section ("APS"). Regulatory oversight for the assessment and cleanup of this site has been transferred from APS to the Division of Waste Management. Future oversight at this site will be the responsibility of the Division of Waste Management's Superfund Section, Inactive Hazardous Sites Branch ("Branch").

Based on information provided to date, we understand that this site has been contaminated by one or more hazardous substances. The Inactive Hazardous Sites Response Act ("IHSRA"), codified under N.C. Gen. Stat. § 130A-310, *et seq.*, applies to the site. In addition, 15A NCAC 2L, Groundwater Classifications and Standards, applies to this site.

The change in oversight responsibility is designed to achieve consistency by addressing all contaminated media at the site with one approval process. The APS dealt with primarily enforcing 15A NCAC 2L, which requires that all contaminants in groundwater, or in soils to the extent that they could contaminate groundwater, be addressed. The cleanup requirements under IHSRA are broader. Under IHSRA all contaminated media must be addressed. In addition to requiring cleanup for the protection of groundwater and surface water, IHSRA requires that soils and sediment be remediated to meet direct contact levels protective of public health and ecological receptors. Consolidating all the contaminant remediation authorities will provide for one comprehensive cleanup, eliminating the need to work with multiple Divisions in resolving the various contaminated media at the site.

Additional information regarding the reorganization may be found on the Branch's web site located at <http://wastenotnc.org/sfhome/ihsbrnch.htm>.

I. ACTIONS REQUIRED AT THIS TIME:

Complete the Site Cleanup Questionnaire.

To comply with the requirements of State law, a Site Cleanup Questionnaire, available at the above website address, must be completed and returned to this office. The information you provide will be reviewed along with other information to prioritize the site, so please make certain that the information you provide is complete and accurate. Please note that your failure to inform the Branch of any nearby potable wells or other high risk conditions may adversely affect the Branch's ability to identify this site as a higher-risk site.

Take Initial Abatement Actions Required Under 15A NCAC 2L.

If you have not already done so, you must take the initial abatement actions required under 15A NCAC 2L. Pursuant to 15A NCAC 2L .0106(b), any person conducting or controlling an activity which results in the discharge of a waste or hazardous substance to the groundwaters of the State, or in proximity thereto, shall take immediate action to terminate and control the discharge, and mitigate any hazards resulting from exposure to the pollutants. Pursuant to 15A NCAC 2L .0106(c), if groundwater standards have been exceeded, you must take immediate action to eliminate the source or sources of contamination. Beyond initial abatement actions, all assessment and remediation will be done through the IHSRA.

II. FUTURE ASSESSMENT AND CLEANUP ACTIVITIES:

All correspondence regarding this site should be sent to the Branch. Future assessment and cleanup activities (activities conducted after the initial abatement steps required in 15A NCAC 2L) may be conducted through the Voluntary Cleanup Program (discussed below) or pursuant to an Order issued under N.C. Gen. Stat. § 130A-310.3. In addition, if you choose not to conduct a cleanup through the Voluntary Cleanup Program, the site may be referred to the United States Environmental Protection Agency ("EPA"). If so referred, EPA will screen the site for Federal enforcement action under the Federal Superfund Program, established under the Comprehensive Environmental Responsibility, Compensation, and Liability Act ("CERCLA").

Please note, you are not expected to repeat work. However, if there are known or suspected areas of concern, contaminated media, or contaminants that were not investigated in the previous work, those items would need to be addressed. This would include any media, areas or contaminants to which there is evidence (such as, but not limited to, allegations or indications of spills, visual observations, field instrument readings, laboratory data, and chemical odors) of releases of contaminants or materials likely to contain contaminants. You and your consultant should evaluate whether there are additional items that are required to be addressed. PLEASE NOTE: If you have an approved corrective action plan, please complete the Site Cleanup Questionnaire, note that you have a corrective action plan prominently at the top of the Questionnaire, and staff will be in contact with you with further instructions.

III. VOLUNTARY CLEANUP PROGRAM:

Under the IHSRA, persons who move forward to assess and remediate contamination, without being compelled to do so through formal legal action filed against them, are called “volunteers.” To participate in the voluntary cleanup program, you will be required to enter into an administrative agreement with the Branch. The voluntary cleanup will proceed through the Registered Environmental Consultant Program or under direct oversight by the Branch Staff, as discussed below:

Agreement to Conduct Assessment and Remediation Through the Registered Environmental Consultant Program.

The Branch has a privatized oversight arm of the voluntary cleanup program known as the Registered Environmental Consultant (“REC”) program. Based on the responses provided on the questionnaire (degree of hazard and public interest in the site), the Branch will determine whether a staff person or an REC will perform the oversight and approval of your assessment and cleanup action. Please note that having one or more of the conditions identified on the questionnaire does not necessarily preclude the site for qualifying for an REC-directed cleanup action.

Under the REC program, the volunteer hires an environmental consulting firm, which the State has approved as having met certain qualifications, to implement a cleanup and certify that the work is being performed in compliance with regulations. In other words, the REC’s certifications of compliance are in place of direct oversight by the Branch. Details of the REC program can be found at <http://www.wastenotnc.org/sfhome/recprog.htm>. If you have any questions specific to the REC Program, including how to participate, please contact the REC Program Manager, Kim Caulk, at (919) 508-8451.

Agreement to Conduct Assessment and Remediation Under State Oversight.

If the Branch determines that the site should be assessed and remediated pursuant to direct State oversight, it will not be eligible for a REC-directed cleanup. Rather, the remedial action will receive direct oversight by Branch staff.

IV. FAILURE TO RESPOND:

If we do not receive a completed questionnaire, the Branch will take further action to prioritize the site without your input. Failure to take the initial abatement steps required in 15A NCAC 2L may result in the assessment of a civil penalty against you. In addition, the Branch may seek an injunction compelling compliance with the initial abatement steps required in 15A NCAC 2L. For future work beyond the initial abatement steps required pursuant to 15A NCAC 2L, a unilateral Order may be issued pursuant to § 130A-310.3 to compel assessment and cleanup.

V. ADDITIONAL INFORMATION REGARDING THE IHSRA AND THE BRANCH:

People are often confused by the name of the Inactive Hazardous Sites Response Act and the Branch. By definition, “Inactive Hazardous Sites” are any areas where hazardous substances have come to be located and would include active and inactive facilities and a variety of property types. The term “inactive” simply refers to the fact that cleanup was inactive at large numbers of sites at the time of program enactment. Additional information about the Branch may be found at <http://www.wastenotnc.org/sfhome/ihbrnch.htm>.

Submit completed questionnaire to: Ginny Henderson
Inactive Hazardous Sites Branch
127 Cardinal Drive Extension
Wilmington, NC 28403

If you have additional questions about the requirements that apply to your site, please contact me at (910) 796-7215.

Sincerely,



Genevieve M. Henderson, P.G.
Hydrogeologist II
Inactive Hazardous Sites Branch
Superfund Section

Cc: IHSB – WiRO files
Mark Westray, RETEC North Carolina, Inc., 2000 Perimeter Park Dr., Ste. 160, Morrisville, NC 27560