

State of North Carolina  
Department of Environment  
and Natural Resources



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

**THE DIVISION OF WASTE MANAGEMENT**

September 22, 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Avery County  
c/o Robert Wiseman, County Manager  
P.O. Box 640  
Newland, NC 28657

**Re: Compliance Order**  
**Avery County Construction and Demolition Landfill (Permit Number 06-03)**

Dear Mr. Wiseman:

Enclosed is a Compliance Order issued to Avery County because of certain violations of the North Carolina Solid Waste Management Act (N.C. General Statute 130A, Article 9) and of the North Carolina Solid Waste Management Rules (15A N.C. Administrative Code 13B) which implements the Act. This Compliance Order describes the violations of concern and the actions required by Haywood County to come into compliance with both the General Statutes and the Administrative Code.

I encourage Haywood County to schedule an informal conference at once with my staff to discuss this Compliance Order. Please contact Mr. Bill Wagner at the Asheville Regional Office at (828) 296-4705.

Sincerely,

Paul S. Crissman, Chief  
Solid Waste Section  
Division of Waste Management

Enclosure

cc: Teresa Townsend, Assistant Attorney General  
Deborah Aja, Western District Supervisor  
Bill Wagner, Environmental Senior Specialist  
Mark Poindexter, Supervisor, Field Operations Branch  
Jaclyne Drummond, Compliance Hydrogeologist  
Central Files, Solid Waste

**COMPLIANCE ORDER**

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**NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF WASTE MANAGEMENT  
SOLID WASTE SECTION**

**In Re:** Avery County  
c/o Robert Wiseman, County Manager  
P.O. Box 640  
Newland, NC 28657

**COMPLIANCE ORDER**

**PRELIMINARY STATEMENT**

This Compliance Order is issued under N.C. General Statutes 130A-22, the Solid Waste Management Act (N.C.G.S. 130A, Article 9), and the Solid Waste Management Rules (15A N.C. Admin. Code 13B). Title 15A of the N.C. Admin. Code, Chapter 13B contains standards and requirements applicable to the proper management of solid waste.

On March 1, 1971, the State of North Carolina, Department of Human Resources, Division of Health Services, Solid Waste Section, implemented a Solid Waste Management Program under the Solid Waste Management Act, N.C.G.S. 130A, Article 9 and Rules codified at 15A N.C. Admin. Code 13B. Solid Waste Management is now regulated under the Solid Waste Section of the Division of Waste Management of the Department of Environment and Natural Resources. Mr. Paul S. Crissman, Chief of the Solid Waste Section, Division of Waste Management, Department of Environment and Natural Resources, has been delegated the authority to implement both the Act and the Rules. Based upon information available, the Division has determined that Avery County is in violation of certain requirements of the Act and/or Rules, as set forth below.

**STATEMENT OF FACTS**

1. The Avery County Construction and Demolition (C&D) Landfill and Land Clearing and Inert Debris (LCID) Landfill (Permit #06-03) is located at 2175 Brushy Creek Road, in Ingalls, N.C. Permit #06-03 was issued by the Division to Avery County to construct and operate the facility on October 25, 1996. The C&D Landfill is governed by Title 15A N.C. Administrative Code 13B .0505, as specified in General Condition No. 12 of Permit #06-03.
2. General Condition #4 of Permit #06-03 states, "the approved plan is described by Attachment 1, 'Approved Documents'."
3. Attachment 1 (Approved Documents) of the permit contains the "Construction/Demolition Landfill & Land Clearing and Inert Debris Landfill, Permit Application, dated October 1995" (herein "the approved application"). The approved application contains maps that delineate the approved waste area.
4. On April 15, 2008, Ms. Deborah Aja, Western District Supervisor, Division of Waste Management, Solid Waste Section, received a written notification from Mr. Robert Wiseman, Avery County

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Manager, of a waste boundary exceedance at the Avery County C&D Landfill. The notice stated that Avery County's consultant, Richardson Smith Gardner and Associates, Inc. (RSG) "identified through field topographic survey and test pit survey that the existing Phase II area of the landfill has exceeded the approved waste limits". Based on the attached April 2008 landfill map prepared by RSG (Attachment A), waste was placed outside of the permitted limits of Phase I and Phase II of the C&D Landfill.

**STATEMENT OF VIOLATIONS**

The above facts constitute violations of the following Sections of Title 15A N.C. Admin. Code Subchapter 13B:

1. Section .0505(1)(a), which states:

Construction plans shall be approved and followed.

Avery County has violated this rule in that it did not follow the approved construction plans as detailed in the "Construction/Demolition Landfill & Land Clearing and Inert Debris Landfill, Permit Application, dated October 1995".

2. Section .0534(b)(2)(A), which states:

The permittee must comply with all conditions of the permit.

Avery County has violated this rule in that Avery County did not follow General Condition #4 of their permit and exceeded the permitted waste boundaries of their Construction and Demolition landfill.

**CONDITIONS FOR COMPLIANCE**

Based on the foregoing, you are hereby ordered to take the following actions:

1. Within 30 days of receipt of this Compliance Order, submit a plan for the Section's approval to remove all of the waste that is outside of the permitted disposal boundaries. All excavated waste shall be properly disposed of at a permitted facility. This plan shall include a timetable for implementation. This plan shall be submitted to:

Bill Wagner  
Environmental Senior Specialist  
Asheville Regional Office  
2090 US Hwy 70  
Swannanoa, NC 28778

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2. After waste that was disposed outside the permitted disposal boundaries has been removed, install permanent boundary markers to clearly define the limits of the permitted waste areas within 5 days.
  
3. Within 30 days of receipt of this Compliance Order, the County shall acquire the services of a N.C. licensed professional geologist with experience in assessment and remediation of ground water contamination and submit a phased assessment plan to the Division to assess the impact of the disposal of waste outside the permitted waste boundaries,. The professional geologist shall consult with Ms. Jaclynne Drummond, Solid Waste Section Hydrogeologist, about the site prior to developing the plan. The Section will review the submitted plan, approve, or request more information or amendments before implementation.

Ms. Jaclynne Drummond  
Compliance Hydrogeologist  
Division of Waste Management  
1646 Mail Service Center  
Raleigh, NC 27699-1646

4. Within 30 days of completion of the approved waste removal plan, submit a report detailing the following:
  - The amount of waste that has been removed from outside the permitted waste area, and
  - Plans showing the as-built limits of the permitted waste areas.

This report shall be submitted to:

Bill Wagner  
Environmental Senior Specialist  
Asheville Regional Office  
2090 US Hwy 70  
Swannanoa, NC 28778

**POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY**

You are hereby advised that, pursuant to N.C.G.S. 130A-22, each day of continued violation of any requirement of the act, the rules, or any order issued under the act or rules constitutes a separate violation for which a penalty of up to \$15,000.00 per day may be imposed. If the violation(s) continue, you may also be subject to further enforcement actions including injunction from operation of a solid waste management facility or a solid waste collection service and any such further relief as may be necessary to achieve compliance with the North Carolina Solid Waste Management Act and Rules.

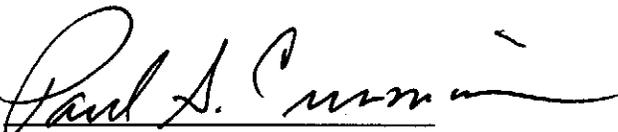
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**INFORMAL CONFERENCE**

The Division encourages you to schedule an informal conference to discuss this matter and to give you an opportunity to provide additional information, including any actions you have taken to correct the violation(s). If you desire an informal conference, please contact:

Bill Wagner  
Environmental Senior Specialist  
Asheville Regional Office  
2090 US Hwy 70, Swannanoa, NC 28778  
828-296-4705

By: 

Paul S. Crissman  
Chief, Solid Waste Section  
Division of Waste Management  
Department of Environment and Natural Resources

**CERTIFICATE OF SERVICE**

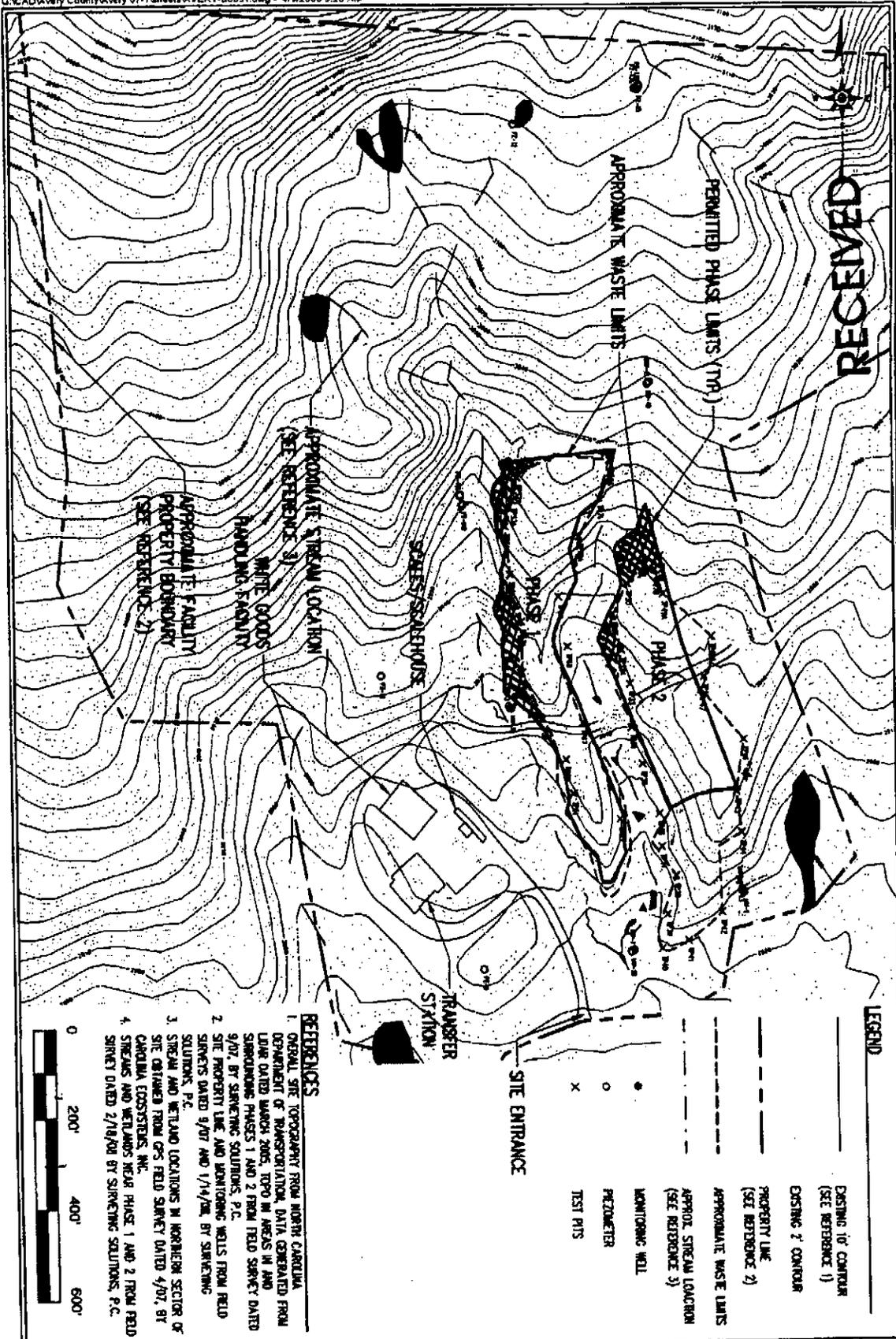
I hereby certify that I have caused a copy of the foregoing Compliance Order to be served upon the person designated below, at the last known address, causing said copy to be deposited in the U.S. Mail, First Class (certified mail postage prepaid, and return receipt requested) in an envelope addressed to:

Avery County  
c/o Robert Wiseman, County Manager  
P.O. Box 640  
Newland, NC 28657

Dated this 22 day of September, 2008



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Compliance Officer  
Division of Waste Management  
Department of Environment and Natural Resources



RECEIVED

APR 18 2008

SOLID WASTE SECTION  
ASHEVILLE REGIONAL OFFICE

**REFERENCES**

1. GENERAL SITE TOPOGRAPHY FROM NORTH CAROLINA DEPARTMENT OF TRANSPORTATION DATA COMPILED FROM LIDAR DATED MARCH 2005, TOPO IN AREAS IN AND SURROUNDING PHASES 1 AND 2 FROM FIELD SURVEY DATED 9/07, BY SURVEYING SOLUTIONS, P.C.
2. SITE PROPERTY LINE AND MONITORING WELLS FROM FIELD SURVEY DATED 9/07 AND 1/14/08, BY SURVEYING SOLUTIONS, P.C.
3. STREAM AND WETLAND LOCATIONS IN NORTHERN SECTION OF SITE OBTAINED FROM GPS FIELD SURVEY DATED 4/07, BY CAROLINA ECOSYSTEMS, INC.
4. STREAMS AND WETLANDS NEAR PHASE 1 AND 2 FROM FIELD SURVEY DATED 2/18/08 BY SURVEYING SOLUTIONS, P.C.



TITLE: <b>AVERY COUNTY SOLID WASTE DEPARTMENT AVERY COUNTY C&amp;D LANDFILL EXISTING CONDITIONS</b>	DRAWN BY: J.A.L.	CHECKED BY: AS SHOWN	SCALE: AS SHOWN	FIGURE NO. 1	RICHARDSON SMITH GARDNER & ASSOCIATES <small>1414 Douglas Blvd Raleigh, N.C. 27608 www.rsginc.com</small>
	DATE: Apr. 2008	PROJECT NO. AVERY-07-1	FILE NAME AVERY-80031		