

**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

November 27, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

D.R. Banks, Inc.
c/o Mr. R. Timothy Banks, President
946 Hicks Chapel Road
Marion, North Carolina 28752

Re: Compliance Order With Administrative Penalty
D.R. Banks, Inc.- Treatment and Processing Facility
18-07- Catawba County

Dear Mr. Banks:

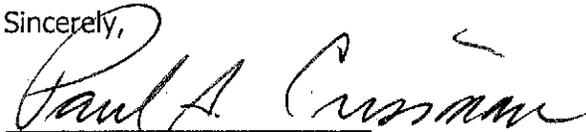
Enclosed is a Compliance Order issued to D.R. Banks, Inc. because of certain violations of the North Carolina Solid Waste Management Act (N.C. General Statute 130A, Article 9) and of the North Carolina Solid Waste Management Rules (15A N.C. Administrative Code 13B) which implements the Act. Along with the Compliance Order is an Administrative Penalty in the amount of \$7,750.00 that is imposed pursuant to N.C. General Statute 130A-22(a). This Compliance Order With Administrative Penalty describes the violations of concern and the actions required by you to come into compliance with both the General Statutes and the Administrative Code

You may appeal this Compliance Order with Administrative Penalty by filing a written petition for an administrative hearing with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within thirty (30) days of the receipt of this

Compliance Order. Your petition must be submitted in accordance with the provisions of N.C. General Statutes 150B-23(a) and 130A - 22(e). A copy of your petition must also be served on Ms. Mary Penny Thompson, General Counsel, NC Department of Environment and Natural Resources, 1601 Mail Service Center, Raleigh, North Carolina 27699-1601.

If no administrative hearing is requested, the administrative penalty must be paid within sixty (60) days by certified check or money order, made payable to the Division of Waste Management. Payment should be mailed to the Solid Waste Section, Department of Environment and Natural Resources, Attn: Compliance Officer, 1646 Mail Service Center, Raleigh, NC 27699-1646. A fee of \$20.00 will be charged for all returned checks on which the payer bank has refused payment. I encourage you to schedule an informal conference at once with my staff to discuss this Compliance Order. Please contact Ms. Deborah Aja, Waste Management Specialist, Division of Waste Management, at the Asheville Regional Office at (828) 296-4702.

Sincerely,

A handwritten signature in cursive script that reads "Paul S. Crissman". The signature is written in black ink and is positioned above a horizontal line.

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

Enclosure

cc: Lauren Clemmons, Assistant Attorney General
Brent Rockett, Western District Supervisor
Deborah Aja, Waste Management Specialist
Mark Poindexter, Field Operations Branch Head
Ted Lyon, Septage and Land Applications Branch Head
Central Files, Solid Waste

COMPLIANCE ORDER

Page 1

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

**In Re: D.R. Banks, Inc.
c/o Mr. R. Timothy Banks, President
946 Hicks Chapel Road
Marion, North Carolina 28752**

**COMPLIANCE ORDER WITH
ADMINISTRATIVE PENALTY**

PRELIMINARY STATEMENT

This Compliance Order With Administrative Penalty 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 D.R. Banks, Inc. is in violation of certain requirements of the Act and/or Rules, as set forth below.

STATEMENT OF FACTS

1. On December 18, 2003, the Division of Waste Management issued a permit to operate a Solid Waste Treatment and Processing Facility (Permit #18-07) to D.R. Banks Wood Waste Recycling Facility, located at 1230 13th Street in Hickory, North Carolina owned and operated by D.R. Banks, Inc. Per permit #18-07, the site was permitted to receive wood waste for grinding into mulch for landscaping and boiler fuel and treated materials such as chip board and painted wood to be ground for boiler fuels. The site is approximately three acres in size. D.R. Banks, Inc. is the owner of the land on which the facility is located (Parcel #2792-46-73-5615).
2. On October 18, 2005, D.R. Banks, Inc. was issued a Notice of Violation for violation of Permit #18-07 Condition 1 and Condition 2.
3. On October 31, 2006, Mr. Albert Hetzell, Waste Management Specialist, Solid Waste Section, inspected the treatment and processing facility permit # 18-07. Upon arriving at the entrance Mr. Hetzell noted that the gate cable across the entrance road was down. The site was full of yard waste and land clearing woody debris. The fresh green wood waste was piled over the access roads between the older wood waste windrows and over the operational grinding area and filled nearly all of the property inside the setbacks from the property line. Approximately 16,000 cubic yards of waste was estimated on site. No employees or equipment were on site. An audit report was sent to Mr. Banks on October 31, 2006 and included a Notice of Violation for violations of 15A NCAC 13B .0104, .0302(1),(4) and (6).

STATEMENT OF VIOLATIONS

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

1. Section .0104(f) states that:

All solid waste shall be stored in such a manner as to prevent the creation of a nuisance, insanitary conditions, or a potential public health hazard.

D.R. Banks, Inc. is in violation of this rule in that wood waste has been collected and stored on the site and does not provide proper access for fire control equipment. Then accumulation of the waste in this manner is a nuisance and a potential public health hazard

2. Section .0302 states that:

COMPLIANCE ORDER

Page 3

Any person who maintains or operates a treatment and processing facility shall maintain and operate the facility in accordance with the following practices unless otherwise specified in the permit:

...

(4) states that:

Equipment for fire control shall be available;

D.R. Banks, Inc. has removed all equipment from the site, including equipment that would be necessary to control a fire.

3. Section .0302(1) states that:

Operational plans shall be approved and followed as specified for the facility;

D.R. Banks, Inc. did not follow Item 7 in the approved operational plan for Permit #18-07 which specifies an equipment list to include the following:

Toro 5000 Tubgrinder
Hogzilla 1564 P Tubgrinder
Caterpillar 320 Excavator 3 models
Caterpillar 953 C Trackloader
Caterpillar D 5 M Dozer
Peerless Chip Trailer
2 Kentworth Roadtractors

Mr. Hetzell's inspection on October 31, 2006, revealed that none of this equipment was present on site.

4. Section .0302(6) states that:

Equipment shall be provided in the storage and charging areas and elsewhere as needed or as may be required in order to maintain the facility in a sanitary condition;

D.R. Banks, Inc. is in violation of this rule in that it has removed all the equipment from the storage and charging areas and the entire site.

CONDITIONS FOR COMPLIANCE

Upon receipt of this Compliance Order, you must:

1. Immediately cease accepting all solid waste materials;
2. Immediately secure the facility site by means of gates, chains, fences, or berms to prevent unauthorized access and to prevent additional waste from being delivered to the site;
3. Within 30 days, mobilize wood waste processing equipment to the site and process all stored wood waste and place processed material into windrows that are 20 feet wide, 10 feet high and 100 feet long, in accordance with the operational plan Item 7, or
4. Within 30 days, remove all wood waste to a properly permitted facility for processing or disposal.

PENALTY IMPOSED

In addition to taking the actions specified above, D.R. Banks, Inc. is hereby ordered to pay in accordance with N.C. General Statute 130A-22(a), a total administrative penalty of \$7,750.00. \$3,750.00 is being issued for violation of 15A NCAC 13B .0104(f) and .0302(4), and \$4,000.00 is being issued for violation of 15A NCAC 13B .0302(1) and .0302(6).

The North Carolina Solid Waste Management Penalty Computation Procedure, dated April 10, 1997, was used to determine the amount of the administrative penalty imposed with this order. The factors considered in determining the administrative penalty are found in 15A N.C.A.C. 13B .0700 et seq. and include the following: the nature of the violations, the potential effect on the public health and environment, the degree and extent of harm caused by the violations, the costs of rectifying any damage, the types and amounts of wastes, the ease and costs of compliance, and any history of non-compliance.

The amount of this penalty shall be paid within sixty (60) days of receipt of this order by certified check or money order made payable to the Division of Waste Management. Payment should be mailed to:

Compliance Officer
Solid Waste Section
Division of Waste Management
1646 Mail Service Center
Raleigh, NC 27699-1646

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 \$5,000.00 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.

OPPORTUNITY TO REQUEST A HEARING

D.R. Banks, Inc. has the right to request an administrative hearing to contest any matter of law, material fact, requirement, or penalty set forth herein. To exercise this right, you must file a written petition in accordance with N.C.G.S. 150B-23(a) and N.C.G.S. 130A - 22(e) within thirty (30) days of receipt of this Compliance Order With Administrative Penalty.

The petition must be signed by your attorney. It must state facts tending to establish that the agency has deprived you of property, has ordered you to pay a fine or civil penalty, or has otherwise substantially prejudiced your rights, and that the agency has:

1. exceeded its authority or jurisdiction;
2. acted erroneously;
3. failed to use proper procedure;
4. acted arbitrarily or capriciously; or
5. failed to act as required by law or rule.

Your petition must be filed within thirty (30) days with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C.G.S. 150B-23(a). A copy of your petition must also be served on Ms. Mary Penny Thompson, General Counsel, NC Department of Environment and Natural Resources, 1601 Mail Service Center, Raleigh, NC 27699-1601. Failure to complete either of these acts within the thirty-(30) day period may result in denial of any administrative hearing.

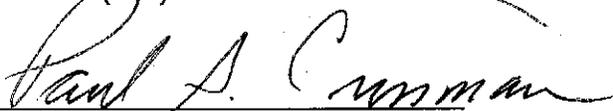
Any administrative hearing will be conducted in accordance with applicable rules contained in Title 26 of the North Carolina Administrative Code. If you file a petition for an administrative hearing within thirty (30) days in accordance with the applicable statutes and rules, payment of the penalty is due within sixty (60) days after service of a copy of any final decision affirming the penalty. You may request a copy of the rules by calling the Office of Administrative Hearings at (919) 733-2698.

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:

Ms. Deborah Aja
Waste Management Specialist
NC DENR- Asheville Regional Office
2090 US Highway 70
Swannanoa, NC 28778
(828) 296-4702

By:



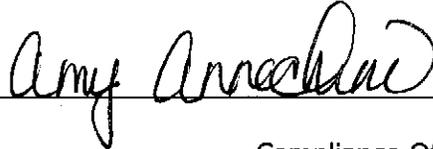
Paul S. Crissman
Chief, Solid Waste Section
Division of Waste Management
Department of Environment and Natural Resources

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:

D.R. Banks, Inc.
c/o Mr. R. Timothy Banks, President
946 Hicks Chapel Road
Marion, North Carolina 28752

Dated this 27 day of November, 2006



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