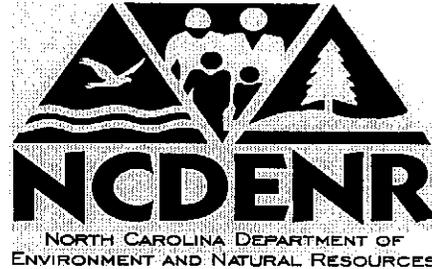


**State of North Carolina
Department of Environment
and Natural Resources**

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



THE DIVISION OF WASTE MANAGEMENT

August 13, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

City of Hickory
c/o Mr. Mick Berry, City Manager
Post Office Box 398
Hickory, North Carolina 28601

Re: **Compliance Order With Administrative Penalty**
City of Hickory Transfer Facility (Permit #18-08T), Catawba County

Dear Mr. Berry:

Enclosed is a Compliance Order With Administrative Penalty issued to the City of Hickory 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 \$13,125.00 pursuant to N.C. General Statute 130A-22(a) plus Investigative Costs in the amount of \$140.96 pursuant to N.C. General Statute 130A-22(j) for a total amount of \$13,265.96. 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.

The City of Hickory 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 Charles Gerstell at the Mooresville Regional Office at (704) 663-1699.

Sincerely,



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

Enclosure

cc: Teresa Townsend, Assistant Attorney General
Mark Poindexter, Field Operations Branch Head
Deborah Aja, Western District Supervisor
Charles Gerstell, Environmental Senior Specialist
Central Files, Solid Waste

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

In Re: City of Hickory
c/o Mr. Mick Berry, City Manager
Post Office Box 398
Hickory, North Carolina 28601

**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 the City of Hickory is in violation of certain requirements of the Act and/or Rules, as set forth below.

STATEMENT OF FACTS

1. On June 19, 2008, Mr. Charles Gerstell, Environmental Senior Specialist with the Division of Waste Management, Solid Waste Section, performed a comprehensive audit of the City of Hickory Transfer Facility (Permit #18-08T). This facility is permitted to receive solid waste as defined in 15A NCAC 13B .0101, except that hazardous and liquid wastes are prohibited from acceptance at this facility. During this inspection, Mr. Gerstell observed leachate leaking from a damaged rollout waste container and flowing into a catch basin that leads directly to the storm sewer system. This leachate was not treated prior to being released from the site into the storm sewer system. The storm sewer system empties into a tributary of Geitner Creek, approximately 125 feet south of the facility on the opposite side of 1st

COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY

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Avenue Southwest. Mr. Gerstell took digital photographs of the violation. A Notice of Violation was issued via certified mail to the City of Hickory on June 24, 2008, pursuant to 15A North Carolina Administrative Code 13B .0402(3) (Certified Mail #7007 1490 0004 4509 3085, received on June 25, 2008). The Notice of Violation stated that the City of Hickory must take corrective action measures within 7 days of its receipt to prevent further release of leachate from the site.

2. On July 9, 2008, Mr. Gerstell performed a follow-up audit to determine the status of compliance with the Notice of Violation issued on June 24, 2008. The rollout containers observed during the previous report had been removed from the site. However, during this inspection, Mr. Gerstell observed leachate leaking from two loaded City of Hickory solid waste transfer trailers that were being prepared to be taken to the Catawba County Landfill. Additionally, Mr. Gerstell observed leachate leaking from an empty City of Hickory trailer at the facility. Mr. John Yvars, Sanitation Supervisor, stated that the seals on the trailers which were designed to prevent leakage were worn out. Leachate from these trailers was flowing into the same catch basin that leads directly to the storm sewer system described on the previous inspection. This leachate was not treated prior to being released from the site into the storm sewer system. Mr. Gerstell took digital photographs of the violation. A Notice of Violation was issued via certified mail to the City of Hickory on July 17, 2008, pursuant to 15A North Carolina Administrative Code 13B .0105(c) and 15A North Carolina Administrative Code 13B .0402(3). (Certified Mail #7007 1490 0004 4509 3092)

STATEMENT OF VIOLATIONS

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

1. Section .0105(c) states:

Vehicles or containers used for the collection and transportation by whatever means, including but not limited to, highway, rail, and navigable waterway, of garbage, or refuse containing garbage, shall be covered, leakproof, durable, and of easily cleanable construction. These shall be cleaned as often as necessary to prevent a nuisance or insect breeding and shall be maintained in good repair.

The City of Hickory has violated 15A NCAC 13B .0105(c) in that on July 9, 2008, leachate was observed leaking from two loaded, solid waste transfer trailers and one empty trailer at the facility.

COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY

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2. Section .0402(3) states:

Water that comes into contact with solid waste will be contained on-site or properly treated prior to discharge from the site. An NPDES permit may be required to discharge to surface waters.

The City of Hickory has violated 15A NCAC 13B .0402(3) in that leachate was observed flowing into a catch basin that leads directly to the storm sewer system on June 19, 2008 and July 9, 2008. This leachate was not treated prior to being released from the site into the storm sewer system that empties into a tributary of Geitner Creek, approximately 125 feet south of the facility.

CONDITIONS FOR COMPLIANCE

Based on the foregoing, the City of Hickory is hereby ordered to complete the following actions within **30** days of receipt of this Compliance Order with Administrative Penalty. Additional measures may be required by the Division including groundwater and soil assessments:

1. Repair all solid waste transfer trailers to ensure that leachate is not lost from the containers. This should include but not be limited to replacing all damaged seals located on the trailers.
2. Implement corrective actions to prevent further releases of leachate from the site into the storm sewer system or adjacent properties. Any changes in procedure as to the exchanging of empty and full waste transfer trailers must be included in a revised Operations Plan.

PENALTY IMPOSED

In addition to taking the actions specified above, the City of Hickory is hereby ordered to pay in accordance with N.C. General Statute 130A-22(a), an administrative penalty of \$13,125.00 for violation of 15A N.C. Admin. Code 13B .0105(c) and .0402(3), plus investigative costs pursuant to N.C.G.S. 130A-22(j) in the amount of \$140.96, for a total amount of \$13,265.96.

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. Additionally under N.C.G.S. 130A-22(j), a portion of the total amount was assessed based on the investigative costs to the Solid Waste Section.

COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY

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The amount of this penalty and investigative costs 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 term or condition of a permit 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 continues, 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

The City of Hickory 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 you or 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.

COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY

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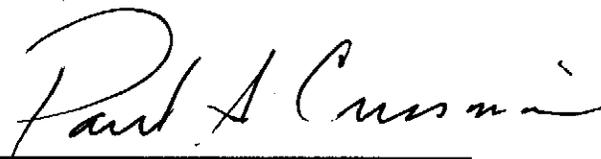
Any administrative hearing will be conducted in accordance with applicable rules contained in Title 26 of the North Carolina Administrative Code. If you file a petition for an administrative hearing within thirty (30) days in accordance with the applicable statutes and rules, payment of the penalty is 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

Whether or not you request an administrative hearing, 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:

Charles Gerstell
Environmental Senior Specialist
Mooresville Regional Office
610 East Center Avenue, Suite 301, Mooresville, NC 28115
(704) 663-1699

Note: The scheduling of an informal conference does not relieve you of the need to file your petition for an administrative hearing within the thirty-(30) day period.

By: 

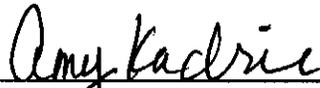
Paul S. Crissman
Chief, Solid Waste Section
Division of Waste Management
Department of Environment and Natural Resources

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Compliance Order With Administrative Penalty 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:

City of Hickory
c/o Mr. Mick Berry, City Manager
Post Office Box 398
Hickory, North Carolina 28601

Dated this 13 day of August, 2008



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