

**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**

January 31, 2008

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

Cherokee County  
c/o David Badger, County Manager  
75 Peachtree Street  
Murphy, NC 28906

Re: **Compliance Order With Administrative Penalty**  
**Cherokee County Landfill, Permit Number 20-02**

Dear Mr. Badger:

Enclosed is a Compliance Order issued to Cherokee 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. A Along with the Compliance Order is an Administrative Penalty in the amount of \$11,250.00 pursuant to N.C. General Statute 130A-22(a) plus Investigative Costs in the amount of \$819.42 pursuant to N.C. General Statute 130A-22(j) for a total penalty of \$12,069.42. 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 Mr. Troy Harrison, Environmental Senior Specialist, Division of Waste Management, at the Asheville Regional Office at (828)296-4701.

Sincerely,



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

Enclosure

cc: Teresa Townsend, Assistant Attorney General  
Mark Poindexter, Field Operations Branch  
Deb Aja, Western District Supervisor  
Troy Harrison, Environmental Senior Specialist  
Ervin Lane, Compliance Hydrogeologist  
Ed Mussler, Permitting Branch Head  
Larry Frost, Permitting Engineer  
Central Files, Solid Waste

**COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

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

Re: Cherokee County  
c/o David Badger, County Manager  
75 Peachtree Street  
Murphy, NC 28906

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

**STATEMENT OF FACTS**

1. The Cherokee County Municipal Solid Waste Landfill Facility (Permit No. 20-02) is located at 10160 US 19/74/129, in Marble, N.C., and is governed by Title 15A North Carolina Administrative Code 13B Section .1600, as specified in the permit conditions.
2. On December 18, 2007, at approximately 11:00 a.m., Ms. Deborah Aja, Western District Supervisor, and Mr. Troy Harrison, Environmental Senior Specialist with the Solid Waste Section, conducted a full compliance audit of the facility. Mr. Jeff Clark with Cherokee County Solid Waste Department was present during the audit.

**COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

3. During the audit Mr. Harrison and Ms. Aja observed an area of ponded leachate, approximately 10 feet by 30 feet in size, located near the north east corner of Phase I of the landfill. According to the facility's liner marker posts, part of the ponded leachate was outside of the landfill liner (see Attachments A and B). Based on blue print diagrams and further conversation with Mr. Clark, it was determined that there was a clean-out access to the leachate collection system located beneath the ponded leachate, which is used as an access point for the purpose of performing routine observations and maintenance. Mr. Clark stated that landfill staff would pump leachate to the collection system in response to this violation. He also stated that he would contact an engineering firm for assistance for the correction of this problem.
4. Also observed south west of the working face of Phase I, was an area of standing water on top of an inactive filled area, approximately 6 feet by 10 feet in size, which is a violation of 15A NCAC 13B .1626(8)(b). (See Attachment A)
5. On December 21, 2007, a Notice of Violation issued pursuant to 15A NCAC 13B .1626(8)(b) and (d), was sent by certified mail (Certified Mail# 7004 1350 0001 6624 6940) and was received by Mr. Hugh Carringen on December 27, 2007.

**STATEMENT OF VIOLATIONS**

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

1. Section .1626(8)(b), which states:

Surface water shall not be impounded over or in waste.

Cherokee County has violated this rule in that on December 18, 2007, standing water was observed over the inactive area of Phase I of the landfill, which is on top of covered waste.

2. Section .1626(8)(d), which states:

Leachate shall be contained on site or properly treated prior to discharge. An NPDES permit may be required prior to the discharge of leachate to surface waters.

Cherokee County has violated this rule in that on December 18, 2007, ponded leachate was observed outside of the liner based on the facility's liner markers.

**COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

**CONDITIONS FOR COMPLIANCE**

Based on the foregoing, Cherokee County is hereby ordered to take the following actions:

1. Monitor to ensure leachate is contained on site or properly treated prior to discharge in accordance with 15A NCAC 13B .1626(8)(d).
2. To assess the cause and impact of the leachate release outside of the waste cell, 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. The professional geologist shall consult with the Solid Waste Section Hydrogeologist about the site prior to developing the plan. The Section will review the submitted plan, approve it, or request more information or amendments before implementation. The plan shall be implemented as approved. Within 60 days, submit this plan to:

Ervin Lane  
Compliance Hydrogeologist  
NC DENR – Division of Waste Management  
Solid Waste Section  
401 Oberlin Road, Suite 150  
1646 Mail Service Center  
Raleigh, NC 27699-1646

3. Within 30 days, submit a report on the cause of the leachate release and a plan for the prevention of leachate migration outside the liner. This plan shall be prepared in accordance with 15A NCAC 13B .1626(12). This plan will be considered an application for a permit modification and approval by the Solid Waste Section will be required prior to any operational changes or modifications of the leachate collection system.
4. Within 30 days, submit a revised operations plan for routine inspections of the leachate system and the revised operation plan will include provisions for annual cleaning of the leachate collection system. This plan shall be prepared in accordance with 15A NCAC 13B .1626(12). Submit the application for permit modification and revised operation plan to:

Ed Mussler, Permitting Branch Head  
NC DENR – Division of Waste Management  
Solid Waste Section  
410 Oberlin Road, Suite 150  
1646 Mail Service Center  
Raleigh, North Carolina 27699-1646

Also submit a copy of the application for permit modification and revised operation plan to:

**COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

Larry Frost, Permitting Engineer  
NC DENR – Division of Waste Management  
Asheville Regional Office  
2090 US Highway 70  
Swannanoa, NC 28778

**NOTE: The above submittals require a permit modification and therefore a permit application fee for a municipal solid waste landfill modification will apply.**

**PENALTY IMPOSED**

In addition to taking the actions specified above, Cherokee County is hereby ordered to pay in accordance with N.C. General Statute 130A-22(a), an administrative penalty of \$12,069.42 for violation of 15A NCAC 13B .1626(8)(d).

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

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 \$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

## **COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

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**

Cherokee County 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.

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**

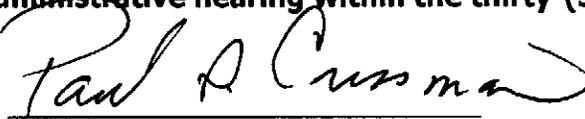
Whether or not you request an administrative hearing, the Division encourages you to schedule an informal conference to discuss this matter and to give you an opportunity to provide additional information, including any actions you have taken to correct the violation(s). If you desire an informal conference, please contact:

Troy Harrison  
Environmental Senior Specialist

**COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

NC DEHNR – Division of Waste Management  
Solid Waste Section  
2090 US Highway 70  
Swannanoa, NC 28778  
(828) 296-4500

**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

**COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

**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:

Cherokee County  
c/o David Badger, County Manager  
75 Peachtree Street  
Murphy, NC 28906

Dated this 31 day of January, 2008

Amy Kadrie

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