State of North Carolina
Department of Environment
and Natural Resources

Michael F. Easley, Governor
William G. Ross, Jr., Secretary
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NCDENR
NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

THE DIVISION OF WASTE MANAGEMENT

October 23, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

City of Durham
c/o Mr. Donald Long, Solid Waste Director
1833 Camden Avenue
Durham, North Carolina 27704

Re: **Compliance Order With Administrative Penalty**
City of Durham Yard Waste Compost Facility, Permit #32-04 SWC

Dear Mr. Long:

Enclosed is a Compliance Order issued to the City of Durham, 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. Mary Whaley, Waste Management Specialist, Division of Waste Management, at the Raleigh Central Office at (919) 508-8496.

Sincerely,

Paul S. Crissman

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

Enclosure

cc: Lauren Clemmons, Assistant Attorney General
Mark Poindexter, Field Operations Branch
Mary Whaley, Waste Management Specialist
Central Files, Solid Waste

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

Re: **City of Durham**
c/o Mr. Donald Long, Solid Waste Director
1833 Camden Avenue
Durham, North Carolina 27704

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, Solid Waste Section Chief, 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 Durham is in violation of certain requirements of the Act and/or Rules, as set forth below.

STATEMENT OF FACTS

1. On August 17, 1998, Mr. Ted Lyon, Compost and Land Application Branch Supervisor, Solid Waste Section, Division of Waste Management sent a letter to Ms. Nancy Newell, City of Durham, which stated that the City of Durham Yard Waste Facility (Permit #32-04 SWC), located at 2115 East Club Boulevard, Durham, North Carolina, Durham County, had expired on November 26, 1996. The letter informed the City of Durham that if a properly completed permit application was not received within ninety (90) days, further compliance action would be taken.

2. On July 7, 1999, the Solid Waste Section issued a permit to operate a Large Type 1 Solid Waste Compost Facility to the City of Durham (Permit #32-04 SWC). Permit Condition No. 11 of Permit #32-04 SWC, stated that the permit would expire on July 7, 2004.

3. On July 15, 2004, Mr. Roosevelt Carter, Waste Disposal and Recycling Manager, Department of Solid Waste, City of Durham, submitted an application to request the renewal of Permit #32-04 SWC.

4. On December 1, 2004, Mr. Lyon sent a letter to Mr. Carter, listing the issues that needed to be addressed in the July 15, 2004, permit application before the review of the application could be completed.

5. Upon information and belief, a fire occurred at the facility sometime during the year 2004. The City of Durham, however, did not inform the Division of this event.

6. On June 30, 2005, Ms. Anita Daniels, Assistant to the Director of Solid Waste, City of Durham, sent a fax to Mr. Lyon (hard copy received by Mr. Lyon on July 6, 2005) responding to the issues addressed by Mr. Lyon in the December 1, 2004 letter.

7. On July 21, 2005, Mr. Dennis Shackelford, Waste Management Specialist, Solid Waste Section, Division of Waste Management and Mr. Lyon, conducted an inspection of the City of Durham Compost Facility. Mr. Carter and Ms. Daniels were present. Mr. Shackelford and Mr. Lyon pointed out numerous operational items that needed to be corrected. Mr. Shackelford took photographs. On August 4, 2005, Mr. Lyon sent a letter to Ms. Daniels as a follow up to their inspection, which listed the issues that needed to be addressed before the Division could complete its review. Mr. Shackelford sent an audit report regarding this visit to Mr. Carter on August 22, 2005.

8. On September 22, 2005, Mr. Shackelford returned to the facility with Mr. Bill Patrakis, Environmental Biologist, Solid Waste Section, Division of Waste Management. Mr. Shackelford noted on his audit report that a permit needed to be secured no later than November 1, 2005.

9. On June 1, 2006, Mr. Shackelford revisited the facility to perform a comprehensive audit. Mr. Patrakis, Ms. Daniels, and Mr. Carter were in attendance. As a result of this audit, an audit report including a Notice of Violation was mailed to Mr. Carter on June 22, 2006 (Certified Mail with Return Receipt Requested #7001 2510 0003 8088 7929, signed by Mr. Carter on June 26, 2006). The Notice of Violation was issued pursuant to 15A NCAC 13B .0201(a) because the City of Durham was operating this facility without a valid permit.

10. On August 8, 2006, Mr. Shackelford and Ms. Mary Whaley, Waste Management Specialist, Solid Waste Section, Division of Waste Management, performed a follow up

audit of the facility. Mr. Patrakis and Mr. Carter were present. Ms. Whaley noted on her audit report that the violation noted on the June 1, 2006, audit had not been resolved.

11. On August 16, 2006, Mr. Lyon received a letter by fax from Mr. Carter requesting an extension of the permit.

12. On August 21, 2006, Mr. Lyon sent Mr. Carter a letter denying the request.

13. On or about September 6, 2006, Ms. Whaley began drafting a Notice Of Intent to Issue a Compliance Order With Administrative Penalty For the City of Durham Yard Waste Compost Facility, Permit #32-04 SWC for operating without a permit in violation of .0201(a).

14. On Monday, September 11, 2006, just before 8:00 a.m., Ms. Whaley received a call from Jay Reinstein, City of Durham, Assistant Solid Waste Director. Mr. Reinstein stated that at approximately 7:00p.m., on Sunday, September 10, 2006, the Durham Fire Department reported that the unprocessed yard waste debris was on fire at the City of Durham Yard Waste Compost Facility. Mr. Reinstein thought the fire started by spontaneous combustion. Mr. Reinstein also stated that a fire lane had been cut down to the bare ground and the mulch piles had been pulled back from the burning area.

15. On Tuesday, September 12, 2006, Ms. Whaley issued the Notice of Intent to Issue a Compliance Order With Administrative Penalty to the City of Durham regarding the Yard Waste Compost Facility, Permit No. 32-04 SWC (Certified Mail with Return Receipt Requested # 7005 1820 0003 4169 5030, signed for on September 13, 2006). The Notice required the City of Durham to, among other things, cease accepting waste at the facility and secure a valid permit from the Division.

    Ms. Whaley inspected the Durham Yard Waste Compost Facility site around 3:30 p.m. Mr. Donald Long, City of Durham, Solid Waste Director, and Mr. Reinstein were at the site. Ms. Whaley saw smoke and visually confirmed that the waste was burning. The burning debris was from 10 to 20 feet deep in places and covered over an acre in size. Ms. Whaley expressed her concern that the fire breaks had not been excavated to the original ground surface and that the mulch piles had not been moved away from the burning debris and there was no other active work on trying to extinguish the fire. In addition, the unprocessed wood waste that was burning was not separated into windrows in accordance with Permit #32-04 SWC Condition No. 1, which required windrows to be placed at least 20 feet apart. Ms. Whaley emphasized the need to be actively trying to put the fire out with all available resources and not just letting it burn itself out, as Mr. Reinstein reported was suggested by the fire department. The fire could be traveling through the burning pile and could spread to adjacent piles. At approximately 9:00 p.m., Ms. Whaley received a call from Mr. Reinstein who said that the fire department had come back to the site and was putting water on the fire. He said that the City had someone from DENR-Forestry service going to the site first thing

in the morning to advise on the process to get the fire out. He said that they were also getting equipment to cut a fire lane.

16. On Wednesday, September 13, 2006, Ms. Whaley inspected the Yard Waste facility. Waste was still burning. In some places, the fire had consumed the waste to the point where the depth of the burning waste was cut down by approximately two feet. The fire lane had still not been cut. Mr. Long and Mr. Reinstein said the equipment was coming in at noon to cut the fire lane. Ms. Whaley observed that some of the mulch had been pulled back from the burning debris.

17. On Thursday, September 14, 2006, Ms. Whaley sent a revised version of the Notice of Intent to Issue a Compliance Order with Administrative Penalty to the City of Durham to correct the date that the permit expired (Certified Mail with Return Receipt requested # 7005 1820 0003 4169 5054, signed for on September 15, 2006).

18. On Friday, September 15, 2006, Ms. Whaley returned to the facility. She observed that the fire was still burning and the fire lane had been cut down to the bare soil, on the topside of the burning area. She observed that the mulch pile was located approximately 15 feet to the burning area and was still too close.

19. On Saturday, September 16, 2006, Ms. Whaley went to the facility and spoke with Mr. Reinstein and Julia Mullen, Program Analyst, City of Durham, Solid Waste Section. Mr. Reinstein told Ms. Whaley that the grinding contractor, King and Martin, had a subcontractor coming in Monday to evaluate the site in regards to putting the fire out, and that equipment to put the fire out would be there Tuesday. Mr. Reinstein stated that the fire department was still coming out every three hours and checking the site. Ms. Whaley observed that there was still heavy smoke at the site.

20. On Wednesday, September 20, 2006, Ms. Whaley was informed by Ms. Mullen that the City of Durham had started to pull apart the burning debris and put water on it.

21. On Saturday, September 23, 2006, Mr. Reinstein called Ms. Whaley and reported that the fire was extinguished at approximately 2 p.m. He said that they had put foam on it and there were no more flames or smoke. The volume of waste that burned over the ten day period was approximately 13,025 cubic yards and covered at least 1.25 acres.

HISTORY OF NON-COMPLIANCE

1. On June 9, 1998, a Notice of Violation was issued to the City of Durham Compost Facility (Permit #32-04 SWC) for violating 15A N.C. Admin. Code Subchapter 13B .1406(6) and .1406(8)(b).

2. One March 8, 1999, a Notice of Violation was issued to the City of Durham Compost Facility (Permit #32-04 SWC) for violating 15A N.C. Admin. Code Subchapter 13B .1406(6).

3. On November 4, 1999, a Notice of Violation was issued to the City of Durham Compost Facility (Permit #32-04 SWC) for violating Permit Condition No. 10.

4. On February 18, 2004, the City of Durham was issued a Compliance Order With Administrative Penalty for failing to remove chlorofluorocarbon refrigerants from discarded white goods at its facility located on Camden Avenue.

STATEMENT OF VIOLATIONS

The above facts constitute a violation of the following section of Title 15A N.C. Admin. Code Subchapter 13B:

1. Section .0201(a) requires that:

> No person shall establish, or allow to establish on his land, a solid waste management facility, or otherwise treat, store, or dispose of solid waste unless a permit for the facility has been obtained from the Division.

The City of Durham has violated *15A NCAC 13B .0201(a)* by operating its Yard Waste Compost Facility after Permit #32-04 SWC expired on July 7, 2004. The City did not supply the information needed in order for the Division to renew the permit. The City if Durham Yard Waste Compost Facility continued to operate without a permit.

2. Section .1406 (7)(a) provides that:

> Open burning of solid waste is prohibited.

The City of Durham was operating its solid waste management facility, located at 2115 East Club Boulevard, as a yard waste composting facility. The City of Durham violated the operational requirements for such a facility, specifically the prohibition in 15A NCAC 13B .1406(7)(a), by failing to properly manage the solid waste at the facility in a manner to prevent the open burning of the waste, which caught fire and burned for 13 days.

CONDITIONS FOR COMPLIANCE

Based on the foregoing, you are hereby ordered to comply with 15A NCAC 13B by taking the following actions:

1. Immediately cease accepting waste at the facility.

2. Within 30 days, dispose of all debris at the facility to a facility that is permitted to receive the yard waste.

3. Secure a valid permit from the Division of Waste Management prior to operating the Yard Waste Compost Facility.

PENALTY IMPOSED

In addition to taking the actions specified above, the City of Durham is hereby ordered to pay in accordance with N.C. General Statute 130A-22(a), a total administrative penalty of $7,750.00 for violations of 15A NCAC 13B .0201(a) ($3,750.00) and .1406(7)(a) ($4,000.00).

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 <u>certified check or money order</u> 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

The City of Durham 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:

Mary Whaley
Waste Management Specialist
NC DENR – Division of Waste Management
Solid Waste Section
401 Oberlin Road, Suite 150
1646 Mail Service Center
Raleigh, NC 27699
(919) 508-8523

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

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 Durham
c/o Mr. Roosevelt Carter, Waste Disposal
and Recycling Manager
1833 Camden Avenue
Durham, North Carolina 27704

Dated this 23 day of October, 2006

Amy Annechino

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