

DURHAM



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CITY OF MEDICINE

**CITY OF DURHAM**

OFFICE OF THE CITY ATTORNEY  
101 CITY HALL PLAZA • DURHAM, NC 27701  
919.560.4158 • fax 919.560.4660  
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November 22, 2006

Ms. Mary Penny Thompson  
General Counsel  
NC Department of Environment and Natural Resources  
1601 Mail Service Center  
Raleigh, North Carolina 27699-1601

✓ Mr. Paul S. Crissman  
Chief, Solid Waste Section  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
1646 Mail Service Center  
Raleigh, NC 27699

Re: Petition for Administrative Hearing  
City of Durham Yard Waste Compost Facility, Permit #32-04 SWC

Dear Ms. Thompson and Mr. Crissman:

Enclosed please find a Petition for Administrative Hearing from the City of Durham concerning the Compliance Order with Administrative Penalty with regard to the City's Yard Waste Compost Facility issued by the NCDENR Division of Waste Management ("DWM") on October 23, 2006, and received by the City of Durham on October 24, 2006.

City staff has been working with DENR staff in good faith, and with appreciation, to come to agreement on a consent order in this matter. The enclosed petition preserves the City's right to appeal the Compliance Order while we continue what we believe has been a productive process.

With best wishes for a happy and safe holiday,

Sherri Zann Rosenthal  
Assistant City Attorney

DURHAM



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November 22, 2006

Clerk  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, North Carolina 27699-6714

Dear Sir or Madam:

Enclosed please find an original and one copy of the Petition for a Contested Case Hearing filed by facsimile with your office on this day.

Sincerely,

Sherri Zann Rosenthal  
Assistant City Attorney

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

COUNTY OF DURHAM

CITY OF DURHAM

PETITIONER,

v.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RESPONDENT.



PETITION FOR A CONTESTED CASE HEARING

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:

On October 23, 2006, and received by the City of Durham on October 24, 2006, the NCDENR Division of Waste Management ("DWM") issued a "Compliance Order with Administrative Penalty, City of Durham Yard Waste Compost Facility, Permit #32-04 SWC" ("Compliance Order").

The Compliance Order imposes an administrative penalty of \$7,750.00. It also alleges that the City violated 15A NCAC 13B.0201(a) by operating its yard waste compost facility after Permit #32-04 expired on July 7, 2004. In fact, the City was in the process of renewing its permit, in communication with DWM, until August 21, 2006, when DWM issued a letter declining to extend the City's permit. The City arguably did not operate without a permit until that date. The Compliance Order alleges that the City violated 15A NCAC 13B.1406(7)(a), which prohibits open burning of solid waste. The City did not, however, intentionally burn solid waste. Yard waste at the City's compost facility spontaneously ignited. Rather than lighting the fire, the City worked aggressively to extinguish it.

The City has been working diligently and in good faith with DWM to informally arrive at an administrative consent agreement. Due to holiday time constraints, however, an agreement will not be finalized before the submittal deadline for this Petition. The City therefore submits this Petition to preserve an appeal in the unlikely event that an agreement between the parties does not occur.

(4) Because of these facts, the State agency or board has: (check at least one from each column)

- |   |   |
|---|---|
| <input type="checkbox"/> deprived me of property;                                 | <input type="checkbox"/> exceeded its authority or jurisdiction;          |
| <input checked="" type="checkbox"/> ordered me to pay a fine or civil penalty; or | <input checked="" type="checkbox"/> acted erroneously;                    |
| <input checked="" type="checkbox"/> otherwise substantially prejudiced my rights; | <input type="checkbox"/> failed to use proper procedure;                  |
| <b>AND</b>  | <input checked="" type="checkbox"/> acted arbitrarily or capriciously; or |
|   | <input type="checkbox"/> failed to act as required by law or rule.        |

(5) Date: November 22, 2006

(6) Your phone number: (919) 560-4158

(7) Print your full address: Sherri Zann Rosenthal, Assistant City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701  
(street address/p.o. box) (city) (state) (zip)

(8) Print your name: Sherri Zann Rosenthal

(9) Your signature:

You must mail or deliver a COPY of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

**CERTIFICATE OF SERVICE**

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed OR by delivering it to the named agency or board:

## CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed **OR** by delivering it to the named agency or board:

(10) Ms. Mary Penny Thompson, General Counsel (11) NC Department of Environment and Natural Resources  
(name of person served) (State agency or board listed on line 3)

(12) 1601 Mail Service Center, Raleigh, North Carolina 27699-1601  
(street address/p.o. box) (city) (state) (zip code)

(13) This the 22<sup>nd</sup> day of November, 2006.

(14) \_\_\_\_\_  
(your signature)

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When you have completed this form, you **MUST** mail or deliver the **ORIGINAL AND ONE COPY** to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

