



5. Pursuant to N.C.G.S. §150B-22 and N.C.G.S. § 150B-31, the parties have decided to resolve Contested Case 06 EHR 2196 in the manner set forth below and agree that Contested Case 06 EHR 2196 is concluded and that no further proceedings are required to resolve it.

### AGREEMENT

1. For purposes of this Agreement, the City of Durham admits that it operated the Yard Waste Compost Facility located at 2115 East Club Boulevard, Durham, North Carolina, without a permit and violated 15A NCAC 13B .0201(a). It further admits that solid waste at the Yard Waste Compost Facility caught on fire beginning on Sunday, September 10, 2006, that this fire burned thereafter through September 23, 2006, and that the burning of this waste violated 15A NCAC 13B .1406(7)(a). The City of Durham admits these facts and violations for the sole purpose of the resolution of the Compliance Order as between the parties, and such admissions are not for the benefit of, to be relied upon, or to be used by any third parties. The City of Durham reserves the right to contest liability or fault as to any claims or actions brought against it by any third parties for any actions or events concerning the fire at the Yard Waste Compost Facility.

2. Respondent DENR, by entering into this Settlement Agreement, does not concede to any allegation or contention raised by Petitioner in Contested Case 06 EHR 2196, including the contentions that the agency acted erroneously or arbitrarily and capriciously in assessing the penalties, and contends that it did not exceed its authority or jurisdiction, act erroneously, act arbitrarily or capriciously, or fail to act as required by law or rule when it assessed the administrative penalties against Petitioner.

3. The City of Durham represents that on December 19, 2006, the City of Durham ceased accepting solid waste, including yard waste, at its Facility at 2115 East Club Boulevard, Durham, North Carolina, that it is no longer operating the Facility as a Yard Waste Compost Facility, and that the yard waste stream is being managed at the City's transfer station. The City has an application for a yard waste facility at the 2115 East Club Boulevard location pending with the Division.

4. The City of Durham shall comply with the Facility clean-up and closure requirements set forth in Attachment 1, which are incorporated herein.

5. The City of Durham agrees that it shall not operate any solid waste management facility, including a yard waste composting facility, at 2115 East Club Boulevard, Durham, North Carolina, without first securing a permit from the Division of Waste Management. As a condition precedent to securing a permit from the Division to operate a solid waste management facility at this location, the City shall remove all materials contained in Piles 1a, 1b, 2, 3a, 3b, and 3c, in accordance with the requirements set forth in Attachment 1, incorporated herein. This condition precedent applies notwithstanding that any application for a permit submitted by the City of Durham may otherwise meet all applicable permitting criteria. The City of Durham acknowledges and agrees that nothing in this Agreement or Attachment shall be construed or asserted by the City of Durham as

a guarantee by the Division that any permit shall or will be issued to the City at this location.

6. The City of Durham agrees to pay the sum of Seven-Thousand Seven-Hundred Fifty-Dollars and No Cents (\$7,750.00), which constitutes the entire penalty, within fifteen (15) days of the effective date of this agreement. Payment of this sum of \$7,750.00 shall be made by check payable to the North Carolina Department of Environment and Natural Resources. Timely payment in this amount will constitute a full and complete discharge of the obligation to pay the penalty amount. The City of Durham shall be in default if the payment is not received by the Division on or before the deadline set forth in this Paragraph. In the event of default, the Division shall have the right to exercise its authority to institute a civil action in superior court to collect the penalty.

7. Within five (5) business days after this Settlement Agreement is signed by the parties, Petitioner shall file a notice of voluntary dismissal with prejudice in Contested Case 06 EHR 2196 in the Office of Administrative Hearings.

8. The City of Durham expressly stipulates and acknowledges that, by entering this Administrative Consent Agreement, the City waives all defenses to collection of the penalty and that the issue in any action to collect said penalty will be limited to the payment or non-payment thereof in accordance with the terms of this Agreement.

9. Nothing in this Agreement shall be construed to restrict the right of DENR, the Division of Waste Management, or the Solid Waste Section, to exercise its statutory and regulatory enforcement authority to initiate any action against the City of Durham for any new or other violation, said other violation not arising out of the facts set forth in the Compliance Order of October 23, 2006, of the North Carolina Solid Waste Management Act, the North Carolina Solid Waste Management Rules; any other law or rule that the agency administers. With respect to all deadlines for the removal of materials from the Facility as set forth in Attachment 1, the City of Durham acknowledges that its failure to complete the removal of the identified materials in accordance with any one or more of the deadlines in said paragraphs shall constitute a violation of 15A NCAC 13B .0103(a), .0201(a), .0501, .0502 and shall subject the City of Durham to penalties, injunctive relief, or other legal action subject to the discretion of the Division of Waste Management.

10. The parties irrevocably waive any right to appeal from this Agreement, assuming such right exists, except that either party may, at its option, seek judicial intervention to enforce the terms of this Agreement.

11. This Agreement is final and binding on the parties, their successors, and assigns, upon execution of the undersigned, who represent and warrant that they are authorized to execute this Agreement on behalf of the parties' hereto and bind the parties to the terms and conditions of this Agreement and its Attachment.

12. The parties agree and acknowledge that this Agreement and the Attachment sets forth all terms and conditions between them concerning the subject matter of this

Agreement, and that there are no terms or conditions between the parties except as specifically set forth herein.

13. This Agreement is effective on the last date that any signatory to the Agreement shall affix his or her signature.

In WITNESS WHEREOF, the parties hereby agree to the preceding terms, as evidenced by the signatures set forth below.

North Carolina Department of  
Environment and Natural Resources

Paul S. Crissman Date 4-2-07  
Paul S. Crissman,  
Chief, Solid Waste Section,  
Division of Waste Management

Attorney for Respondent  
Roy Cooper  
Attorney General

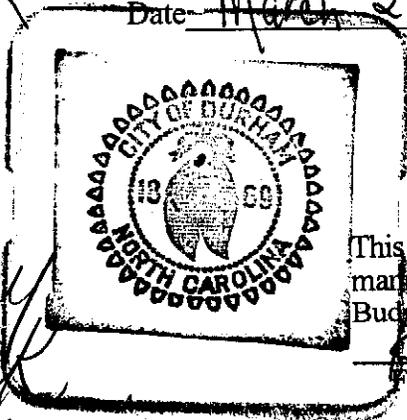
Lauren M. Clemmons Date 4/2/07  
Lauren M. Clemmons  
Assistant Attorney General  
9001 Mail Service Center  
Raleigh, NC 27699-9001

Attorney For City of Durham

Sherri Zann Rosenthal Date 3/29/07  
Sherri Zann Rosenthal  
Assistant City Attorney  
City of Durham  
101 City Hall Plaza  
Durham, N.C. 27701

City of Durham

Patrick W. Baker Date March 29, 2007  
Patrick W. Baker  
City Manager  
City of Durham  
101 City Hall Plaza  
Durham, N.C. 27701



Attest: Dawn Gray  
City Clerk  
3-29-07

This instrument has been preaudited in the  
manner required by the Local Government  
Budget and Fiscal Control Act.  
[Signature] 3/29/07  
FINANCE OFFICER DATE

## ATTACHMENT 1

1. The City of Durham acknowledges that piles of waste material, as well as usable, composted waste material, remain at the Facility, as identified as Piles 1a, 1b, 2, 3a, 3b, 3c, 4a, 4b, 4c, 5a, 5b, 6, and Compost Windrows in the **Map** attached hereto and incorporated herein, as well as described herein.

### 2. Removal of Piles 1a, 1b, 2, 3a, 3b, and 3c.

The City of Durham shall remove the materials contained in Piles 1a and 1b no later than **August 31, 2007**, and shall remove the materials contained in Piles 2, 3a, 3b, and 3c no later than **June 30, 2007**, and shall transport said materials for disposal, in accordance with the solid waste management regulations, 15A NCAC Chapter 13B, to a facility permitted by the Division to receive the materials for disposal. Descriptions of these piles are as follows:

#### Pile 1a

Pile 1a consists of old, mixed waste material, including dirt, organic matter, and pieces of plastic, as well as stumps, and is located behind the south side of the Facility. Pile 1a is an area feature consisting of approximately 0.12 acres and outlined on the Map by points E, F, G, L and M, which correspond to the following UTM coordinates:

E	693437.93	3990209.05
F	693428.36	3990229.56
G	693411.05	3990244.14
L	693432.92	3990202.68
M	693402.39	3990237.76

#### Pile 1b

Pile 1b also consists of old, mixed waste material, including dirt, organic matter, and pieces of plastic, as well as stumps, and is located behind the south side of the Facility. Pile 1b is an area feature consisting of approximately 0.25 acres and outlined on the Map by points D, E, J, K, L, which correspond to the following UTM coordinates:

D	693479.85	3990216.35
E	693437.93	3990209.05
J	693509.02	3990216.35
K	693509.47	3990198.12
L	693432.92	3990202.68

#### Pile 2

Pile 2 consists of garbage-contaminated waste material, including plastics and paper litter, and is located along and in the ditch along

the west side of the north half of the Facility. Pile 2 is an area feature consisting of approximately 0.34 acres and outlined on the Map by points WW, XX, YY, ZZ, AAA, and BBB, which correspond to the following UTM coordinates:

WW	693449.32	3990360.80
XX	693442.94	3990420.03
YY	693425.63	3990421.86
ZZ	693422.89	3990401.81
AAA	693418.34	3990392.24
BBB	693432.92	3990365.81

#### Pile 3a

Pile 3a is a windrow of old, mixed waste material consisting mostly of decomposed yard debris with some plastic bag debris, and located to the west of the burn area. Pile 3a is an area feature consisting of approximately 0.08 acres feature and outlined on the Map by points RR, SS, TT, UU, and VV, which correspond to the following UTM coordinates:

RR	693457.53	3990378.57
SS	693454.79	3990417.76
TT	693450.24	3990421.40
UU	693447.50	3990401.81
VV	693452.97	3990376.74

#### Pile 3b

Pile 3b is a windrow of old, mixed waste material consisting mostly of decomposed yard debris with some plastic bag debris, and located to the west of the burn area. Pile 3b is an area feature consisting of approximately 0.23 acres and outlined on the Map by points GG, HH, II, JJ, OO, PP, and QQ, which correspond to the following UTM coordinates:

GG	693475.75	3990376.29
HH	693470.74	3990418.67
II	693468.92	3990435.98
JJ	693477.58	3990460.59
OO	693472.11	3990461.96
PP	693458.44	3990431.43
QQ	693466.18	3990378.11

#### Pile 3c

Pile 3c is a windrow of old, mixed waste material consisting mostly of decomposed yard debris with some plastic bag debris, and located to the west of the burn area. Pile 3c is an area feature consisting of approximately 0.08 acres and outlined on the Map by points CCC, DDD,

EEE, FFF, GGG, and HHH, which correspond to the following UTM coordinates:

CCC	693437.93	3990423.22
DDD	693441.58	3990433.25
EEE	693456.61	3990453.30
FFF	693452.06	3990456.03
GGG	693432.92	3990438.72
HHH	693430.64	3990423.68

### 3. Removal of "Compost Windrows"

The City of Durham acknowledges at the time of the signing of this Agreement that approximately fifteen (15) windrows of yard waste material are located at the south end of the Facility. These windrows contain ground-up yard waste material and composted yard waste material. The Division of Waste Management agrees that the City of Durham shall have up to and including **September 1, 2007**, in which to remove all materials in each windrow from the Facility through sale or for disposal, in accordance with the solid waste management regulations, 15A NCAC Chapter 13B, to a facility permitted by the Division to receive the material disposal. The City of Durham shall not add new yard waste or other solid waste to the windrows. In addition to the documentation required by Paragraph 8 below, the City of Durham shall provide written notification to Ms. Mary Whaley, Waste Management Specialist, upon the City's complete removal of a windrow and shall include a photograph showing the cleared area. Said notification shall occur within 3 business days of the completion of the removal. Pending the removal of the windrowed materials, the City of Durham shall manage the windrows in accordance with 15A NCAC 13B .1406, .1407, and .1408. The description of the "Compost Windrows" is as follows:

This area feature is identified in the Map as "Compost Windrows," consists of approximately 2.69 acres and is outlined on the Map by points A, B, C, D, E, F, G, H, I, which correspond to the following UTM coordinates:

A	693554.59	3990298.37
B	693577.37	3990262.37
C	693544.11	3990233.66
D	693479.85	3990216.35
E	693437.93	3990209.05
F	693428.36	3990229.56
G	693411.05	3990244.14
H	693398.29	3990285.61
I	693480.31	3990287.89

#### 4. Removal of Pile 3d

Pile 3d shall be removed from the Facility through sale or for disposal, in accordance with the solid waste management regulations, 15A NCAC Chapter 13B, to a facility permitted by the Division to receive the material disposal for disposal, on or before **June 30, 2007**. The City of Durham shall manage the material in accordance with 15A NCAC 13B .1406, .1407, and .1408, pending its removal. The description is as follows:

Pile 3d consists of ground-up, usable, yard waste material and is an area feature consisting of approximately 0.09 acres and outlined on the Map by points JJ, KK, LL, MM, NN, OO, which correspond to the following UTM coordinates:

JJ	693478.03	3990460.13
KK	693488.06	3990476.99
LL	693486.23	3990487.02
MM	693487.15	3990495.22
NN	693482.13	3990497.95
OO	693472.11	3990461.96

#### 5. Removal of Piles 4a, 4b, and 4c

Piles 4a, 4b, and 4c consist of old, ground-up yard waste and composted yard waste material, and each is located in a flood plain. The City of Durham shall move Piles 4a, 4b, and 4c out of the flood plain by **April 28, 2007**, unless the Division of Water Quality requires that any one or more of the Piles be removed prior to this date. After Piles 4a, 4b, and 4c are removed from the flood plain, the City of Durham shall, within ten business days of relocation of the piles on the Facility, establish the GPS or UTM coordinates for the new location of the piles at the Facility and report the location to Ms. Mary Whaley in writing. The City of Durham subsequently shall remove the materials in Piles 4a, 4b, and 4c from the Facility through sale or for disposal, in accordance with the solid waste management regulations, 15A NCAC Chapter 13B, to a facility permitted by the Division to receive the material disposal for disposal, on or before **August 31, 2007**. The City of Durham shall manage the material in accordance with 15A NCAC 13B .1406, .1407, and .1408, pending its removal. The descriptions of the piles are as follows:

##### Pile 4a

Pile 4a is an area feature consisting of approximately 0.09 acres and outlined on the Map by points SSS, TTT, UUU, VVV, WWW, and XXX, which correspond to the following UTM coordinates:

SSS	693413.33	3990451.93
TTT	693432.01	3990477.45
UUU	693444.77	3990491.12

VVV	693441.58	3990493.85
WWW	693428.36	3990486.11
XXX	693409.68	3990464.23

Pile 4b

Pile 4b is an area feature consisting of approximately 0.09 acres and outlined on the Map by points III, JJJ, KKK, and LLL, which correspond to the following UTM coordinates:

III	693429.27	3990446.01
JJJ	693435.65	3990461.50
KKK	693430.64	3990464.23
LLL	693423.35	3990446.46

Pile 4c

Pile 4c is an area feature consisting of approximately 0.09 acres and outlined on the Map by points MMM, NNN, OOO, PPP, QQQ, and RRR, which correspond to the following UTM coordinates:

MMM	693453.88	3990471.53
NNN	693467.55	3990486.11
OOO	693474.39	3990496.59
PPP	693469.37	3990497.95
QQQ	693458.44	3990489.75
RRR	693444.77	3990469.25

6. Removal of Piles 5a and 5b.

The City of Durham shall remove the materials in Pile 5a and Pile 5b by sale or for disposal, in accordance with the solid waste management regulations, 15A NCAC Chapter 13B, to a facility permitted by the Division to receive the material disposal for disposal, on or before **June 30, 2007**. The City of Durham shall manage the material in accordance with 15A NCAC 13B .1406, .1407, and .1408, pending its removal. Piles 5a and 5b consist of windrows of usable, ground-up yard waste material located south of the burn area and are described as follows:

Pile 5a

Pile 5a is an area feature consisting of approximately 0.09 acres and outlined on the Map by points CC, DD, EE, and FF, which correspond to the following UTM coordinates:

CC	693462.99	3990358.52
DD	693514.03	3990355.33
EE	693514.49	3990358.97
FF	693461.63	3990363.99

### Pile 5b

Pile 5b is an area feature consisting of approximately 0.09 acres and outlined on the Map by points Y, Z, AA, and BB, which correspond to the following UTM coordinates:

Y	693458.44	3990346.67
Z	693523.14	3990343.94
AA	693519.50	3990352.14
BB	693455.25	3990355.78

### 7. Removal of Pile 6

Pile 6 consists of a buried yard waste (approximately ten feet deep) and is covered with burned material and clay. It is located in the southwest corner of the Facility and is an area feature consisting of approximately 0.36 acres and outlined on the Map by points N, O, P, Q, R, S, T, U, V, W, and X, which correspond to the following UTM coordinates:

N	693385.53	3990275.13
O	693360.47	3990274.22
P	693361.83	3990260.55
Q	693363.66	3990249.61
R	693349.53	3990275.13
S	693348.62	3990261.00
T	693348.62	3990246.42
U	693335.86	3990273.76
V	693335.40	3990261.91
W	693334.95	3990248.70
X	693320.37	3990264.65

The disposal of this waste is without a permit as required by the solid waste management regulations, 15A NCAC Chapter 13B. The City of Durham shall excavate the waste material and shall manage it by removing the waste material for composting to a facility permitted by the Division for yard waste composting, including any yard waste composting facility permitted to the City of Durham at 2115 East Club Boulevard, Durham, North Carolina, or by removing the waste material for disposal, in accordance with the solid waste management regulations, 15A NCAC Chapter 13B, to a facility permitted by the Division to receive the material for disposal. The City of Durham shall act to excavate and remove the waste material in accordance with the following schedule:

- a) on or before **August 31, 2007**, excavate and remove for composting or disposal the waste material contained within the section of Pile 6 outlined by points O, P, Q and N on the Map;

b) on or before **April 30, 2008**, excavate and remove for composting or disposal the waste material contained within the section of Pile 6 outlined by points R, S, T, Q, P and O on the Map;

c) on or before **May 30, 2008**, excavate and remove for composting or disposal the waste material contained within the section of Pile 6 outlined by points U, V, W, T, S, and R on the Map; and

d) on or before **December 31, 2008**, excavate and remove for composting or disposal the waste material contained within the section of Pile 6 outlined by points X, U, V, and W on the Map.

8. With respect to all materials sold or disposed of in accordance with the requirements set forth in this Attachment, the City of Durham shall maintain records of all sale and disposal transactions including, but not limited to, the date of the transaction, the amount of material sold or disposed, the buyer of the material or the solid waste facility to which the material was transported for disposal, and the sale price or the cost of disposal. With respect to any materials in Pile 6 as described in Paragraph 7 above that are removed for composting to a permitted yard waste composting facility, the City of Durham shall maintain records of all amounts removed for composting, the name of the composting facility to which the material was transported, the dates of any transactions, and any costs charged by a permitted yard waste composting facility for receipt of the City's material. All records shall be made available upon request by the Division of Waste Management.

