State of North Carolina Department of Environment and Natural Resources

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

NCDENR
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

THE DIVISION OF WASTE MANAGEMENT

August 12, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

PCM Construction Services, LLC
c/o Ms. Dawnna Hogan-guerra
Registered Agent
1400 Crescent Green Drive
Cary, NC 27518

Certified Copy Sent to:

Booth Properties, LLC
c/o Mr. William J. Booth, Jr.
P.O. Box 156
Apex, NC 27502

and

Shotwell Transfer Station II, Inc.
c/o Mr. David W. King, Jr.
3209 Gresham Lake Road
Suite 114
Raleigh, NC 27615

Re: **Compliance Order With Administrative Penalty**
PCM Apex C&D Transfer Permit #92-29T, Wake County

Dear Ms. Hogan-guerra:

Enclosed is a Compliance Order With Administrative Penalty issued to PCM Construction Services, LLC 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 $38,625.00

pursuant to N.C. General Statute 130A-22(a) plus Investigative Costs in the amount of $313.34 pursuant to N.C. General Statute 130A-22(j) for a total amount of $38,938.34. 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 Brad Bailey at the Raleigh Central Office at (919) 508-8565

Sincerely,

Paul S. Crissman

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

Enclosure

cc: Terry Townsend, Assistant Attorney General
Mark Poindexter, Field Operations Branch Head
Jason Watkins, Central District Supervisor
Bradley Bailey, Environmental Senior Specialist
Central Files, Solid Waste

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

In Re: PCM Construction Services, LLC
c/o Ms. Dawnna Hogan-guerra
Registered Agent
1400 Crescent Green Drive
Cary, NC 27518

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 PCM Construction Services, LLC is in violation of certain requirements of the Act and/or Rules, as set forth below.

STATEMENT OF FACTS

1. On February 1, 2002, a Permit to Operate a Construction Waste Transfer Station (Permit #92-29T) was issued to Mr. William J. Booth, Jr., landowner, and PCM Construction, operator, of PCM Apex C&D (Construction and Demolition) Transfer Facility located at 1506.5 North Salem Street, Apex, in Wake County, North Carolina. The Permit Modification was issued on September 16, 2005, and included Mrs. Margaret B. Perry and Mr. Calvin Perry as additional land owners. In accordance with Condition Number 1 of Permit #92-29T, the facility is "permitted to receive new construction waste only, no demolition waste, hazardous waste, household waste, commercial/industrial waste, liquid wastes and those wastes listed in the operations plan submitted by PCM are to be accepted at this facility."

2. On June 2, 2008, Mr. Sparky Cullen, Chief Financial Officer of PCM Construction Services, LLC, sent a letter to the Division which stated that PCM Services, LLC was working on an agreement with "Shotwell" which would make Shotwell the facility operator. The letter stated that the target date for Shotwell (i.e. Shotwell Transfer Station II, Inc.) to become the facility operator was June 9, 2008 and otherwise the facility would close on June 6, 2008.

3. On June 10, 2008, Mr. Cullen forwarded to the Division a copy of a letter dated June 5, 2008, from Ms. Dawnna Hogan-guerra, Manager of PCM Construction Services, LLC, to Mr. William J. Booth, Jr., facility property owner, which expressed the desire of PCM Construction Services, LLC to enter into an "Asset Purchase Agreement" with Mr. David W. King, President of Shotwell Landfill, Inc. The letter stated that Mr. King had agreed to purchase certain assets of PCM's solid waste transfer and debris removal business and Mr. King would continue to operate the facility until the facility's next permit renew date of September 16, 2010.

4. On June 12, 2008, Mr. Bradley W. Bailey, Environmental Senior Specialist, Mr. Karim Pathan, P.E., Permitting Engineer, Ms. Donna Wilson, Permitting Engineer, and Mr. Zinith Barbee, Hydrogeologist, all with the Solid Waste Section, visited the PCM Apex C&D Transfer Facility to conduct a comprehensive facility audit. Mr. Bailey observed several bags of mixed household waste which included plastic bottles, cardboard boxes, toy packaging, a motorcycle helmet, plastic bags, and plastic food wrappers. There were green tree clippings and other yard trash located on the tipping floor. Mr. Bailey noted that a truck delivered waste to the facility and exited the facility without facility personnel visibly inspecting the waste in contrast to the Inspection of Wastes section of the approved operations plan.

5. Mr. Bailey also noted and photographed a blue print from a construction site in Durham, North Carolina on the tipping floor: the facility is permitted to receive waste from Wake County only. Mr. Cullen admitted in a letter dated May 7, 2007, that the PCM Apex C&D Transfer Facility had been accepting waste from counties outside its permitted service area for a number of years.

6. Additionally on June 12, 2008, Mr. Bailey found numerous tires on the site, which he estimated to be in excess of 500 tires, located in storage containers and in piles on the ground.

7. Mr. Bailey took several digital photographs during the inspection. In response to this inspection, a Notice of Violation was issued pursuant to 15A NCAC 13B Section .0402(2) for accepting waste that the facility was not permitted to receive and Section .1105(a) for operating a scrap tire collection site without a valid permit from the Division.

8. During the June 12, 2008, facility audit, Ms. April Amour Milla, Certified Transfer Station Operator, stated to Mr. Brad Bailey that Shotwell was operating the facility and the PCM company phone had been disconnected.

HISTORY OF VIOLATIONS

1. On August 4, 2005, PCM Fulp Road C&D Transfer Station in Forsyth County (Permit #34-16T) was issued a Notice of Violation pursuant to 15A NCAC 13B .0402(2) for accepting waste that it was not permitted to receive.

2. PCM Construction Services, LLC North Raleigh C&D Facility (Permit #92-27T) was issued a Notice of Violation December 6, 2007, and a Compliance Order With Administrative Penalty on June 12, 2008, pursuant to 15A NCAC 13B .0402(2) for accepting waste that it was not permitted to receive.

STATEMENT OF VIOLATIONS

The above facts constitute violations of the following regulations:

1. 15A N.C.A.C. 13B Section .0402(1) states that:

   Operational plans shall be approved and followed as specified for the facility;

   Section 3.1 INSPECTION OF WASTES of the approved Operational Plan for Permit #92-29T states that, "The transfer station attendant controls access to the transfer station. As waste is delivered to the facility and as it being deposited onto the concrete pad, the transfer station attendant will conduct a visual screening of the waste materials."

PCM Construction Services, LLC is in violation of this rule in that on June 12, 2008, the PCM Apex C&D Transfer Station (Permit 92-29T) attendant was not actively screening waste as it entered the facility. Furthermore, the fact that non-permitted waste was seen throughout the facility shows that waste screening was not being conducted on a regular basis.

2. 15A N.C.A.C. 13B Section .0402(2) states that:

   A facility shall only accept those wastes which it is permitted to receive;

   Permit #92-29T Condition Number 1 states that the facility is "permitted to receive new construction waste only, no demolition waste, hazardous waste, household waste, commercial/industrial waste, liquid wastes and those

wastes listed in the operations plan submitted by PCM are to be accepted at this facility."

Permit #92-29T Condition Number 2 states that the facility, "may receive solid waste that is generated within the service area described in Appendix I of this document . . .", which is limited to Wake County.

Additionally, Section 2.0 WASTE ACCEPTANCE CRITERIA of the approved Operational Plan for Permit #92-29T states that the facility, "will only accept residential construction debris from new home construction."

PCM Construction Services, LLC is in violation of this rule in that on June 12, 2008, municipal solid waste and yard waste was noted at the PCM Apex C&D Transfer Station (Permit 92-29T), which the facility is not permitted to receive. PCM Apex C&D Transfer Station (Permit 92-29T) received waste generated outside the service area defined in its permit.

3. 15A N.C.A.C. 13B Section .1105(a) states that:

> No person, other than a person exempted by G.S. 130A-309.57(d), shall establish, operate or maintain, or allow to be established, operated or maintained upon his land, a scrap tire collection site or scrap tire disposal site unless a permit for the site has been obtained from the Division.

PCM Construction Services, LLC is in violation of this rule in that it has collected and stored tires at the PCM Apex C&D Transfer Station (Permit 92-29T), as discovered during the audit on June 12, 2008.

4. PCM Construction Services, LLC has violated its permit (Permit 92-29T) in that it had turned over the operation of the facility to another entity.

The transfer station permit was issued to the Booths (i.e. Booth Properties, LLC), as owners of the land, and to PCM Construction Services, LLC, as operator of the facility. PCM applied for the permit and is responsible for the operation of the facility. As lessor of the land, Booth Properties, LLC had no role in the actual operation of the facility, and insofar as known to the Division, there is no business relationship between Booth Properties, LLC and PCM Construction Services, LLC other than the lessor/lessee relationship. PCM has sold the construction waste transfer station to another operator, Shotwell, who has been operating the facility without a permit from the Division of Waste Management. Operation of the facility by Shotwell is a violation of the permit issued to PCM Construction Services, LLC as operator of the facility.

Although PCM informed the Division of the sale of "certain assets" to Mr. David W. King, President of Shotwell, Inc. on June 10, 2008, two days before the facility audit, the Division has received no application to operate the transfer station from Mr. King, from Shotwell, or from anyone else. In addition, two days would not be sufficient time for the Division to process an application from a new operator. Mr. King and Shotwell are operating the transfer station

without a permit from the Division, and PCM has violated its permit by turning over operation of the transfer station to another operator.

CONDITIONS FOR COMPLIANCE

In order to achieve compliance with the violations noted above, this facility must complete the following:

1. Within 15 days submit an application for a permit modification for PCM Construction Services, LLC, or cease operations at the site and notify the Division that the facility is not operating. An application for a permit modification shall include, but not be limited to, financial qualification information and documentation for PCM Construction Services, LLC, compliance history for PCM Construction Services, LLC and any affiliated business entities in operation during the past five years, as well as compliance history for any businesses in which the principals of PCM Construction Services, LLC have engaged in during the last five years. The application shall be submitted to:

   Ms. Donna Wilson, Permitting Engineer
   NC DENR- Division of Waste Management
   Solid Waste Section
   Raleigh Central Office
   1646 Mail Service Center
   Raleigh, NC 27699-1646

2. Remove all scrap tires, municipal solid waste, yard trash and all other waste the facility is not permitted to receive from the site and provide documentation (disposal receipts) verifying proper disposal of each type of waste. Documentation shall be submitted to:

   Mr. Brad Bailey
   Environmental Senior Specialist
   NC DENR- Division of Waste Management
   Solid Waste Section
   Raleigh Central Office
   1646 Mail Service Center
   Raleigh, NC 27699-1646

   Proper waste screening at the facility, in accordance with the operations plan is necessary.

3. Take immediate action to meet the requirements set forth in 15A NCAC 13B .0402(2) to ensure that this facility does not receive waste they are not permitted to receive. Implement the plan of action to ensure that proper waste screening and education of workers is being conducted in accordance with the conditions of your operations plan. Implement contract provisions with building contractors using the facility to ensure that only waste from new construction in Wake County is delivered to the facility.

PENALTY IMPOSED

In addition to taking the actions specified above, PCM Construction Services, LLC is hereby ordered to pay in accordance with N.C. General Statute 130A-22(a), an administrative penalty in the amount of $14,250.00 for violation of 15A N.C. Admin. Code 13B .0402(1) and .0402(2); a penalty in the amount of $10,500.00 for violation .1105(a); a penalty in the amount of $13,875.00 for violation of its permit by turning the operation of the transfer station over to another party; plus investigative costs pursuant to N.C.G.S. 130A-22(j) in the amount of $313.34, for a total amount of $38,938.34.

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.

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

You, PCM Construction Services, South Wake C&D Transfer Station, have 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:

Mr. Brad Bailey
Environmental Senior Specialist
NC DENR- Division of Waste Management
Solid Waste Section
Raleigh Central Office
1646 Mail Service Center
Raleigh, NC 27699-1646
(919) 508-8565

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:

PCM Construction Services, LLC
c/o Ms. Dawnna Hogan-guerra
Registered Agent
1400 Crescent Green Drive
Cary, NC 27518

Dated this 13 day of August, 2008

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