

**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

February 12, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wilkes County
Gary Page, County Manager
110 North Street, Room 110
Wilkesboro, NC 28697

Re: **Compliance Order With Administrative Penalty**
Wilkes County Municipal Solid Waste Landfill
Permit #97-04
Wilkes County

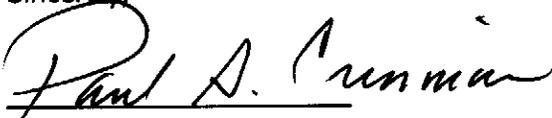
Dear Mr. Page:

Enclosed is a Compliance Order issued to you 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 \$69,375.00 pursuant to N.C. General Statute 130A-22(a) plus Investigative Costs in the amount of \$3,470.62 pursuant to N.C. General Statute 130A-22(j) for a total penalty of \$72,845.62. 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 total 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 Jason Watkins, Central Regional Supervisor, Division of Waste Management, at the Winston-Salem Regional Office at 336-771-5092.

Sincerely,

A handwritten signature in black ink that reads "Paul S. Crissman". The signature is written in a cursive style with a large initial "P".

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

Enclosure

cc: Terry Townsend, Assistant Attorney General
Paul S. Crissman, Section Chief
Mark Poindexter, Field Operations Branch
Deb Aja, Western District Supervisor
Jason Watkins, Central Regional Supervisor
Ervin Lane, Compliance Hydrogeologist
Central Files, Solid Waste

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

Re: Wilkes County
Gary Page, County Manager
110 North Street, Room 110
Wilkesboro, NC 28697

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

STATEMENT OF FACTS

1. The Wilkes County Municipal Solid Waste Facility (Permit No. 97-04), located on NC Highway 268, near Roaring River, Wilkes County, North Carolina is permitted to receive municipal solid waste (MSW).
2. On January 23, 2007, and January 31, 2007, Jason Watkins, Environmental Senior Specialist with the N.C. Division of Waste Management, Solid Waste Section, conducted an inspection of the Wilkes County Landfill. The January 23rd inspection revealed the following violations:
 - Pursuant to 15A NCAC 13B.1626(2)(a), the Division has specified in Permit # 97-04 Condition No. 18, that at least 6 inches of soil cover be placed on the waste at least once per day. Mr. Watkins observed that the area of Phase 2 atop the

hill and the new area in Phase 3 had insufficient cover. Areas of waste were left exposed for days at a time.

- Pursuant to 15A NCAC 13B.1626(7)(b), adequate sediment control measures must be taken. Mr. Watkins observed the berm along the lower side of the access road to Phase 2 was washed out. This allowed waste to wash down the side of the outer slope.
- Pursuant to 15A NCAC 13B.1626(11)(c), appropriate methods such as fencing and diking shall be provided to confine blown solid waste. Mr. Watkins observed that due to inadequate covering along the top of Phase 2, windblown material was found along the NC Highway 268 side of the landfill, approximately 200ft outside the permitted disposal area. Material blew from the working face area in Phase 3 and entered into the area between Phase 2 and the access road around the site.

The January 31st inspection by Mr. Watkins was at the request of Mr. Phil Greene, Landfill Supervisor, to re-inspect the daily cover. The inspection revealed that the Phase 2 area had been corrected except for a small area along the southern facing slope due to excessive wetness keeping equipment from that area. The areas in Phase 3 still lacked 6 inches of daily cover. However, staff was on site covering during the inspection. Because of site conditions observed on January 23, 2007, a Notice of Violation was issued February 2, 2007 and was received on February 6, 2007 by Mr. Livingston, Wilkes County Director of Solid Waste.

3. On February 7, 2007, Mr. Livingston issued a letter to Mr. Watkins stating that the corrections had been made to address the violations.
4. On February 15, 2007 and February 21, 2007, Mr. Watkins conducted follow-up inspections of the facility. No new violations were noted. Previous violations had been addressed, but not completely. Violation of 5A NCAC 13B.1626(2)(a), daily cover, had slightly improved but not in compliance. Violation of 15A NCAC 13B.1626(7)(b) had been corrected. Violation of 15A NCAC 13B.1626(11)(c) had been partially corrected but wind blown material had not been retrieved from the trees surrounding the landfill.
5. Mr. Watkins conducted a re-inspection on March 1, 2007. Although improvements had been made to correct the violation of 5A NCAC 13B.1626(2)(a), full compliance had not been achieved. Waste in non-active areas had not received adequate soil coverage. Violation of 15A NCAC 13B.1626(11)(c) has not been addressed since the February 21, 2007 inspection and wind blown materials were still a problem.
6. On April 17, 2007, staff from the Solid Waste Section conducted a Comprehensive Facility Audit (CFA) of the Wilkes County Landfill. The inspection revealed that the existing violations of rules 15A NCAC 13B.1626(2)(a) and 15A NCAC 13B.1626(11)(c) had still not been fully addressed to achieve compliance. No efforts had been made to control windblown litter. Wind blown solid waste was visible outside of the lined

landfill area. Additionally, the facility staff had not developed or implemented a plan to control windblown materials in a proactive manner as required by 15A NCAC 13B.1626(11)(c). The possibility of grinding both tires and wood waste was discussed and the facility staff agreed to include this in an updated version of their operations plan. As a result of the CFA conducted on April 17, 2007, a new Notice of Violation was issued on April 23, 2007 and was received on April 26, 2007 by Mr. Livingston.

7. On June 11, 2007, Mr. Watkins conducted a follow-up inspection. The inspection revealed that full compliance had still not been achieved regarding violations of 15A NCAC 13B.1626(2)(a) and 15A NCAC 13B. 1626(11)(c). According to Mr. Livingston, after the start of the new fiscal year, the facility would acquire portable fencing to address the windblown litter issue.
8. On August 28, 2007, Mr. Watkins re-inspected the landfill. Efforts to correct 15A NCAC 13B.1626(2)(a) had not progressed. Waste was being left uncovered for multiple days at a time. There was no sign of new fencing on the site and no evidence of any effort to retrieve wind blown waste as required.
9. On September 18, 2007, Mr. Livingston sent an email to Mr. Watkins addressing the facility's efforts/plans to correct the violations.
10. On September 24, 2007, Mr. Livingston sent an email to Mr. Watkins. Mr. Livingston stated the tire grinding operation was not going as planned. They were experiencing issues negotiating a contract with the grinding contractor. Tires were being stockpiled in the area where grinding was to occur and would be loaded into trailers if a resolution was not achieved in the days following the email.
11. On October 18, 2007, Mr. Livingston sent Mr. Watkins an email stating that the county had contracted PLA, Inc. to empty the leachate pond and that Cavanaugh & Associates in Greensboro would be overseeing inspection of the leachate collection system lines.
12. On November 6, 2007, Mr. Watkins re-inspected the landfill. During this inspection, three new violations were found in addition to the outstanding violations:
 - 15A NCAC 13B.1626(7)(b) requires adequate sediment control measures. Mr. Watkins noted the berm along the lower side of Phase 3 had breached during a recent rain event. Waste material migrated via storm water and sediment into a sediment basin outside of the current liner system. Trash mixed with soil was approximately 4-6 inches deep in half of the basin.
 - 15A NCAC 13B 1626(8)(d) requires leachate to be contained on site. Mr. Watkins observed that waste materials were no longer contained in the lined area and had entered the sediment basin. Once waste comes in contact with storm water, the water is then considered leachate. Rain events leading up to the November 6, 2007 inspection potentially activated the riser system in the basin allowing leachate to be discharged off-site.

- 15A NCAC 13B .1107(2)(c) requires whole and sliced scrap tires to be covered with water shedding material, to be processed, or to be removed from the site within ten days of receipt. According to facility staff, the grinding of tires stopped in late July or early August because a contract had not been agreed upon between the county and the contractor. There were 3 trailers full of tires and approximately 10-12 trailer loads of tires being stockpiled on the ground.

In addition to these new violations, violations of 15A NCAC 13B.1626(2)(a) and 15A NCAC 13B.1626(11)(c) still had not been remedied.

13. On November 19, 2007, Mr. Livingston sent an email to Mr. Watkins outlining the steps the facility had taken since the November 6, 2007 inspection.

STATEMENT OF VIOLATIONS

The above facts constitute a violation of the following:

1. 15A NCAC 13B .1626 states:

The owner or operator of any MSWLF unit must maintain and operate the facility in accordance with the requirements set forth in this Rule and the operation plan as described in Rule .1625 of this Section.

...

(2) Cover Material Requirements

(a) the owners or operators of all MSWLF units must cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

Wilkes County continuously failed to apply and maintain a daily soil cover of at least six inches in depth. This violation has been on-going since January 2007.

...

(11) Spreading and Compacting requirements

(c) Appropriate methods such as fencing and diking shall be provided within the area to confine solid waste subject to be blown by the wind. At the conclusion of each day of operation, all windblown material resulting from the operation shall be collected and returned to the area by the owner or operator.

Wilkes County failed to take proactive steps to prevent windblown litter from exiting the landfill and has not collected and disposed of all waste material that has exited the lined facility.

...

(7) Erosion and sedimentation control requirements

(b) Adequate sediment control measures (structures or devices), shall be utilized to prevent excessive on-site erosion.

The berm along the lower side of Phase 3 had breached during a recent rain event. Waste material was allowed to migrate via storm water and sediment into a sediment basin outside of the current liner system. Trash mixed with soil was approximately 4-6 inches deep in half of the basin.

...

(8) Drainage control and water protection requirements

(d) 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.

Waste materials left the lined area and entered the sediment basin. Once waste comes in contact with storm water, the water is then considered leachate. Rain events leading up to the November 6, 2007 inspection potentially activated the riser system in the basin, thus allowing leachate to be discharged off-site.

2. 15A NCAC 13B .1107 states "scrap tire collection sites shall meet the following operational requirements":

...

(2) All scrap tire collection, processing or disposal sites which store scrap tires or processed tires outdoors must comply with the following technical and operational standards:

(c) The owner or operator of any scrap tire collection site shall control mosquitoes and rodents so as to protect the public health and welfare. Whole and sliced scrap tires, and other scrap tires capable of holding water shall be covered upon receipt with a water shedding material or disposed of, processed or removed from the site within ten days of receipt.

Wilkes County allowed tires to be stockpiled on open ground and not in trailers for more than 10 days. The grinding of tires stopped in late July or early August. A limited number of tires were placed in trailers and hauled off prior to the November 6, 2007 inspection.

CONDITIONS FOR COMPLIANCE

Within **30** days of the receipt of this Compliance Order with Administrative Penalty, you must complete the following actions:

1. Take immediate action to meet the requirements set forth in 15A NCAC 13B .1626(2) in providing adequate cover on all waste at the facility.
2. Develop and implement a plan to control all windblown waste at the facility. A copy of that plan shall be submitted as part of a revised operations plan to the Solid Waste Section for review and approval.
3. Take immediate action to repair the failed section of the berm along the lower side of Phase 3, remove all waste from the sediment basin and return it to the working face. Any remaining water in the sediment basin must be pumped into the leachate pond. Additional action, including sampling may be required.
4. 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

5. 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.
6. Take immediate action to either remove or adequately store all scrap tires at the facility. Develop and implement a plan to address the management of scrap tires and submit it as part of a revised operations plan to the Solid Waste Section for review and approval.

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, you, Wilkes County, are hereby ordered to pay in accordance with N.C. General Statute 130A-22(a), an administrative penalty of \$72,845.62 for violations of 15A NCAC 13B .1626(7)(b), .1626(8)(d), .1626(11)(c), .1626(2)(a), and .1107(2)(c).

The factors considered in determining the administrative penalty are found in 15A NCAC 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 NCGS 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 NCGS 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 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, Wilkes County, 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:

Jason Watkins
NC DENR Winston-Salem Regional Office
Division of Waste Management, Solid Waste Section
585 Waughtown Street
Winston-Salem, NC 27107
Voice: (336) 771-5092

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: 

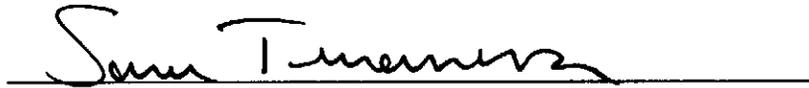
Paul S. Crissman
Section Chief
Solid Waste Section
Division of Waste Management
Department of Environment and Natural Resources

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:

Wilkes County
Gary Page, County Manager
110 North Street, Room 110
Wilkesboro, NC 28697

Dated this 12th day of February, 2008



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