

State of North Carolina  
Department of Environment  
and Natural Resources

Beverly E. Perdue, Governor  
Dee Freeman, Secretary  
Dexter R. Matthews, Director



**THE DIVISION OF WASTE MANAGEMENT**

March 3, 2009

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. George A. Wood, County Manager  
Lincoln County  
115 West Main Street  
Lincolnton, North Carolina 28092

Re: **Compliance Order With Administrative Penalty**  
**Facility Permit #55-03, Lincoln County**

Dear Mr. Wood:

Enclosed is a Compliance Order With Administrative Penalty issued to the Lincoln County Landfill 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 \$10,500.00 pursuant to N.C. General Statute 130A-22(a) plus Investigative Costs in the amount of \$109.19 pursuant to N.C. General Statute 130A-22(j) for a total amount of \$10,609.19. This Compliance Order with Administrative Penalty describes the violations of concern and the actions required by the Landfill to come into compliance with both the General Statutes and the Administrative Code.

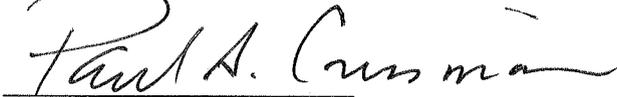
You may appeal this Compliance Order With Administrative Penalty by filing a written petition for an administrative hearing with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within thirty (30) days of the receipt of this Compliance Order. Your petition must 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

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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 Charles Gerstell at the Mooresville Regional Office at (704) 235-2144

Sincerely,

A handwritten signature in black ink that reads "Paul S. Crissman". The signature is written in a cursive style with a horizontal line underneath the name.

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

Enclosure

cc: Teresa Townsend, Assistant Attorney General  
Mark Poindexter, Field Operations Branch Head  
Deborah Aja, Western District Supervisor  
Charles Gerstell, Environmental Senior Specialist  
Central Files, Solid Waste

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

**In Re:** Mr. George A. Wood, County Manger  
Lincoln County  
115 West Main Street  
Lincolnton, North Carolina 28092

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

**STATEMENT OF FACTS**

1. On January 21, 2009, Ms. Nancy Rickard, Lincoln County Deputy Secretary of Solid Waste, notified Mr. Charles Gerstell, Environmental Senior Specialist, Division of Waste Management, Solid Waste Section, of a leachate spill that was discovered by landfill staff on Monday, January 19, 2009 at the Lincoln County Landfill, 5291 Crouse Road, Crouse, North Carolina. In a series of two phone conversations, Ms. Rickard explained that a discharge pipe leading from the two leachate tanks froze causing the pipe to fail. As a result of the failure, leachate entered an open storm drain in the concrete floor of the containment area surrounding the leachate tanks. Once leachate entered the storm drain, it exited though a pipe leading into a diversion swale adjacent to the leachate tanks. Ms. Rickard stated that she observed leachate "gushing" from the pipe on the morning of January 19<sup>th</sup>. From the

**COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY**

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ditch, the leachate entered a sediment basin. Leachate passed through the stone spillway of the basin and entered into a low lying area south of the aforementioned basin. No significant rainfall events took place from January 16<sup>th</sup> to the 19<sup>th</sup> to add additional water to the storm drain within the floor of the leachate tank containment area.

Ms. Rickard explained that on Friday, January 16, 2009, the leachate levels on both tanks were observed to be 18-feet. However, on Monday, January 19, 2009, leachate levels were observed to be 8-feet. The leachate levels were read from a gauge located on the side of each leachate tank. She explained that Ken Daily, Project Manager with S&ME, calculated the loss of leachate to be approximately 156,000 gallons (or approximately 78,000 gallons each from the two tanks). She explained that pumps were utilized to pump leachate from the sediment basin and the low lying area beyond the basin back to the pump station which sends flow back to the leachate tanks. Ms Rickard stated at the time of the first phone conversation, both tanks were back to 14' of liquid.

Mr. Gerstell asked Ms. Rickard why the storm drain located within the concrete floor of the containment area surrounding the leachate tanks was not closed. Ms. Rickard stated that landfill staff thought it was closed, but it was actually open. She also stated that the drain had probably been open since it was installed in 2006.

2. On January 21, 2009, Mr. Gerstell and Mr. Larry Frost, Permitting Engineer, Division of Waste Management, Solid Waste Section, performed a partial inspection of the Lincoln County Landfill to investigate the leachate spill. Upon arriving, Mr. Gerstell observed repair work being performed on the failed pipe located within the leachate tank containment area. This work was being executed by Ed Yarboro of N/S Carolina Storage Systems, Inc. Leachate levels within the two leachate tanks were observed to be 18.8-feet and 18.1-foot at the time of inspection. Mr. Gerstell and Mr. Frost observed the sediment basin and low lying area beyond the basin where leachate was reportedly pooled. A small amount of standing liquid was observed in the sediment basin. Pump lines remained in place in the low lying area beyond the basin where a significant amount of standing liquid was observed. Mr. Gerstell and Mr. Frost were informed by Ms. Rickard and Mr. Mark Bivins, Landfill Operations Manager, that the low area beyond the sediment basin retains a significant amount of water following rain events. Mr. Gerstell and Mr. Frost observed a natural channel at the southeast end of the large ponded area that leads to an unnamed tributary of Indian Creek. Due to the close proximity of the water source, Mr. Gerstell advised officials of the Division of Environmental Health, Public Water Supply Section and Division of Water Quality, Surface Water Protection Section. Ms. Rickard also informed Mr. Gerstell and Mr. Frost that the Supervisory Control And Data Acquisition System [SCADA] used to monitor functions of the leachate system was non-operational.

**STATEMENT OF VIOLATIONS**

The above facts constitute violations of the following Sections of Title 15A N.C. Admin. Code Subchapter 13B:

Section .1626(8)(d) states that: "Leachate shall be contained on site or properly treated prior to discharge."

Lincoln County is in violation of 15A NCAC 13B .1626(8)(d) in that leachate was not contained onsite, but was released from the landfill to a low-lying area beyond the sediment basin near an unnamed tributary of Indian Creek and was not properly treated prior to discharge.

**CONDITIONS FOR COMPLIANCE**

Based on the foregoing, you are hereby ordered to take the following actions:

1. Monitor to assure leachate is contained on site or properly treated prior to discharge in accordance with 15A NCAC 13B .1626(8)(d).
2. Complete all repairs to the failed pipe located within the leachate tank containment area. Notify the Division when repairs have been tested and found to be complete and operational.
3. To assess the impact of the leachate release outside the waste cell, Lincoln 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, or request more information or amendments before implementation. The plan shall be implemented as approved. Within 30 days, submit this plan to:

Jaclyne Drummond, Compliance Hydrogeologist  
NCDENR-Division of Waste Management  
Solid Waste Section  
410 Oberlin Road, Suite 150  
1646 Mail Service Center  
Raleigh, North Carolina 27699-1646

4. Within 30 days, submit a revised operations plan to include a revised contingency plan. The contingency plan must detail all procedures to be taken to prevent leachate spills in the future. Submit the revised operations plan to:

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Larry Frost, Regional Engineer  
NCDENR-Division of Waste Management  
Solid Waste Section  
2090 US Highway 70  
Swannanoa, North Carolina 28778

**HISTORY OF VIOLATIONS**

1. Lincoln County was issued a Notice of Violation on January 17, 2001 for a violation of 15A NCAC 13B .1628(e)(1)(f). (Resolved)
2. Lincoln County was issued a Notice of Violation(s) on March 7, 2005 for a violation of 15A NCAC 13B .0505(12)(b). (Resolved)
3. Lincoln County was issued a Notice of Violation(s) on June 29, 2007 for a violation of 15A NCAC 13B .1626(6)(i). (Resolved)
4. Lincoln County was issued a Notice of Violation(s) on September 9, 2008 for a violation of 15A NCAC 13B .1626(2)(a). (Resolved)
5. Lincoln County was issued a Notice of Violation on January 27, 2009 by the Division of Water Quality for violations of NCGS 143-215.1(a)(1) and 15A NCAC 02B .0506(a)(2)

**PENALTY IMPOSED**

In addition to taking the actions specified above, Lincoln County is hereby ordered to pay in accordance with N.C. General Statute 130A-22(a), an administrative penalty of \$10,500.00 for violation of 15A N.C. Admin. Code 13B .1626(8)(d), plus investigative costs pursuant to N.C.G.S. 130A-22(j) in the amount of \$109.19, for a total amount of \$10,609.19.

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.

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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. 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 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

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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.

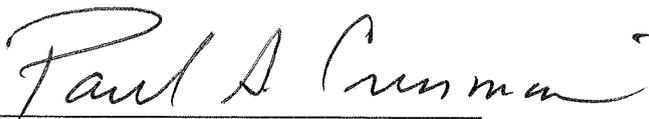
Any administrative hearing will be conducted in accordance with applicable rules contained in Title 26 of the North Carolina Administrative Code. If you file a petition for an administrative hearing within thirty (30) days in accordance with the applicable statutes and rules, payment of the penalty is 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) 431-3000.

**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:

Charles Gerstell,  
Environmental Senior Specialist  
NCDENR Division of Waste Management  
Solid Waste Section  
Mooresville Regional Office  
310 East Center Avenue, Suite 301  
Mooresville, North Carolina 28115  
(704) 235-2144

**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:

Mr. George A. Wood, County Manager  
Lincoln County  
115 West Main Street  
Lincolnton, North Carolina 28092

Dated this 3rd day of March, 2009

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