



North Carolina Department of Environment and Natural Resources
Division of Waste Management

Beverly Eaves Perdue
Governor

Dexter R. Matthews
Director

Dee Freeman
Secretary

November 23, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IMMEDIATE ACTION
NOTICE OF VIOLATION
Docket Number 2010-017

Glyn Holcomb
Holcomb Creosote Company
5016 HWY 601 N
Yadkinville, NC 27055
NCD024900987

Dear Mr. Holcomb:

On December 18, 1980, the State of North Carolina, Hazardous Waste Section (Section) was authorized to operate the State Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program under the Solid Waste Management Act, (Act) N.C.G.S. 130A, Article 9 and rules promulgated thereto at 15A NCAC 13A (Rules) in lieu of the federal RCRA program.

Holcomb Creosote Company, in Yadkinville, North Carolina is currently closed but had operated as a wood treatment and preservative facility using creosote to treat posts and lumber. The facility was operating as a conditionally exempt small quantity generator of hazardous waste. It stopped treating wood in February 2009 and its assets were sold at an auction in September 2009.

Holcomb Creosote facility is also classified as treatment, storage, disposal facility. The facility operated a surface impoundment for many years that received residual materials from the creosoting process. The surface impoundment was closed in 1983 and the contents were land farmed. The surface impoundment and land farming areas are closed and are being monitored with groundwater monitoring wells. These areas are being addressed under the existing post-closure permit by the Facility Management Branch within the Hazardous Waste Section.

On November 12, 2009 Brent Burch, Western Regional Supervisor and Ernest Lawrence, Environmental Senior Specialist with this office, conducted a site visit at Holcomb Creosote. After the visit a meeting was held with Ben Holcomb and Glyn Holcomb at the law office of Lee Zachary. Barry Nelson with Northwest Geoscience, Holcomb Creosote's consultant, also attended the meeting. Bud McCarty and Qu Qi with the Facilities Management Branch of the Hazardous Waste Section were present.

Several areas of concern observed during the site visit must be addressed in order to properly close the facility. These areas of concern were discussed during the meeting.

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Statement of Facts Related to Respondent's Management of Hazardous Waste

Holcomb Creosote operated a creosote treating business using a stainless steel pressure vessel that is 60 inches in diameter and 64 feet long. Instead of operating a drip pad the facility allowed treated lumber to dry in the treatment vessel. During the meeting, Mr. Ben Holcomb and Mr. Nelson said that the treatment vessel still contains waste residues that have accumulated during wood treatment. It was estimated that the quantity of waste would fill two 55-gallon containers.

One 55-gallon sump was used on each end of the vessel to contain any spills that occurred when the vessel doors were opened. Additionally, a 1 ft by 2 ft rectangular catch basin is located at the end of the vessel where treated lumber is removed. Both the 55-gallon sumps and rectangular catch basin appeared to be storing creosote waste and debris.

Treated lumber and posts that dried inside the treatment vessel were stored at the Transfer Area which is located immediately at the end of the pressure vessel. The Transfer Area has soil and gravel over a plastic liner that is estimated to be 25 ft. by 100 ft. The area is covered by a metal roof. In 1990 the soil beneath the liner was certified clean prior to installation. Several inches of soil and gravel above the liner may now have contaminants from incidental drippage of treated lumber. Additionally, underlying soil may have been impacted if the liner was torn or otherwise compromised.

Make up water used in the treating process was stored in an in-ground concrete block structure referred to as the Water Holding Tank. Water from the tank was pumped to the treatment vessel, then to a condenser, and then back to the Water Holding Tank after use. The Water Holding Tank is a rectangular concrete basin that is approximately 6 ft by 20 ft. The unit is partially underground and has a metal roof. It appeared to have a large amount of water that has a black appearance and a strong smell of creosote. The quantity could not be estimated, but the wastewater appears to be several feet deep. It is not known if waste creosote has penetrated the concrete and contaminated the adjacent soil.

There are four aboveground tanks on the property. The exact contents of the tanks were not determined during the visit or meeting. Mr. Ben Holcomb indicated that one of the tanks is believed to have roughly 500 gallons of creosote product. Mr. Ben Holcomb stated that the facility is attempting to sell the creosote product to another wood treatment facility. Mr. Ben Holcomb thought the others would be empty.

There are about thirty (30) 55-gallon containers at various locations behind the buildings. Mr. Ben Holcomb said that two contained waste creosote and one has hydraulic fluid. Mr. Ben Holcomb stated that the other containers appeared to be empty.

Statutory and Regulatory Background

- A. 40 CFR 261.1(a), adopted by reference at 15A NCAC 13A .0106, identifies those solid wastes which are subject to regulation as hazardous wastes under Parts 262 through 265 and Parts 270, 271, and 124 of this Chapter and which are subject to the notification requirements of Section 3010 of RCRA.

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- B. 40 CFR 261.2(b), adopted by reference at 15A NCAC 13A .0106, states that materials are solid waste if they are abandoned by being [1] disposed of; or [2] burned or incinerated; or [3] accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.
- C. 40 CFR 261.3(a), adopted by reference at 15A NCAC 13A .0106, states that a solid waste, as defined in Section 261.2 is a hazardous waste if:
1. It is not excluded from regulation as a hazardous waste under Section 261.4(b); and
 2. It meets any of the following criteria:
 - i. It exhibits the characteristics of hazardous waste identified in Subpart C.
 - ii. It is listed in Subpart D and has not been excluded from the lists in Subpart D under Sections 260.20, and 260.22 of this chapter.
 - iii. It is a mixture of solid waste and hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.
 - iv. It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under Sections 260.20 and 260.22 of this chapter.
- D. GS 130A-290(6), defines "Disposal" as the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.
- E. 40 CFR 124.2, defines "Owner" or "Operator" as owner or operator of any "facility or activity" subject to regulation under the RCRA program.
- F. GS 130A-290(22), defines "Person" as an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- G. GS 130A -290(41), defines "Storage" as the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

Violations Requiring Immediate Action

- H. It is the determination of the Section that the disposal and storage of the industrial wastes at Holcomb Creosote Company at 5016 Highway 601 North constitutes storage and disposal of solid/hazardous waste subject to all applicable requirements of 40 CFR 261 through 265 and 270. Specifically:

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1. 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107, requires that a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:
 - a. He should first determine if the waste is excluded from regulation under 40 CFR 261.4.
 - b. He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 CFR Part 261.
 - c. If the waste is not listed as a hazardous waste in Subpart D of 40 CFR Part 261, he must determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:
 - i. Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or
 - ii. Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

Holcomb Creosote Company is in violation of 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107, in that the above-referenced solid waste was generated and disposed on the property as defined in 40 CFR 261.2 and a determination was not made if that waste was a hazardous waste.

2. 40 CFR 270.10(a), adopted by reference at 15A NCAC 13A.0113(b), states that any person who is required to have a permit shall complete, sign and submit an application to the Hazardous Waste Section which meets the requirements of 270.10 and 270.70 through 270.73.

Holcomb Creosote Company is in violation of 40 CFR 270.10(a), adopted by reference at 15A NCAC 13A.0113(b) in that it was required to have a permit to store and dispose the above-referenced waste creosote, and it failed to complete and submit an application for a permit in accordance with the requirements of 270.10 and 270.70 through 270.73.

3. 15A NCAC 13A .0109(a), requires that any person who treats, stores, or disposes of hazardous waste shall comply with the requirements set forth in this section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in 40 CFR Parts 264 and 265, adopted by reference in 15A NCAC 13A .0109 and .0110.

Holcomb Creosote Company is in violation of 15A NCAC 13A .0109(a), in that the above-referenced hazardous waste has been stored and disposed without complying with the requirements set forth in 40 CFR Parts 264 and 265, adopted by reference in 15A NCAC 13A .0109 and .0110.

COMPLIANCE SCHEDULE

By the dates specified below, Holcomb Creosote Company shall comply with the following requirements:

1. Comply with 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107. An immediate

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determination and/or analysis of the contents of the pressure vessel, sumps, catch basin, water holding tank, aboveground tanks, and containers must be completed to ensure proper characterization and disposition. Due to a suspected or known release of hazardous waste, a comprehensive site characterization is required. The characterization must include areas where containers are stored, the aboveground tanks, sumps, catch basin, water holding tank and transfer area and impacted soil adjacent to these units.

Within 60 days of the effective date of this Notice, develop and submit to the Branch Chemist, two (2) copies of an Initial Site Sampling Plan that characterizes the wastes and release(s) in question. This characterization must comply with the requirements set forth in the Hazardous Waste Section Generator Closure guidance document. (Summary attached). It must include identifying the sources of contamination, the nature and extent of contamination, determining site hydrogeologic conditions, evaluation of fate/transport of the contaminants, pathways for migration, and identifying potential human and environmental receptors.

The Initial Site Sampling Plan will be reviewed by the Branch Chemist to determine its completeness. If it is determined to be complete, the Chemist will determine whether the project will be managed as a generator closure under the guidance of the Section's Compliance Branch or be referred to the Programs Branch. If the remediation of the site remains with the Compliance Branch, two (2) copies of an Assessment and Clean-up Plan must be developed and submitted to this office within 30 days of the Chemist's approval of the Initial Site Sampling Plan. Elements required in the development of an Assessment and Clean-up Plan are outlined in the attached summary of the Generator Closure Guidelines. The Assessment and Clean-up Plan must fully describe all facets of the remediation, a schedule of activities, sampling and analysis methods, and proposed cleanup standards. Failure by Holcomb Creosote Company to complete an effective site remediation may subject the site to additional requirements including closure plans, financial assurance for closure/post-closure and groundwater monitoring.

Upon verification that hazardous waste has been disposed, Holcomb Creosote Company, must immediately cease the discharge/disposal of hazardous waste to the environment and all hazardous wastes shall be removed and manifested to a permitted hazardous waste treatment, storage or disposal facility. The removal must be completed and two (2) copies of a Closure Report submitted to the Branch Chemist within the time frame set forth in the approved schedule submitted in the Assessment and Clean-up Plan and no later than 180 days from the date of the approval of the Assessment and Clean-up Plan.

2. Comply with 15A NCAC 13A .0109(a). If it is determined that waste on site is hazardous waste Holcomb Creosote shall not store or dispose of the waste without full compliance with this section. During the interim, pending shipment of hazardous waste, Holcomb Creosote must comply with 40 CFR 262.34(a), adopted by reference at 15A NCAC 13A .0107 which states that:
 - a. If the waste is placed in containers the generator must comply with Subpart I of 40 CFR Part 265 or if the waste is placed in tanks, the generator must comply with Subpart J of 40 CFR Part 265 except 265.197(c) and 265.200. No waste piles are allowed.
 - b. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.
 - c. While being accumulated on-site, each container and tank must be labeled or marked clearly with the words, "Hazardous Waste"; and

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- d. The generator must comply with the requirements for owners or operators in Subparts C & D in 40 CFR part 265, Section 265.16 and 268.7(a)(4).

Potential Consequences of Failure to Comply

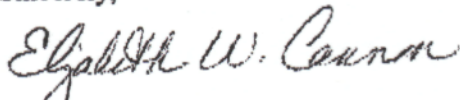
You must comply with each requirement of this Immediate Action Notice of Violation (IANOV); however, compliance will not divest the Section of its authority to issue an administrative penalty for the violations cited in this IANOV and additional violations cited in a subsequent Compliance Order with Administrative Penalty. In accordance with NCGS 130A-22(a), the penalty shall not exceed thirty two thousand five hundred dollars (\$32,500.00) per day in the case of a first violation. Each day of a continuing violation shall constitute a separate violation.

Pursuant to NCGS 130A-18, a violation of any provision of the Act or the Rules may also result in the Section initiating an action for injunctive relief. If an injunction is obtained, you will be subject to both the civil and criminal contempt powers of the North Carolina General Courts of Justice.

All reports required by this IANOV should be sent to: Roberta Proctor, Environmental Chemist, P.O. Box 384, Lake Lure, NC 28746.

If you should have questions concerning this Notice, you may contact Mr. Ernest Lawrence at 336-652-5742. Questions concerning the site characterization and remediation should be addressed to Ms. Roberta Proctor, Compliance Branch Chemist at 828-625-0171.

Sincerely,



Elizabeth W. Cannon, Chief
Hazardous Waste Section

Attachment: Summary - Generator Closure Guidance

cc: Central Files
Barry Nelson, Northwest GeoScience
Mike Williford, Compliance Branch Supervisor
Brent Burch, Western Area Supervisor
Roberta Proctor, Chemist
Ernest Lawrence, Environmental Senior Specialist
Lee Zachary, Zachary Law Firm

