



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

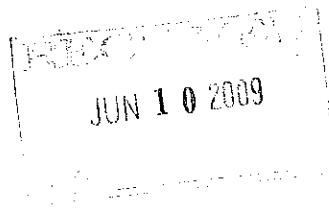
Beverly Eaves Perdue
Governor

Dexter R. Matthews
Director

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Secretary

June 9, 2009

Cyrus F. Parker, LG, PE
GeoEnvironmental Supervisor
NC Department of Transportation
1020 Birch Ridge Drive
Raleigh, NC 27610



Re: **Clarification of the Inactive Hazardous Sites Branch Regulatory Position**

Hwy 52 Bridge Project – Exxon VCC Site
Winston-Salem, Forsyth County, North Carolina
IHSB # NONCD0001147

Dear Mr. Parker:

As a follow-up to our telephone conference on May 27, 2009 and the additional questions which have been expressed by your consultant (Hart and Hickman) since that meeting, I thought I would take the opportunity to clarify the Inactive Hazardous Sites regulatory position on this project.

The Virginia Carolina Chemical (VCC) site is a listed site in the Inactive Hazardous Site Branch (IHSB) inventory. Even though the IHSB is not directly overseeing assessment and remediation of this site as a priority project, remediation performed at the site must meet the IHSB cleanup goals or the site will be subject to further remediation in the future. This means that soil contamination exceeding both the IHSB health-based direct contact goals and the protection of groundwater criteria will ultimately have to be addressed by VCC/Exxon. The IHSB has two remediation programs for sites: 1) Direct staff oversight for priority sites involving receptor impacts, and 2) the self-directed Registered Environmental Consultant (REC) program. VCC and Exxon are not currently voluntarily participating in either of these programs with the IHSB.

Due to an agreement between Exxon and the US EPA, the US EPA and the NC Superfund Section's Federal Remediation Branch is handling oversight of the road construction project where it impacts the VCC site. These efforts are under US EPA authority where cleanup levels and actions may be limited to removing immediate health risks and not afford long-term protection and restoration of groundwater quality. Regardless of what remediation criteria are allowed by the Federal Remediation Branch and the US EPA for this project, VCC and Exxon will ultimately have to meet the IHSB's cleanup goals and criteria when they either enter a voluntary agreement to remediate the site with the IHSB or when the IHSB decides this site is a priority and executes an administrative order requiring that the work be performed. If the current NCDOT construction

project prevents access to soils from the site (or brought in from other sites) which exceed our remediation goals, it is possible that NCDOT would be held responsible for remediation of those soils in the future.

In addition, if contaminated soils are brought into the road construction project from other sites for use as fill material, a determination must be made by the NCDOT that those soils do not meet the definitions of a hazardous waste or they will be subject to the permitting requirements of the Hazardous Waste Section.

Contaminated soils excavated and brought into the road construction project from nearby IHSB regulated sites for use as fill material does not constitute approved remediation of the contaminated soils at those sites unless the activity is conducted under an approved remedial action plan and an executed administrative agreement with the IHSB. Please refer to our regulations and guidelines at the following website for additional information: <http://www.wastenotnc.org/sfhome/ihsbrnch.htm>


I understand from our meeting that it is not the NCDOT's intent to perform approved remediation at the off-site IHSB regulated sites, but rather your intent is to protect your workers. If non-hazardous waste contaminated soils were brought into the road construction project from other sites and were not handled in accordance with the IHSB regulations and guidelines, the NCDOT could be held responsible for remediation of those soils since you are controlling them. For general IHSB guidance on placing non-hazardous waste contaminated soils into the road construction project from other IHSB regulated sites for use as fill material, those soils must meet the IHSB health based remediation goals and the protection of groundwater criteria.

Protection of groundwater goals can be determined from the table at the previously referenced website, or by using TCLP/SPLP sample results that demonstrate the leachable concentrations of contaminants in fill soils are below the State's 15A NCAC 2L groundwater quality standards. Alternatively, for non-recent releases, if monitoring wells have been installed in the most contaminated area and contaminants have not been found in groundwater in excess of the 15A NCAC 2L standards, protection of groundwater criteria can be considered met. For health-based remediation goals, either (1) unrestricted use levels of 22 mg/kg for arsenic and 400 mg/kg for lead should be met (assuming no other contaminants are present above natural background) or (2) the area must be placed under pavement or under at least 2 feet of clean soils with sufficient engineering safeguards to prevent erosion from exposing the soils to potential human contact, construction worker health-based remediation goals must be met, and land use restrictions are recorded on the property that will restrict future excavation of the soil and other uses of the property. Again, it is the NCDOT's responsibility to first ensure that these soils do not contain hazardous wastes before moving them to other locations. The construction worker direct contact value for the arsenic soils contamination would be 365 ppm, and for lead contaminated soils it would be 800 ppm.

If the Inactive Hazardous Sites Response Act is used as the authority to record land use restrictions, the law requires those restrictions be in a Remedial Action Plan approved by the program. That remedial action plan would need to propose a remedy that meets both cleanup criteria of the Inactive Hazardous Sites Program. In order for remediation efforts conducted by VCC/Exxon to be approved by the IHSB, and legally meet the requirements of the Inactive Hazardous Sites Act, any remediation performed for the IHSB by VCC/Exxon must be done under an administrative agreement with public comment. If the NCDOT and VCC/Exxon remediating parties do not want to have to conduct work under an IHSB administrative agreement and/or do not want to place land use restrictions for the roadway/bridge property, then it would be best to plan to meet unrestricted use health-based remediation goals and the protection of groundwater criteria as part of the work effort with the US EPA.

I hope this information clarifies the regulatory concerns of the IHSB related to contaminated soils at this project. If you have additional questions about the requirements that apply to your site, please contact Collin Day at (336) 771-5281 or myself at (704) 663-1699.

Sincerest Regards,



Bruce R. Parris
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