



The Chemours Company
Fayetteville Works
22828 NC Highway 87 W
Fayetteville, NC 28306

Sent via email

July 3, 2020

Michael E. Scott, Director
NCDEQ – Division of Waste Management
217 West Jones Street – 1646 Mail Service Center
Raleigh, North Carolina 27699-1646

SUBJECT: Notice of Violation and Notice of Intent to Enforce
15 NCAC 13B Solid Water Generator Requirements
Chemours Company – Fayetteville Works Bladen County

Mr. Scott,

This letter is in response to the Notice of Violation and Notice of Intent to Enforce, dated June 18, 2020, from the Division of Waste Management relating to 15A NCAC 13B – Solid Waste Generator Requirements (the “NOV”).

Summary

The NOV relates to Chemours’ taking land clearing waste and yard waste materials to the Hunts Construction LCID Landfill (“Hunts Landfill”), including tree roots and stumps that had been cleared from the Fayetteville Works facility to allow construction of a treatment plant necessary for compliance with the pending Superior Court Consent Order. After such materials were taken to the Hunts Landfill, NCDEQ raised concerns as to whether the landfill was authorized to receive these materials. To address these concerns, Chemours promptly and voluntarily removed the materials from the landfill and disposed of them at another location. Chemours also ceased any further disposal activity of these materials at the Hunts Landfill. As explained herein, Chemours disagrees with the alleged violations in the NOV. Notwithstanding this, Chemours is complying herein with the two directives in the NOV.

Background

Chemours is presently constructing a water treatment plant near the discharge location of Old Outfall 002 at the Fayetteville Works site for remediation under the Consent Order entered by the Superior Court for Bladen County on February 25, 2019 among Chemours, NCDEQ and Cape Fear River Watch. The water treatment plant is scheduled to be operational in September. The construction area is not within the footprint of the manufacturing areas at the facility (either active or closed) and is located above the 100-year flood plain and outside of the Old Outfall 002 channel. The operation of the water treatment plant will be subject to a NPDES permit to be issued by NCDEQ.

In order to construct the water treatment plant, approximately 3 acres needed to be cleared and graded, which included the removal of trees and other yard waste materials. Chemours contracted for available timber to be sent to a mill for beneficial reuse. Once the trees were harvested for timber, the stumps and root mass material that were unsuited for structural fill for the construction project were removed from the ground and collected for offsite disposal, along with other land clearing waste and yard waste materials. The root mass material was raked to remove loose soil, however soil entangled within the root mass was not removed.

When disposal of the Old Outfall 002 project land clearing waste began on May 22, 2020, Hunts Landfill was closed due to weather conditions and 18 loads of waste materials were taken to the Robeson Municipal Landfill, a lined sanitary landfill. When the Hunts Landfill re-opened, one load from the Old Outfall 002 project was sent there on May 27, 2020 and 38 loads on June 1, 2020. Prior to that disposal, Chemours discussed with the Hunts Landfill staff that the land clearing waste and yard waste materials would be from an area of the Fayetteville Works site outside of the manufacturing area, and such materials were identified as acceptable for the landfill.

Late in the day on June 1, 2020, Chemours received a call from you on behalf of NCDEQ regarding the material going to Hunts Landfill, in which you identified a community concern about these materials being disposed of at that landfill, as it is unlined and not authorized to accept contaminated soil. During the course of the conversations, two pathways were discussed: testing the materials or moving the material to a lined landfill. During this discussion, it was identified that there is no regulatory standard for “contaminated soil” for PFAS compounds. Nevertheless, and as testing would have required additional time to address the community concern, Chemours made the decision to voluntarily remove the land clearing waste and other yard waste materials sent to Hunts Landfill from the Old Outfall 002 project.

Chemours received acceptance from the Robeson Municipal Landfill that it would accept the materials, and on June 4-5, 2020, 40 loads of land clearing waste and other yard waste materials identified as originating from the Chemours land clearing project were removed from Hunts Landfill. Chemours, through its contractor, contracted with Hunts Landfill to excavate and load these materials into Hunts Landfill trucks for delivery to Robeson Municipal Landfill. The materials had been cordoned off by Hunts Landfill prior to excavation, and no additional fill had occurred in the location.

NOV Response

The NOV was issued after the land clearing waste and other yard waste materials at issue had been removed from Hunts Landfill and alleges that Chemours failed to ensure proper disposal of its solid waste, in violation of 15A NCAC 13B .0106(a) and (b), when it failed to perform analytical testing of the yard waste and soil for PFAS prior to transport and disposal at the LCID landfill. The NOV requests that Chemours complete two actions:

- (1) Immediately cease sending untested yard waste, soil or any other waste to any properties that are not permitted to receive that waste, and

- (2) Submit a plan for approval by the Division of Waste Management, which shall include a description of the removal activities for the materials taken to the Hunt LCID landfill¹ and “a detailed plan outlining all steps to ensure any future solid waste generated by construction or remediation activities is properly characterized prior to final disposal at a site or facility which is permitted to receive the waste. The plan shall include coordination with NCDEQ.”

The NOV also indicated that NCDEQ was considering taking further enforcement action and provided Chemours and opportunity to explain why that would not be appropriate.

With respect to the first action directed in the NOV, Chemours has suspended sending offsite for disposal any untested land clearing materials, soil or yard waste materials generated by construction or remediation activities at Fayetteville Works pending approval by NCDEQ of the attached plan.

With respect to the second action directed in the NOV, the attached Soil and Material Waste Management Plan – Fayetteville Works – Non-Manufacturing Areas is submitted for approval by NCDEQ.

Further Enforcement Action Is Not Appropriate

Under the North Carolina solid waste regulations, “land clearing waste” is defined as “solid waste which is generated solely from land clearing activities such as stumps, trees, limbs, brush, grass, and other naturally occurring vegetative material.” A land clearing and inert debris landfill may accept land clearing waste, as well as other materials including uncontaminated soil and yard trash. The regulations do not define or otherwise provide an applicable standard for “uncontaminated soil”. “Inert debris” is defined at G.S. 130A-290(14) to be “solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.”

Based upon the area being cleared being outside of the facility’s manufacturing areas and not within the Old Outfall 002 discharge channel, the land clearing waste and other yard waste materials were treated as acceptable materials to be disposed of at a permitted LCID landfill. This included the soil entangled within the root mass (i.e., directly under the tree or attached to its roots). Chemours has not disposed of soils generated from construction or remediation projects within Fayetteville Works manufacturing areas at LCID landfills.

Site construction activities do produce excess soils from time to time. If these soils are removed from areas within the Chemours manufacturing footprint, the soils are currently being sent to the Waste Management facility in Emelle, Alabama. If there are excess soils from other parts of the plant site, they can be reused within the plant site. For instance, soils separated from

¹ Part 2(a) of the NOV requests that the proposed plat include a “summary of the removal activities for the yard waste and soil that was taken to the Hunts LCID landfill to include excavation/removal methods and final disposal location, including documentation of proper disposal of excavated material.” The requested summary is provided in the Background section of this letter and attached are the disposal tickets for the land clearing waste and other yard waste materials loads taken to the Robeson Municipal Landfill.

the root masses for the Old Outfall 002 project were not included in the land clearing waste and other yard waste materials to be disposed of and will remain on the property for reuse. Excess soils from non-manufacturing areas will be disposed of per the submitted plan.

Chemours disagrees that all land clearing waste or other yard waste materials that originate from the Fayetteville Works site must be analytically tested for PFAS prior to transport and disposal. The North Carolina solid waste regulations do not proscribe this broad analytical requirement for land clearing waste and other yard waste materials. Chemours actions in taking the land clearing materials to a nearby LCID landfill were reasonable based upon not only the location of the Old Outfall 002 water treatment facility project at the site but also consistent with the disposal of such materials in proximity to the site and for other commercial and industrial facilities in the State.

To avoid any concerns going forward, per the submitted plan, Chemours will work cooperatively with NCDEQ when identifying disposal locations.

Based on the above, Chemours reasonably determined that the materials in question could be disposed of at Hunts Landfill and disagrees with the alleged violations in the NOV or that further enforcement actions should be taken. Further enforcement is also inappropriate because Chemours, when presented with the community concerns by NCDEQ, acted quickly to address the concerns and remove the materials from the LCID landfill to a lined landfill. This was all completed prior to the issuance of the NOV. Chemours believes implementation of the Soil and Material Waste Management Plan – Fayetteville Works – Non-Manufacturing Areas, once approved by NCDEQ, is the appropriate path forward in response to the NOV, and further enforcement action is unwarranted and not supported by the North Carolina solid waste regulations.

If you have any questions, please feel free to contact me at (910) 678-1213.

Sincerely,

A handwritten signature in black ink, appearing to read "Christel Compton", with a long horizontal flourish extending to the right.

Christel Compton
Program Manager

Cc: Ed Mussler, Solid Waste Section Chief
Jason Watkins, Field Operations Branch Head – Solid Waste
Drew Hammonds, Eastern Compliance Supervisor – Solid Waste
Brian Long, Chemours