



**NORTHERN OAKS RDF**

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January 21, 2019

Mr. Matthew R. Karl  
MDEQ – Air Quality Division  
401 Ketchum Street, Suite B  
Bay City, Michigan 48708

**RE: Violation Notice Response  
Northern Oaks Recycling and Disposal Facility (RDF), SRN: N6010**

Dear Mr. Karl:

The purpose of this correspondence is to respond to the Violation Notice (letter) from your office dated January 15, 2019. The letter alleges Northern Oaks RDF (Northern Oaks) discovered a discrepancy between the asbestos quantity of waste designated on the waste shipment record and the quantity actually received, and made no attempt to reconcile the discrepancy with the waste generator in violation of 40 CFR 61.154(e)(3). Note the letter alleges that 40 CFR 61.145(e)(3) was violated, but based on the description of the allegation, Northern Oaks believes the proper reference is 40 CFR 61.154(e)(3).

Northern Oaks strongly disagrees that a violation occurred for the reasons stated below.

**Background**

On January 9, 2019 Northern Oaks received a load of friable asbestos waste from the Medical Arts Building in West Branch, Michigan. The transporter, American Waste, had notified Northern Oaks as required. The load arrived in an enclosed container that was observed to be properly secured upon arrival. The truck was weighed and the load disposed in accordance with applicable rules and Northern Oaks' procedures.

On January 14, 2019 Motor Carrier Investigator William Clark (Officer Clark) visited Northern Oaks and spoke with Joni Jones, Operations Specialist and Terry Nichols, District Manager. Officer Clark asked if we had recently received any loads of asbestos. Ms. Jones responded we had and produced the HBC Specialized Contracting file. Officer Clark mentioned "a bag or two" had fallen out of the truck and he wanted to confirm that the load had been disposed. After his visit, Officer Clark followed up with a phone call and asked if bags are counted when loads of friable asbestos

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are received. Later that same day, Officer Clark called again and asked about Northern Oaks' procedure for disposing of friable asbestos loads.

Another manifested asbestos waste load was received from HBC Specialized Contracting on the same day of Officer Clark's inspection (January 14). Having been made aware of the discrepancy in the January 9 load as a result of Officer Clark's inspection, Northern Oaks contacted the generator on January 16 and confirmed that this load contained bags of asbestos waste that had been lost from the January 9 load.

### **Asbestos Disposal Procedures**

In accordance with its special waste acceptance program, Northern Oaks requires a 24-hour notice before a load of friable asbestos is delivered to the site for disposal. This allows sufficient time to excavate a dedicated area for the proper disposal of the friable asbestos. Friable asbestos loads must have a preapproved profile number and waste shipment record accompanying the loads. Once the load is entered into the computer system and the truck is weighed, a disposal ticket is issued and the truck is routed to the dedicated area. Landfill operators are then notified that the asbestos load is enroute to the active working face.

Northern Oaks' special waste program stresses that personnel be aware of inconsistencies in various materials received at the facility, such as waste color, odor, material consistency and even weight. The contents of the container are observed as the asbestos material is placed in the excavation. For safety reasons, operators do not leave the equipment to visually inspect loads disposed of at the landfill, the visual inspection is conducted from the cab of the equipment.

### **Regulatory Analysis**

The requirements for disposal of asbestos-containing waste material are contained in 40 CFR 61.154, "Standards for Active Waste Disposal Sites." In accordance with 40 CFR 61.154(e)(3), the owner or operator of an active waste disposal site is required to comply with the following requirement:

*(3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.*

As described above, Northern Oaks was not aware of any discrepancy between the shipment records and the quantity received in the January 9 load until Officer Clark's visit on January 14.

The load arrived in a secured rolloff container, and measured weight of the load was consistent with the material description in the waste manifest. The driver of the January 9 load provided no indication that any problems had been encountered on the trip, or that any material had potentially been lost. Further, the container had re-secured prior to arriving at Northern Oaks.

Individual bags of asbestos waste are not counted as the loads are placed in the excavation, since doing so would create a safety and exposure hazard for Northern Oaks' employees. Rather, the weight of the load was compared with the listed material on the waste manifest. Demolition/renovation waste can exhibit a range of material densities, due too high variation in materials and contractor packing practices. The weight of the load was consistent with the expected range of weights for the quantity of material listed on the manifest.

Northern Oaks first became aware of the discrepancy on January 14 and communicated with the generator on January 16 to resolve the discrepancy. Upon learning that the lost material had been included in another load disposed on January 14, *the same day as Northern Oaks learned of the discrepancy*, Northern Oaks considered the discrepancy to be resolved.

The cited regulation requires that the discrepancy be reported **"If the discrepancy is not resolved within 15 days after receiving the waste"** (emphasis added). Since the discrepancy was resolved well within 15 days of receiving the January 9 load, separate reporting of the discrepancy was not required. The Agency appears to concur with this point in its letter.

The letter does allege, however, that *"Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, no attempt was made to reconcile the discrepancy with the waste generator."* This is incorrect, and clearly not consistent with the facts or timeline of the incident.

Northern Oaks communicated with the generator to resolve the discrepancy and confirmed that the discrepancy had been resolved (i.e., the lost material had been recovered and disposed) upon discovery of the incident on January 14. These communications, as well as the subsequent resolution, all occurred well within the required timeframe of 15 days after receiving the waste. The date of the Agency's letter, January 15, is only six days after the load in question was received, and only one day after Northern Oaks discovered the discrepancy. All of Northern Oaks' communications with the generator to resolve the discrepancy, and even its response to the Agency's letter, have been completed prior to the date where reporting of the incident would be required.

Based on the analysis presented above, Northern Oaks respectfully requests the violation notice be rescinded. Northern Oaks appreciates the Agency's concerns for compliance protection of human health and the environment, but there is no violation of the cited regulation and the Agency's timeline for issuance of the letter is inconsistent with the timeline contained in the regulation.

Northern Oaks would be willing to meet in person to discuss this matter should the Agency require additional information or is inclined not to rescind the letter.

Please contact me if you have any questions or require any other information.

Sincerely,



**Debora L. Johnston**  
**Environmental Engineer**

- c: Ms. Mary Ann Dolehanty, DEQ**
- Dr. Eduardo Olaguer, DEQ**
- Mr. Christopher Ethridge, DEQ**
- Ms. Jenine Camilleri, DEQ**
- Ms. Karen Kajiya-Mills, DEQ**
- Mr. Chris Hare, DEQ**
- Ms. Meg Sheenan, DEQ**
- Mr. Steve Forgacs, WM**
- Mr. Rich Paajanen, WM**
- Mr. Terry Nichols, WM**
- Mr. Steve Niehoff, WM**