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ATTORNEY GENERAL



State of North Carolina
Department of Justice
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ATTACHMENT 8

REPLY TO: Daniel F. McLewhorn
Special Litigation
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October 31, 1997

STATE FILE

HAND DELIVERED

Robert R. Gelblum, Esquire
Assistant Attorney General
N.C. Department of Justice
Old Education Building
Raleigh, North Carolina 27602

Re: Administrative Order on Consent
UNC Chemical Waste Burial Area (NCD 980 557 623)

Dear Rob:

After consulting with the University's in house counsel Pat Crawford regarding the proposed Administrative Order for the UNC Chemical Waste Burial Area, I am pleased to report that the University is prepared to enter into an administrative order for the UNC Chemical Waste Burial Area. To enter into a consent administrative order, the University must have an amendment made to the proposed administrative order.

At the present time, the University does not have sufficient funds in its budget to cover the full costs of the remedy required by the proposed administrative order. Unless it has those monies in hand, Article V, § 3 of the Constitution of North Carolina bars the University from entering into the agreement. I have confronted the same issue in negotiating consent settlement of CERCLA claims against the State by the United States Environmental Protection Agency. We have successfully resolved the issue by conditioning the agreement with language similar to the following proposed paragraph, which I modified to fit the present circumstances:

The Parties to this Administrative Order recognized and acknowledge that the obligations of the University of North Carolina-Chapel Hill as an agency of the State of North Carolina under this Administrative Order can only be enforced if the University has appropriated funds available for such purpose. Nothing in this Administrative Order shall be interpreted or construed as a commitment or requirement that the University of North Carolina-Chapel



This addition will enable the University to enter into the proposed administrative order.

(21)

The second matter of which the agency should be aware is the sequence of the intended remedial action. The University's consultant has advised that the source of the contaminants of concern should be stabilized before the groundwater remediation is undertaken. Based on the advice of its consultants, the University believes it can achieve the source stabilization in sufficient time to undertake the groundwater remediation in accordance with the schedule in the proposed administrative order. I find nothing in the rules or the proposed administrative order which limits the University in reordering the sequence of remedial events so long as it meets the time schedule in the proposed administrative order and the rules. If this presents a problem, the University requests that the administrative order be revised accordingly.

Finally, the University has designated a different person as the site manager from that shown in the proposed administrative order. The name of Leonard Moretz should be deleted and the name of James E. Shilladay should be entered as the site manager.

Otherwise, the University is prepared to sign a revised administrative order for this site. Please send the revised order directly to Pat Crawford for signature with a copy to me. Thank you again for your cooperation and that of the agency in reaching resolution of this matter.

Sincerely,



Daniel F. McLawhorn
Special Deputy Attorney General

CC: Pat Crawford, Esquire
Sylvia Thiabaut, Esquire