



North Carolina Department of Environment and Natural Resources
Division of Water Quality

Beverly Eaves Perdue
Governor

Coleen H. Sullins
Director

Dee Freeman
Secretary

April 28, 2010

APR 29 2010

CERTIFIED MAIL #7008 1300 0000 1133 8937
RETURN RECEIPT REQUESTED

Mr. Richard Mann
Vice Chancellor for Finance & Administration
University of North Carolina at Chapel Hill
302 South Building CB#1000
Chapel Hill, North Carolina 27599-1000

Subject: **NOTICE OF VIOLATION and
RECOMMENDATION FOR ENFORCEMENT**
NOV-2010-WQ-0028
UNC Chapel Hill Bingham Research Facility
*Violations: Wetland Standards; Failure to Secure 401
Certification*
Orange County

Dear Mr. Mann:

On April 22, 2010, Martin Richmond of the NC Division of Water Quality (DWQ) Raleigh Regional Office conducted a stream/buffer determination at the subject facility, located at 1907 Clover Garden Church Rd in Orange County. Present during the site visit were Sharon Myers of UNC Chapel Hill Environment, Health & Safety, Kevin Nunnery of Biohabitats, Inc. and Andy Williams of the US Army Corps of Engineers.

During the site visit, unauthorized impacts to jurisdictional wetlands and a stream were observed. These impacts were the result of construction (including recent upgrades to the wastewater facility) on the property. Impacts noted were as follows:

- Impact A (Lagoon): Approximately 0.10 acres of wetland had been filled as part of the construction of the lagoon.
- Impact B (Road): Approximately 0.04 acres of wetland had been filled and a gravel road constructed. This activity was conducted without a NC DWQ 401 Certification.
- Impact C (Irrigation Line): A section of perennial stream approximately 3 ft x 6 ft was trenched for installation of a utility line, and rip rap fill material placed in the channel. This activity was conducted without a NC DWQ 401 Certification.
- In addition, it appeared that a portion of the wastewater sprayfield includes wetlands.

As a result of the site inspection and a file review, the following violations are noted:



Item I. 15A NCAC 02B .0231 (b): Wetland Standards

- (1) Liquids, fill or other solids or dissolved gases may not be present in amounts which may cause adverse impacts on existing wetland uses; and,
(5) Hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent adverse impacts on:
(C) The chemical, nutrient and dissolved oxygen regime of the wetland;
(D) The movement of aquatic fauna;
(F) Water levels or elevations.

Item II. 15A NCAC 2H .0501: Failure to Secure 401 Certification

Title 15A NCAC 2H .0501 requires certifications pursuant to Section 401 of the Clean Water Act whenever construction or operation of facilities will result in a discharge into navigable waters, including wetlands, as described in 33 CFR Part 323. Title 15A NCAC 2H .0502 states any person desiring issuance of the State certification or coverage under a general certification required by Section 401 of the Federal Water Pollution Control Act shall file with the Director of the North Carolina Division of Water Quality. The file review confirmed that a Pre-construction Notification has not been received by the Division of Water Quality for this project and that a 401 Water Quality Certification has not been issued.

Requested Response

Accordingly, you are directed to respond to this letter in writing **within 30 calendar days** of receipt of this Notice. Your response should include the following:

1. Please explain when construction (excavation, grubbing, and clearing) began at the site.
2. Please clearly explain why appropriate 401 Water Quality Certification and a 404 Permit were not secured.
3. Please provide a map that exactly details the streams and wetlands on the tract, and the areas that were impacted.
4. Please submit a Restoration Plan to this office for review and approval. You are encouraged to secure a consultant to assist you with your plan development, permit, certification and authorization necessary to achieve compliance. This plan should include the following:
 - a.) The restoration plan must detail how the earthen fill material placed in wetlands (including all side casting) will be removed and how excavated wetlands will be restored. This information must be clearly depicted on a map that you provide **as a part of this response**. This map should also indicate all of the wetlands locations on the tract as well as the wetland areas that have been impacted;
 - b.) Satisfactory wetland restoration requires the replanting of at least 2 native hardwood wetland species and the maintenance of a stem density/survivorship of at least 320 trees per acre at the end of 3 years. Also, this plan will require an herbaceous wetland seed mix for all wetlands that are disturbed;
 - c.) Stream Restoration Plan – Please explain how you plan to restore the pattern, profile and dimension of the impacted stream channels to include the removal of pipes, fill and riprap. The streambed must be restored to the original profile, the stream banks must be stabilized,

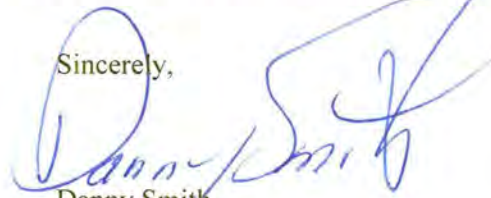
and any fill material must be removed from the riparian zone. Replanting of the riparian zone will be required.

- d.) Permit Application – If you wish for any impacts to remain in place, you must contact the U.S. Army Corps of Engineers (USACOE) for information on the type(s) of permit required. Depending on the type of permits USACOE requires, application for a 401 Water Quality Certification to DWQ will also be required.
- e.) Please indicate in your response a schedule with dates detailing when the restoration will be accomplished, and if you plan to seek a permit for the permissible impacts. This schedule should include a three-year monitoring plan to ensure that the wetlands are restored.
- f.) Wetlands are located in a wastewater spray application field. Please explain how you intend to reconfigure the sprayfield and eliminate the application of waste onto wetlands.

Finally, please explain how you propose to prevent these problems from reoccurring on future projects.

Thank you for your attention to this matter. This Office is considering sending a recommendation for enforcement to the Director of the Division of Water Quality regarding these issues and any future/continued violations that may be encountered. Your above-mentioned response to this correspondence will be considered in this process. **This office requires that the violations, as detailed above, be abated immediately. These violations and any future violations are subject to a civil penalty assessment of up to \$25,000.00 per day for each violation.** Should you have any questions regarding these matters, please contact Martin Richmond at (919) 791-4250 or myself at (919) 791-4200.

Sincerely,



Danny Smith
Regional Supervisor

cc: RRO File Copy
John Hennessy - NPS-ACO Unit, Archdale Building
Jay Zimmerman – DWQ/RRO Aquifer Protection Section
Andy Williams – USACE, 5331 Heritage Drive Suite 105, Wake Forest NC 27587