

FAX COVER SHEET



**NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES**
Raleigh Regional Office
1628 Mail Service Center
Raleigh, NC 27699-1628

10 Pages, including cover sheet

TO: MARY BETH KOZA FAX: 919-571-0227
 FROM: JAY ZIMMERMAN DATE: 5/14/10
 SUBJECT: CIVIL PENALTY

MESSAGE:

Just wanted to fax this civil penalty to your attention. Hard copy to follow. We'll await your reply. Please call me if questions.

Jay Zimmerman

If you do not receive all pages, call 919.791.4200 or fax back to 919.571.4718.

**PLEASE NOTE OUR PHONE NUMBER HAS CHANGED
THE FAX NUMBER REMAINS THE SAME**



North Carolina Department of Environment and Natural Resources

Division of Water Quality

Beverly Eaves Perdue
GovernorColeen H. Sullins
DirectorDee Freeman
Secretary

May 14, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 7006 0810 0002 6050 3527

Richard L. Mann – Vice Chancellor for Finance and Administration
The University of North Carolina at Chapel Hill
302 South Building CB#1000
Chapel Hill, North Carolina 27599

SUBJECT: Assessment of Civil Penalties for Violation(s) of
N.C.G.S. 143-215.1
Orange County
Enforcement File #: DV-2010-0029

Dear Mr. Mann:

This letter transmits notice of a civil penalty assessed against The University of North Carolina at Chapel Hill in the amount of \$15,000, and \$1612.48 in investigative costs, for a total of \$16,612.48. Attached is a copy of the assessment document explaining this penalty.

This action was taken under the authority vested in me by delegation provided by the Secretary of the Department of Environment and Natural Resources. The Division is aware of additional violations that may be the subject of civil penalties. Also, any continuing violation(s) may be the subject of a new enforcement action, including an additional penalty.

Within **thirty days** of receipt of this notice, you must do **one** of the following:

1. Submit payment of the penalty:

Payment should be made directly to the order of the Department of Environment and Natural Resources (do not include waiver form). Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Please submit payment to the attention of:

Ed Hardee
Aquifer Protection Section
Division of Water Quality
1636 Mail Service Center
Raleigh, North Carolina 27699-1636

OR

1617 Mail Service Center, Raleigh, North Carolina 27699-1617
Location: 512 N. Salisbury St. Raleigh, North Carolina 27604
Phone: 919-807-6300 \ FAX: 919-807-6492 \ Customer Service: 1-877-623-6748
Internet: www.ncwaterquality.org

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2. Submit a written request for remission including a detailed justification for such request:

Please be aware that a request for remission is limited to consideration of the five factors listed below, as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Because a remission request forecloses the option of an administrative hearing, such a request must be accompanied by a waiver of your right to an administrative hearing and a stipulation and agreement that no factual or legal issues are in dispute. Please prepare a detailed statement that establishes why you believe the civil penalty should be remitted, and submit it to the Division of Water Quality at the address listed below. In determining whether a remission request will be approved, the following factors shall be considered:

- (1) whether one or more of the civil penalty assessment factors in NCGS 143B-282.1(b) were wrongfully applied to the detriment of the violator;
- (2) whether the violator promptly abated continuing environmental damage resulting from the violation;
- (3) whether the violation was inadvertent or a result of an accident;
- (4) whether the violator has been assessed civil penalties for any previous violations; or
- (5) whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

Please note that all evidence presented in support of your request for remission must be submitted in writing. The Director of the Division of the Division of Water Quality will review your evidence and inform you of their decision in the matter of your remission request. The response will provide details regarding the case status, directions for payment, and provision for further appeal of the penalty to the Environmental Management Commission's Committee on Civil Penalty Remissions (Committee). Please be advised that the Committee cannot consider information that was not part of the original remission request considered by the Director. Therefore, it is very important that you prepare a complete and thorough statement in support of your request for remission.

In order to request remission, you must complete and submit the enclosed "Request for Remission of Civil Penalties, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form within thirty (30) days of receipt of this notice. The Division of Water Quality also requests that you complete and submit the enclosed "Justification for Remission Request." Both forms should be submitted to the following address:

Ed Hardee
Aquifer Protection Section
Division of Water Quality
1636 Mail Service Center
Raleigh, North Carolina 27699-1636

OR

3. File a petition for an administrative hearing with the Office of Administrative Hearings:

If you wish to contest any statement in the attached assessment document you must file a petition for an administrative hearing. You may obtain the petition form from the Office of Administrative Hearings. You must file the petition with the Office of Administrative Hearings within thirty (30) days of receipt of this notice. A petition is considered filed when it is received in the Office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for official state holidays. The petition may be filed by facsimile

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(fax) or electronic mail by an attached file (with restrictions) - provided the signed original, one (1) copy and a filing fee (if a filing fee is required by NCGS §150B-23.2) is received in the Office of Administrative Hearings within seven (7) business days following the faxed or electronic transmission. You should contact the Office of Administrative Hearings with all questions regarding the filing fee and/or the details of the filing process. The mailing address and telephone and fax numbers for the Office of Administrative Hearings are as follows:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Tel: (919) 431-3000
Fax: (919) 431-3100

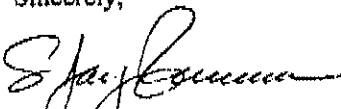
One (1) copy of the petition must also be served on DENR as follows:

Mary Penny Thompson, General Counsel
DENR
1601 Mail Service Center
Raleigh, NC 27699-1601

Failure to exercise one of the options above within thirty (30) days of receipt of this notice, as evidenced by an internal date/time received stamp (not a postmark), will result in this matter being referred to the Attorney General's Office for collection of the penalty through a civil action.

Please be advised that additional penalties may be assessed for violations that occur after the review period of this assessment. If you have any questions, please contact Jay Zimmerman at (919) 791-4200.

Sincerely,



for, Coleen H. Sullins

Enclosures

cc: RRO Enforcement File
APS Central Files
Orange County Health Department

STATE OF NORTH CAROLINA

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF ORANGE

FILE NO. Enf. File # DV-2010-0029

IN THE MATTER OF:)
The University of North)
Carolina at Chapel Hill)

FINDINGS AND DECISION AND
ASSESSMENT OF CIVIL PENALTIES

FOR VIOLATIONS OF:)
)
N.C.G.S. 143-215.1)

Acting pursuant to North Carolina General Statutes (N.C.G.S.) 143-215.6(A) and the delegation provided by the Secretary of the Department of Environment and Natural Resources, I, Coleen H. Sullins, Director of the Division of Water Quality (DWQ), make the following:

I. FINDINGS OF FACT:

- A. The University of North Carolina at Chapel Hill (hereinafter referred to as UNC), owns and operates the Bingham Facility (former Research Resource Facility), at 1907 Clover Garden Road, Chapel Hill North Carolina, Orange County.
- B. The Bingham facility consists of a biological nutrient removal treatment train, filtration, disinfection, a 1.6 million storage lagoon, spray irrigation disposal fields, and all associated piping, valves, sprinklers and appurtenances, to serve the animal research activities conducted at the Bingham 2 building (formerly ARC 2).
- C. UNC constructed the Bingham facility as a deemed permitted facility and began operations there in the Spring of 2009.
- D. On November 19, 2009, UNC notified the DWQ of a piping leak between the clarifier and the sand filter that released approximately 630 gallons into soils surrounding the piping.
- E. UNC does not have a permit for said discharge.
- F. On December 14, 2009, DWQ staff inspected the Bingham facility in response to facility non-compliance reported on December 13, 2009. During the inspection, it was determined that violations of North Carolina General Statute 143-215.1 had occurred as a result of illegal discharge of wastewater from the 1.6 million gallon storage lagoon via the groundwater underdrain system beneath the storage lagoon.
- G. North Carolina General Statute 143-215.1 prohibits the operation of a disposal system without a permit from the Commission. During the inspection on December 14, 2009, DWQ staff noted that a dye had been added to the wastewater in the lined storage lagoon. On the western edge of the storage lagoon, dyed wastewater was identified discharging from the lagoon underdrain system. Discharged wastewaters were noted flowing overland towards a tributary of Collins Creek. The green-dyed wastewater was observed in the tributary of Collins Creek.
- H. UNC does not have a permit for said discharge to waters of the State.

- I. On December 14, 2009, UNC implemented a short-term plan to eliminate the illegal discharge of wastewater from the Bingham facility to the surface waters of the State. The short-term plan involved the installation of a sump, with a pump and float assembly to collect wastewater from the under-drain system piping to direct the water back to the 1.6 million gallon storage lagoon.
- J. On December 18, 2009, the Division issued a Notice of Violation (NOV) to UNC identifying a violation of N.C.G.S. 143-215.1, for the illegal discharge of wastewater to waters of the State without a permit. The NOV was sent by certified mail, return receipt requested and received on December 22, 2009.
- K. On January 19, 2010, the Division received a response to the December 18, 2009 NOV from UNC. The response included the November 17, 2009 Report of Geotechnical Exploration for the 1.6 million gallon lagoon conducted by MACTEC Engineering and Consulting, Inc.
- L. The MACTEC Report of Geotechnical Exploration noted that on October 19, 2009, MACTEC was forwarded the observations of Mr. Paul Caruth from UNC, which included among other things notes that the liner in the storage lagoon was stretched between the pipe penetrations, that the storage lagoon level appeared to be dropping, and that a leak was suspected.
- M. The MACTEC Report of Geotechnical Exploration noted that no groundwater was observed in the two (2) test borings constructed below the base of the storage lagoon or in the four (4) hand auger borings installed at the toe of the slope of the lagoon. On November 3, 2009 MacTec staff observed the discharge of water from the storage lagoon underdrain system at a rate of 1.5 gallons per minute and noted that it had a foul odor. Based upon the lack of observed groundwater below the lagoon, the report concluded that water observed flowing out of the underdrain at the southwest corner of the storage lagoon indicated that leakage through the liner was occurring.
- N. On February 4, 2010 a Notice of Intent to enforce letter was issued to UNC for a violation of N.C.G.S. 143-215.1. The Notice was sent by Certified Mail, Return Receipt Requested and received on February 7, 2010.
- O. A leak test survey conducted on February 16th and 17th by Hutchinson Group, Ltd. and submitted to the Division on March 31, 2010, indicated that the storage lagoon liner had over one hundred areas in need of a patch. Seventy percent of the damaged areas were due to perforation of the liner; ten percent were due to seam failure; and twenty percent were due to deep cut/abrasions (but not penetrations). The collars for the pipe boots were only held by a single clamp, all of which had fallen off and evidence that water had migrated through the annular space along the pipe existed. In addition, twelve areas of damaged liner were mapped during the electrical leak detection survey of the pond bottom. The report concludes that several areas were too close to discriminate during the electrical leak detection survey, and that more may have been missed due to the electrical noise from adjacent areas of damaged liner.
- P. Staff costs and expenses associated with detecting the violations, defining their nature and extent and bringing enforcement action totaled \$1612.48.

Based upon the above Findings of Fact, I make the following:

II. CONCLUSIONS OF LAW:

- A. UNC is a "person" within the meaning of N.C.G.S. 143-215.6(A) pursuant to N.C.G.S. 143-212(4).

- B. Collins Creek and its tributaries constitute waters of the State within the meaning of N.C.G.S. 143-215.1, pursuant to N.C.G.S. 143-212(6).
- C. The discharge of wastewater from the storage lagoon caused by UNC constitutes making an outlet to waters of the State for purposes of N.C.G.S. 143-215.1(a)(1), for which a permit is required by N.C.G.S. 143-215.1.
- D. General Statute 143-215.6A(a)(2) provides that a civil penalty of not more than \$25,000.00 per violation may be assessed against a person who fails to apply for or to secure a permit required by General Statute 143-215.1 or who violates or fails to act in accordance with the terms, conditions, or requirements of a permit required by N.C.G.S. 143-215.1.
- E. General Statute 143-215.3(a)(9) provides that the reasonable costs of any investigation, inspection or monitoring survey may be assessed against a person who violates any regulations, standards, or limitations adopted by the Environmental Management Commission or violates any terms or conditions of any permit issued pursuant to N.C.G.S. 143-215.1, or special order or other document issued pursuant to N.C.G.S. 143-215.2.

Based upon the above Findings of Fact and Conclusions of Law, I make the following:

III. DECISIONS

Pursuant to N.C.G.S. 143-215.6A in determining the amount of the penalty, I have taken into account the Findings of Fact and Conclusions of Law and considered all the factors listed in N.C.G.S. 143B-282.1.

Accordingly, UNC shall be, and hereby is, assessed a civil penalty of:

\$ <u>15,000</u>	for making an outlet to waters of the State without a permit as required by N.C.G.S. 143-215.1.
\$ <u>15,000</u>	TOTAL CIVIL PENALTY which is <u>60</u> percent of the maximum penalty authorized by N.C.G.S. 143-215.6A.
\$ <u>1612.48</u>	Investigation costs assessed
\$ <u>16612.48</u>	<u>TOTAL AMOUNT DUE</u>

Pursuant to G.S. 143-215.6A(c), in determining the amount of the penalty I have taken into account the Findings of Fact and Conclusions of Law and the factors set forth at G.S. 143B-282.1(b), which are:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;

- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures.

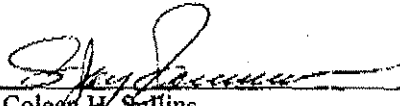
IV. NOTICE:

I reserve the right to assess civil penalties and investigative costs for any continuing violations occurring after the assessment period indicated above. Each day of a continuing violation may be considered a separate violation subject to a maximum \$25,000.00 per day penalty. Civil penalties and investigative cost may be assessed for any other rules and statutes for which penalties have not yet been assessed.

V. TRANSMITTAL:

These Findings of Fact, Conclusions of Law and Decision shall be transmitted to UNC in accordance with N.C.G.S. 143-215.6(A)(d).

5/19/2010
(Date)

for,


Coleen H. Sullins

JUSTIFICATION FOR REMISSION REQUEST

APS Case Number: DV-2010-0029

County: Orange

Assessed Party: The University of North Carolina at Chapel Hill

Amount assessed: \$16,612.48

Please use this form when requesting remission of this civil penalty. You must also complete the "Request For Remission, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form to request remission of this civil penalty. You should attach any documents that you believe support your request and are necessary for the Director to consider in determining your request for remission. Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. By law [NCGS 133-215.6A(f)] remission of a civil penalty may be granted when one or more of the following five factors applies. Please check each factor that you believe applies to your case and provide a detailed explanation, including copies of supporting documents, as to why the factor applies (attach additional pages as needed).

- ___ (a) one or more of the civil penalty assessment factors in NCGS 143B-282.1(b) were wrongfully applied to the detriment of the petitioner (the assessment factors are included in the attached penalty matrix and/or listed in the civil penalty assessment document);
- ___ (b) the violator promptly abated continuing environmental damage resulting from the violation (i.e., explain the steps that you took to correct the violation and prevent future occurrences);
- ___ (c) the violation was inadvertent or a result of an accident (i.e., explain why the violation was unavoidable or something you could not prevent or prepare for);
- ___ (d) the violator had not been assessed civil penalties for any previous violations;
- ___ (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions (i.e., explain how payment of the civil penalty will prevent you from performing the activities necessary to achieve compliance).

EXPLANATION:

STATE OF NORTH CAROLINA

**DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES**

COUNTY OF ORANGE

**IN THE MATTER OF ASSESSMENT)
OF CIVIL PENALTIES AGAINST)
THE UNIVERSITY OF NORTH)
CAROLINA AT CHAPEL HILL)
)
)
)**

**WAIVER OF RIGHT TO AN
ADMINISTRATIVE HEARING AND
STIPULATION OF FACTS**

FILE NO. DV-2010-0029

Having been assessed civil penalties totaling \$16,612.48 for violation(s) as set forth in the assessment document of the Division of Water Quality dated, May 14, 2010, the undersigned, desiring to seek remission of the civil penalty, does hereby waive the right to an administrative hearing in the above-stated matter and does stipulate that the facts are as alleged in the assessment document. The undersigned further understands that all evidence presented in support of remission of this civil penalty must be submitted to the Director of the Division of Water Quality within thirty (30) days of receipt of the notice of assessment. No new evidence in support of a remission request will be allowed after thirty (30) days from the receipt of the notice of assessment.

This the _____ day of _____, 200__.

Signature

ADDRESS

TELEPHONE
