November 10, 2021

CERTIFIED MAIL #7017 2680 0000 2236 8068
RETURN RECEIPT REQUESTED

State of North Carolina
Attn: N. David Smith
116 West Jones Street
Raleigh, NC 27603-1335

Subject: Notice of Violation-Notice of Intent to Enforce
NOV-2021-PC-0538
Stream Standard Violations
Failure to Secure a 401 Certification
Failure to Pay Compensatory Mitigation
Project Athens, DWR Project #20201897
Address of Site: 5900 Chapel Hill Road, Raleigh
Wake County

Dear Mr. Smith,

On October 4, 2021, October 12, 2021, and October 25, 2021, staff from the Raleigh Regional Office (RRO) of the Division of Water Resources (DWR) conducted site inspections at the above referenced site.

On October 4, 2021, Stephanie Goss and Colleen Cohn from the RRO conducted a 401-compliance evaluation inspection. The following observations and violations were noted during the site inspection and subsequent file review (See Attachment 1 for feature designations):

- The stream labeled as Stream S1 on Attachment 1 is an unnamed tributary to Richland Creek and is classified as Class C, Nutrient Sensitive Waters (NSW) in the Neuse River Basin.
- Stream S1 is depicted on the NRCS Soil Survey of Wake County and the USGS Topographic Map and is therefore subject to the Neuse Riparian Buffer Rules (15A NCAC 02B .0714 (3)).
- DWR staff observed approximately 10 linear feet of Stream S1 was impacted by the addition of a plastic culvert, fill and rock in the stream channel. This activity resulted in severe impacts to the stream, the streamside area and the streambanks (Photographs 1 and 2).
- A file review confirmed that a Pre-Construction Notification was received by DWR on April 6, 2021 for this project and an Individual 401 Water Quality Certification (WQC) was issued on June 3, 2021. However, stream S1 was not authorized to be impacted by the installation of a culvert/fill under the approved 401 WQC. A Buffer Authorization was issued on June 3, 2021 for impacts to the riparian buffers (only) at stream S1 for a bridge crossing.
- A file review confirmed that DWR has not received proof of payment for compensatory mitigation despite the requirement that until “proof of payment has been provided to this Office, no impacts specified in this [Buffer] Authorization Certificate shall occur.”
Item I. Stream Standards Violation- Removal of Use
Title 15A North Carolina Administrative Code (NCAC) 02B .0211 (2) requires that “The waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard.”

Item II. Failure to Secure a 401 Certification
Title 15A NCAC 02H .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 02H .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 Resources.

Item III. Buffer Authorization Condition Violation- Failure to Pay Compensatory Mitigation
The Buffer Authorization Certificate, DWR #20201897, states that 29,336 square feet of compensatory mitigation was required to be paid before impact shall occur. File review confirmed that proof of payment for mitigation to DWR has not been received as of the date of this letter.

On October 12, 2021, Stephanie Goss from the RRO and Lyle Phillips from the U.S. Army Corps of Engineers conducted a site inspection due to the self-report of in-stream sediment on October 11, 2021 by Spencer Merritt with East West Partners via telephone. The following observations and violations were noted during the site inspection:

- DWR staff observed that due to the land disturbing activities on the parcel, sediment had been deposited into Stream S1 for approximately 200 linear feet at a depth of approximately 2-3 feet (Photographs 4-8).
- DWR staff observed that due to the land disturbing activities on the parcel, sediment and gravel had been deposited into Zone 1 and 2 of the riparian buffer for approximately 130 linear feet at a depth of approximately 3 inches (Photographs 3-5).

Item IV. Stream Standards Violation- Other Waste (In-Stream Sediment)
Title 15A North Carolina Administrative Code 02B .0211 (12) requires that “Oils; deleterious substances; colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses;”

On October 25, 2021, Stephanie Goss and Colleen Cohn from the RRO conducted a site visit at the above referenced site at the request of Eric Penley with Tennoca. The purpose of the site visit was to assess the in-stream sediment removal efforts. DWR staff observed the plastic culvert in stream S1 had been removed and restoration efforts to remove the in-stream sediment were ongoing.

You are requested to address the below items in writing within 30 days of receipt of this letter.

1. **Riparian Buffer (Sediment Impacts)** Sediment needs to be removed from the riparian buffer area utilizing shovels and buckets. Sediment should be removed down to the native soil. No heavy equipment can be utilized in the riparian buffer. Sediment that has been removed from stream/riparian buffer needs to be secured upslope, landward of the 50-foot buffer and stabilized with thick vegetative cover.

2. **Stream Restoration Plans (Sediment Impacts)** Sediment needs to be removed from the stream utilizing shovels and buckets. Sediment should be removed down to the native soil. No heavy
equipment can be utilized in the stream/streamside area. Sediment that has been removed from stream needs to be secured upslope, landward of the 50-foot buffer and stabilized with thick vegetative cover.

3. **Erosion control** Please address the control measures that will be used for temporary stabilization/sediment control while this work is under way. Please provide a schedule with dates by which this work will be completed. As a part of your restoration plan, it is required that you include a permanent stabilization plan for the disturbed areas.

4. **Plan and Schedule.** Please provide a detailed schedule with dates explaining when the restoration will be accomplished.

Please submit required materials to:
Stephanie Goss
Division of Water Resources
3800 Barrett Drive
1628 Mail Service Center
Raleigh, NC 27699

This office requires that the violations, as detailed above, be abated immediately and properly resolved. Environmental damage and violations of North Carolina Administrative Codes have been documented for the subject site as stated above. Your efforts to undertake activities to bring the subject site back into compliance is not an admission, rather it is an action that must be taken in order to begin to resolve ongoing environmental issues.

**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 Stephanie Goss at (919) 791-4256 or via email at Stephanie.Goss@ncdenr.gov.

Sincerely,

Scott Vinson, Regional Supervisor
Water Quality Regional Operations Section
Raleigh Regional Office
Division of Water Resources, NCDEQ

Attachment 1

cc: Lyle Phillips, USACE Raleigh Regulatory Field Office (via email)
Bill Denton, DEMLR
Paul Wojoski DWR 401 & Buffer Permitting
RRO files
Photograph 1 & 2: Unauthorized culvert at Stream S1
Photographs 3 & 4: Sediment in the riparian buffer of Stream S1.
Photograph 5 & 6: Sediment and gravel in the riparian buffer and Stream S1
Photograph 7 & 8: Sediment and gravel in the riparian buffer and Stream S1
Attachment 1: Project Athens; NOV-2021-PC-0538

Map provided by NCDEQ Division of Water Resources

:: Locations are approximate and are provided for reference only ::