



Transportation

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August 26, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Department of the Army
Wilmington District Corps of Engineers
Attention: Colonel Kevin P. Landers Sr.
69 Darlington Avenue
Wilmington NC, 28403-1343

NCDEQ, Division of Water Resources
Attention: Ms. Amy Chapman
1617 Mail Service Center
Raleigh NC, 27699-1617

Subject: USACE Cease and Desist Notice, August 15, 2016
NCDWR Notice of Violation, NOV-2016-PC-0403

North Carolina Department of Transportation
USACE Action ID No. SAW-2009-00876
NCDWR Project No. 20020672
TIP: R-2559 B&C, R-3329
Monroe Bypass, Union County

Dear Colonel Landers and Ms. Chapman:

The North Carolina Department of Transportation (NCDOT) acknowledges receipt of the subject Cease and Desist Notice dated August 15, 2016 and Notice of Violation dated August 12, 2016, by certified mail on August 18, 2016 and August 16, 2016 respectively. We have fully reviewed the circumstances leading up to these notices with NCDOT staff, consultants and the Contractor, Monroe Bypass Constructors. LLC (MBC), and offer the following response.

On the morning of August 9, 2016, Ms. Donna Hood of the NC Division of Water Resources (NCDWR), Ms. Crystal Amschler of the US Army Corps of Engineers (USACE), Mr. Thomas Smith with the NCDOT Roadside Environmental Unit (REU) and members of the project environmental team conducted an on-site inspection of the subject project in Union County. The group met at the project office at approximately 9:30 AM and proceeded to inspect permitted sites along the entire length of the project beginning from the west at Site 1 near US74. During the previous night between 7:00 and 11:00 PM, the east end of the project received about 2.1" of rain and grading activities there were generally idle. The Section 3 erosion & sediment control (E&SC) team began mandatory E&SC inspection in accordance with the National Pollutant Discharge Elimination System (NPDES) permit at Morgan Mill Road working towards the east end of the project, arriving at Permit Site 60 approximately one hour after the NCDWR team resulting in the unreported loss status. Section 1 and 2 E&SC inspection teams were also



performing routine E&SC inspection on this date, however the west end of the project received relatively small rainfall during the previous night.

During this site visit the agency representatives collectively noted a number of violations described in the August 15, 2016 USACE Notice as follows:

- Construction at Permit Site 1 was not completed in accordance with the permitted plans. The low flow culvert at this site was found to be incorrectly placed - not aligned with the existing stream. The associated floodplain culvert was subsequently also misaligned.
- Several wetland areas had been mechanically cleared outside of permitted limits and contained unauthorized fill.

and described in the August 12, 2016 NCDWR letter as follows:

- Construction of permit modification without agency consultation or approval at Site 1
- Failure to follow the approved 401 Permit at Site 1.
- Unreported sediment loss at Site 60.

In addition to the specific violations described above relative to the Project 404/401 Permit, NCDOT REU issued an Immediate Corrective Action notice (ICA) for E&SC deficiencies in Sections 2 and 3 of the project and at the Stalling Road borrow/waste site.

Based on the violations described at permitted Sites 1 and 60, NCDWR issued a Notice of Violation on August 12, 2016 and concurrently the USACE recommended in a letter dated August 15, 2016 that work in waters of the US, including wetlands, cease and desist until certain conditions are met. Based on comments from NCDWR and USACE regarding Site 1, NCDOT suspended all work in Site 1 on August 11, 2016. In addition, the NCDOT suspended all land disturbing work in Sections 2 and 3 of the project, plus borrow areas, on August 12, 2016 while general erosion and sediment control measures were brought into compliance with the permit.

The NCDOT is aware that this project has received prior ICAs and an NOV during the period between August 2015 to August 2016 and we fully recognize the need to determine the additional management and inspection steps necessary to prevent violation or poor rating reoccurrence at any level. This letter is intended to not only respond directly to several technical requirements presented in both the USACE and NCDWR letters but will also address the underlying management deficiencies we believe allowed these violations to occur and what the NCDOT is proactively doing to correct them.

The items in the USACE and NCDWR letters requiring technical response were as follows:

1. Provide a schedule for completing Site 1 within 4 weeks by relaying the pipe in proper alignment with the stream, completing required stream improvements to meet permit conditions, and stabilization to prevent erosive damage (USACE & NCDWR)
 - 1a. Provide a schedule for the removal of fill and replanting associated with the over clearing of wetland areas (USACE)
2. Improvements to site inspections with personnel and training to prevent future unreported losses (NCDWR)
3. Provide written documentation with dates, names and topics covered during the storm water training session required during the last Notice of Violation issued May 11, 2016 (NCDWR)

Response Concerning Item 1

The NCDOT recognizes there was a failure to properly layout the culvert system in the field because of a construction survey oversight compounded by inaccurate baseline stream mapping. Further, after recognizing there was a problem the management team did not quickly and efficiently involve agencies in determining the appropriate and timely solution. We have addressed how we will prevent future occurrences of this issue in our “Responses” paragraphs later in this letter.

MBC has fully committed to re-laying the low-flow 84-inch reinforced concrete pipe at Site 1 to proper alignment with the stream and we appreciate the verbal indication Ms. Hood and Ms. Amschler provided during a conference call on August 19, 2016 that the second 84-inch “high flow” pipe may stay in place, thereby providing desirable additional pipe separation between the two lines. In a memo to the NCDOT on August 23, 2016, MBC clearly stated its intent to re-lay the misaligned 84-inch pipe and presented a list of engineering and construction steps necessary to complete this task as early as possible. During an August 24, 2016 construction coordination meeting between NCDOT and MBC, the following planned sequence was developed:

- a. August 26 - Receive verbal concurrence for the intent stated in this letter.
- b. August 28 - Resume construction of partial headwall section as necessary to secure existing unsupported high flow 84-inch pipe.
- c. September 2 - Submit permit modification package, including design details for Site 1.
- d. September 6 to 16 - re-lay existing 84-inch low-flow pipe.
During construction, weekly photographic monitoring of the pipe inlet and outlet will be forwarded to the environmental agencies.
- e. By September 20 - Complete end wall.
Post construction, bi-weekly photographic monitoring of the pipe inlet and outlet will be forwarded to the environmental agencies.
- f. By September 30 - Complete slope stabilization and stream improvements.

MBC intends to reuse the existing pipe because of limited availability of replacement pipe and to this end it is devising a mechanical system for separating the existing sections with minimal joint damage. We will follow this letter with a final schedule to you by Friday, September 2, 2016, and will make every effort to comply with the date commitments made above. Any from the schedule outlined above will be brought to the attention of your office.

As mentioned earlier, the current field conditions on which the permit was based do not align with the permit drawings and a permit modification is still needed to accurately reflect the actual impact on the stream location in Site 1. The schedule proposed above is based on concurrent relay of the pipe, construction of end wall and update of the permit. MBC’s environmental consultant, Three Oaks Engineering (Three Oaks), will take the lead on the permit update via the NCDOT.

Upon completion of the pipe realignment and end wall, the contractor will complete ditches, embankment, slopes and stabilization in the areas as continuously and as quickly as possible.

Response Concerning Item 1a.

The six wetland areas that were mechanically cleared outside of permitted limits and/or received unauthorized fill have been addressed. Attachment 1 to this letter outlines the dates by which unauthorized fill was removed and the dates by which they were replanted. For the sites that it was deemed necessary to replant with saplings, planting will take place with appropriate available native plants during November, 2016.

Response Concerning Requirement 2

To improve the E&SC and permit site inspections, the NCDOT commits to the following:

- a. Reformatting of the weekly NPDES inspection procedure to focus reporting on possible sediment loss, including in permitted areas. In the past the project team has observed the traditional “5-gallon bucket” rule as guidance on sediment loss reporting. This approach is very subjective and we have shifted our approach to a more conservative “zero tolerance” viewpoint; ALL visible sediment loss shall be reported by project personnel to NCDOT REU and NCDOT environmental personnel. We will also review our agency “call down” list to insure timely notification of all sediment losses as identified by the expanded zero tolerance criteria described above.
- b. Our project staff has routinely completed required NPDES reporting however because of the size of the project and the number of major subcontractors involved, we have already consolidated all E&SC activities into a single list that can be used for senior level project management and planning around maintenance of the project. This much improved formatting and filtering of tasks will allow the project management team to more easily identify problem areas and act during normal weekly EC maintenance and after rain events. This improved reporting will allow the NCDOT’s Resident Engineer (RE) clear information for enforcement of contract environmental requirements.
- c. The NCDOT’s RE office has recently added an Assistant RE who will be solely responsible for insuring efficient compilation of site inspection reports under the supervision of his senior Assistant RE and the RE.
- d. MBC’s environmental supervisor has been given clear authority to direct equipment, labor and other resources as she deems necessary to comply with contract requirements. In case of any conflict she has been given clear authority to work directly with the NCDOT’s RE to quickly resolve problems.
- e. As described earlier in this letter, in order to increase the level of permit compliance awareness MBC has committed to increase involvement of their environmental consultant, Three Oaks, to at least one site visit per week specifically for oversight of the permitted area management and inspections work. This site visit frequency will be reviewed every 30 calendar days and adjustments to this minimum schedule will be made by the management team. Three Oaks will attend the inspection of ALL permitted sites providing real-time opinion on soil loss, implementation of the engineering drawings and recommendations for earliest stabilization. This increased involvement by Three Oaks should help prevent the type of issues encountered in Site 1, Site 60, and the over-cleared wetland sites.
- f. MBC management has committed to work with the NCDOT’s RE to develop a realistic plan for completing culverts, slopes, ditches and final stabilization of unfinished work in permitted areas. This plan will be presented to all agencies for comment within 14 calendar days. In the future work will not begin in permitted areas until a clear work plan is approved by the NCDOT’s RE and progress will be closely monitored by the RE and Three Oaks.
- g. As a result of improved tracking and analysis of E&SC activities, NCDOT will work closely with MBC’s senior management and will not hesitate to suspend activities as necessary to insure compliance with the contract provisions relative to the environment and permits.

Response Concerning Requirement 3

Attachment 2 to this letter is a copy of the attendance roster for environmental retraining conducted on May 19 and 23, 2016. Training sessions included understanding 401/404 Permits; permitted impacts vs non-permitted impacts; Project Special Provisions and correct installation of erosion control best management practices, specifically stone banks, for stream improvement/stabilization.

After the May 2016 NOV, twelve new people became certified in level two erosion and sediment control for HRI, the segment one grading subcontractor. In response to this current NOV, four additional people will be certified in level two erosion and sediment control for V&G (segment two grading subcontractor) and four for Wagner (segment three grading subcontractor).

Although this training is an effective tool for distributing important information and reinforcing good work habits, our observation is that training alone has not produced the desired result. Our current approach is to insure senior level management buy-in and accountability. Generally, we see that individual employees are experienced and professional but require clear guidance and support from their management team, including from key subcontractors. MBC has clearly committed to holding its subcontractors to the higher standards for erosion control committed to in this response. Subcontractors will be held directly responsible for their actions and when necessary their work will be proactively suspended by MBC's environmental supervisor in order to achieve notable results.

The NCDOT is committed to fully understanding the underlying cause of this violation and will prevent a recurrence. We also fully understand Condition n. of the 404 Permit which reads:

n. Violations of these conditions or violations of Section 404 of the Clean Water Act must be reported in writing to the Wilmington District U.S. Army Corps of Engineers within 24 hours of the permittee's discovery of the violation

Again, we regret this violation of the permit and will continue to work hard to regain the trust of NCDWR.

Sincerely,



Mr. Philip Harris, III, PE
NCDOT PDEA Natural Environment Section

PH/RB/TM; Attachment; cc:

Ms. Donna Hood, NCDWR Mooresville Regional Office
Ms. Crystal Amschler, US Army Corps of Engineers, Asheville District Office
Mr. Monte Matthews, US Army Corps of Engineers, Wake Forest District Office
Mr. Michael Holder, PE, NCDOT Chief Engineer
Mr. Ron Hancock, PE, NCDOT Deputy Chief Engineer
Mr. Louis Mitchell, PE, Division Engineer
Mr. Colin Mellor, NCDOT Project Delivery
Mr. Rick Baucom, PE, NCDOT Division 10 Construction Engineer
Mr. Phil Suggs, CPESC, NCDOT Roadside Environmental Field Operations Engineer
Mr. Larry Thompson, PWS, LSS, NCDOT Division 10 Environmental Officer
Mr. James Triplett, PE, Monroe Bypass Constructors, LLC
Mr. Tim Michael, Summit Design and Engineering Services, Resident Engineer
File

The following permit sites were inadvertently cleared and/or filled beyond the authorized limits. NCDOT has begun remediation at each site as noted. If sapling planting is noted, planting will occur in November to optimize growth potential, in accordance with NCDOT protocol. Once the planting is complete, a final update to this memo and table will be provided to the Corps and NCDWR.

Permit Site	Area Over Cleared and/or filled	Date Fill Removed	Vegetation	Date Replanted	Comments
2	0.047 ac (Clearing and fill)	End May 2016	Replant with saplings and wetland seed mix.	Wetland seed mix planted on same day fill was removed Saplings to be planted in November	Relocate old exterior fencing once adequate vegetation on adjacent slope is complete per agencies direction and remove rock checks.
5	0.010 ac (Fill only)	Ongoing	Plant with wetland seed mix only.	Wetland seed mix will be planted when slopes are stabilized and toe protection is removed.	Toe protection will be removed once upstream slopes are stabilized. Estimated completion date End September
7	0.041 ac (Clearing only)	Mid July 2016	Plant with wetland seed mix only.	Wetland seed mix planted on same day fill was removed	Safety and silt fence have been appropriately located.
14	0.033 ac (Clearing and fill)	End July 2016	Replant with saplings and wetland seed mix.	Wetland seed mix planted on same day fill was removed Saplings to be planted in November	Safety and silt fence have been appropriately located.
18	0.017 ac (Clearing only)	No fill to be removed	Replant with saplings and wetland seed mix.	Wetland seed mix planted on Beginning July Saplings to be planted in November	Survey elevations and return to preconstruction levels, to be completed by End Sept.
33	0.123 ac (Fill only)	End July 2016	Plant with wetland seed mix.	Wetland seed mix planted on same day fill was removed	Temporary stone per ESC plans has been removed. Safety and silt fence have been appropriately located.

Wetland Seed Mix – Use the appropriate species listed in the REU protocol for Native Seeding – West.
Avoid using fescue.

https://www.ncdot.gov/doh/Operations/dp_chief_eng/roadside/soil_water/pdf/NativeSeedingAndMulching_west.pdf

Saplings should not be planted until November as stated in the REU protocol for Wetland Reforestation and will be based upon available native plants.

https://www.ncdot.gov/doh/Operations/dp_chief_eng/roadside/soil_water/pdf/WetlandReforestation.pdf

Environmental Re-Training 5/23/16

Bryson WESTBROOK

HRI, Inc.



James Teague

Siteworks, LLC.



Ben Bishop

HRI, Inc.



<u>Name</u>	<u>Subcontractor</u>	<u>Contractor</u>
Jimmy Snipes	UIG	UIG
LARRY Smith	UIG	UIG
Michael Gantt	MBC	
Doug Baldwin	UIG	UIG
Keith Timmons	GML	MBC
John	UIG	UIG
Jerry Dukery	UIG	UIG
Harvey Richardson	Dellinger	
JAMES BETTY		
TIM BYRD	" DELLINGER INC.	
RICHARD OLINGER		MBC
JIMMY SOMMERVILLE	V+G	V+G
Phil Robinson	MBC	MBC
Jeremy Goings	MBC	MBC
PHIL BRACEWELL III	MC	MBC
Felipe Rosa	MBC	MBC
Treose Marock	MBC	MBC
Mike Meyers	ESW	
Dan Taplin	ESW	

Environmental Re-Training.
5/19/16

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