

ROY COOPER

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*Interim Director*



NORTH CAROLINA  
*Environmental Quality*

June 17, 2019

**NOTICE OF VIOLATIONS OF THE  
SEDIMENTATION POLLUTION CONTROL ACT**

**AND**

**GENERAL PERMIT - NCG 010000  
TO DISCHARGE STORMWATER UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
FOR  
CONSTRUCTION ACTIVITIES**

**CERTIFIED MAIL – 7017 1070 0000 1776 2040**  
**RETURN RECEIPT REQUESTED**

Zimmer Development Company  
ATTN: Mr. Jeffery L. Zimmer  
P.O. Box 2628  
Wilmington, NC 28402-2628

RE: Project Name: WCU- Millennial Campus Apartments  
Project ID: JACKS-2019-001  
County: Jackson  
Compliance Deadlines: 14 days from receipt for SPCA violations  
14 days from receipt by certified mail for  
Construction Stormwater Permit NCG 010000 violations

Dear Mr. Zimmer:

On June 11, 2019 personnel of this office inspected a project located on Dr. Killian Road, Cullowhee in Jackson County, North Carolina. This inspection was performed to determine compliance with the North Carolina Sedimentation Pollution Control Act (SPCA) of 1973 and General Permit - NCG 010000 to Discharge Stormwater Under the National Pollutant Discharge



North Carolina Department of Environmental Quality | Division of Energy, Mineral and Land Resources  
Asheville Regional Office | 2090 U.S. Highway 70 | Swannanoa, North Carolina 28778  
828.296.4500

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Elimination System for Construction Activities (Construction Stormwater Permit NCG 010000). The inspection revealed a land-disturbing activity of approximately 19.1 acres being conducted.

It is our understanding that you and/or your firm are responsible for this land-disturbing activity. The purpose of this letter is to inform you that this activity was found to be in violation of the SPCA, G.S. 113A-50 to 66, Title 15A, North Carolina Administrative Code (NCAC), Chapter 4 and Construction Stormwater Permit NCG 010000. If you feel that you are not responsible for the following violations, please notify this office immediately.

**The violations of the SPCA that were found are:**

1. Failure to conduct a land-disturbing activity in accordance with the approved erosion and sedimentation control plan. G.S. 113A-57(5). **At the time of inspection, erosion control measures that were required in the approved plan had not been installed.**
2. Failure when a land-disturbing activity that will disturb more than one acre is undertaken on a tract, to install sedimentation and erosion control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract. G.S. 113A-57(3). **Sediment has entered Long Branch (C) at numerous locations.**
3. Failure to take all reasonable measures to protect all public and private property from damage by such land-disturbing activities. 15A NCAC 4B .0105. **At the time of inspection, insufficient erosion control measures were in place. Sediment has entered Long Branch (C) at numerous locations.**
4. Failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation by natural or artificial means within the 25 percent of that portion of the buffer zone nearest the land-disturbing activity. G.S. 113A-57(1). **Sediment has entered Long Branch (C) at numerous locations.**

**The violations of the Construction Stormwater Permit NCG 010000 that were found are:**

1. Failure to develop and adhere to the erosion and sedimentation control plan. The approved erosion and sedimentation control plan is considered a condition of Construction Stormwater Permit NCG 010000. **At the time of inspection, erosion control measures that were required in the approved plan had not been installed. As a result, sediment has entered Long Branch (C) at numerous locations.**

To correct these violations, you must:

1. Submit a revised sedimentation and erosion control plan for approval for the entire project. Current plan is inadequate for the current phase of construction.
2. Submit a sediment removal plan for the affected areas of Long Branch that were impacted from the sediment release.
3. Install erosion and sediment control devices sufficient to retain sediment on the tract.
4. Remove all off-site sediment and stabilize affected areas and any areas disturbed in the process of removing off-site material.

### **SPCA Violations**

The violations of the SPCA cited herein may be referred to the Director of the Division of Energy, Mineral and Land Resources (Director) for appropriate enforcement action, including civil penalty assessments for an initial one-day violation and/or a continuing violation. The penalty for an initial one-day violation of the SPCA may be assessed in an amount not to exceed \$5,000.00. The Division of Energy, Mineral and Land Resources is not required to provide a time period for compliance before assessing an initial penalty for the violations of the SPCA cited herein. Please be advised that a civil penalty may be assessed for the initial day of violations of the SPCA regardless of whether the violations are corrected within the time period set out below.

In addition, if the violations of the SPCA cited herein are not corrected within **14 calendar days** of receipt of this Notice, this office may request that the Director take appropriate legal action against you for continuing violations pursuant to NCGS 113A-61.1 and 113A-64. A penalty may be assessed from the date of the violation of the SPCA, pursuant to NCGS 113A-64(a)(1), and for each day of a continuing violation of the SPCA in an amount not to exceed \$5,000.00 per day.

### **Construction Stormwater Permit NCG 010000 Violations**

The violations of the Construction Stormwater Permit NCG 010000 cited herein may be referred to the Director of the Division of Energy, Mineral and Land Resources (Director) for appropriate enforcement action, including civil penalty assessments for a continuing violation. This Notice serves as a letter of proposed civil penalty assessment. You have **up to 14 calendar days** from receipt of this Notice by certified mail to cease the violations listed above, and to submit in writing reasons why the civil penalty should not be assessed.

Accordingly, you are directed to respond to this letter in writing within **14 calendar days** of receipt of this Notice by certified mail. Your response should be sent to this regional office at the letterhead address and include the following:

1. The date by which the corrective actions listed above have been or will be completed.

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2. Rainfall data and self-inspection or self-monitoring records from May 1, 2019 to June 11, 2019.
3. A plan of action to prevent future violations.
4. A plan for restoration of sedimentation damage.
5. Reasons why a civil penalty should not be assessed.

Pursuant to G.S. 143-215.6A, these violations and any future violations are subject to a civil penalty assessment of up to a maximum of \$25,000.00 per day for each violation. Your above-mentioned response to this correspondence, the degree and extent of harm to the environment and the duration and gravity of the violation(s) will be considered in any civil penalty assessment process that may occur.

Please be advised that any new land-disturbing activity associated with this project should not begin until the area presently disturbed is brought into compliance with the SPCA and Construction Stormwater Permit NCG 010000. When corrective actions are complete, you should notify this office so that work can be inspected. You should not assume that the project is in compliance with the SPCA and Construction Stormwater Permit NCG 010000 until we have notified you. After installation, all erosion control measures must be maintained in proper working order until the site is completely stabilized.

We solicit your cooperation and would like to avoid taking further enforcement action. At the same time, it is your responsibility to understand and comply with the requirements of the SPCA and Construction Stormwater Permit NCG 010000. Copies of the relevant statute and administrative rules may be examined at this office or will be sent to you upon request. Should you have questions concerning this notice or the requirements of the SPCA and Construction Stormwater Permit NCG 010000 please contact either **Rick Brooks** or me at your earliest convenience.

Sincerely,



Stanley E. Aiken, P.E.  
Regional Engineer  
Land Quality Section

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Enclosures: Sedimentation Inspection Report  
Construction Stormwater Permit NCG 010000  
ESC Technical Assistance Document (**Only include for 1<sup>st</sup> time recipients of NOV's**)

cc: Deborah Reese, Administrative Assistant, ([Deborah.Reese@ncdenr.gov](mailto:Deborah.Reese@ncdenr.gov))  
Julie Coco, PE, State Sediment Specialist, ([Julie.Coco@ncdenr.gov](mailto:Julie.Coco@ncdenr.gov))  
Zan Price, PE Assistant Regional Supervisor Water Quality Regional Operations Section  
([Zan.Price@ncdenr.gov](mailto:Zan.Price@ncdenr.gov))

## Sedimentation/Construction Stormwater Inspection Report

North Carolina Department of Environment and Natural Resources  
Land Quality Section: 2090 US Highway 70, Swannanoa, NC 28778 (828) 296-4500

County: Jackson      Project: WCU-Millennial Campus Apartments      River basin: Little Tennessee  
Person financially responsible: ZP Group, LLC - Jeffery L Zimmer, Manager      Project #: JACKS-2019-001

Address: 111 Princess Street, Wilmington, NC 28401

1. **Project Location:** Dr. Killian Road, Cullowhee

Pictures: Yes - Digital

2. **Weather and soil conditions:** Wet Soils

Initial inspection: No

3. **Is site currently under notice of violation?** No

4. **Is the site in compliance with S.P.C.A. and rules?** No      If no, check violations below:

5. **Violations:**

- ✓ b. Failure to follow approved plan, G.S. 113A-57(5)
- ✓ e. Insufficient measures to retain sediment on site, G.S. 113A-57(3)
- ✓ f. Failure to take all reasonable measures, 15A NCAC 4B .0105
- ✓ g. Inadequate buffer zone, G.S. 113A-57(1)
- ✓ s. Failure to install and maintain BMP's, NCG 010000 Part. II, G.2-3

6. **Is the site in compliance with the NPDES Permit?** No

Describe: Failure to develop and adhere to the erosion and sedimentation control plan. The approved erosion and sedimentation control plan is considered a condition of Construction Stormwater Permit NCG 010000.

7. **Has sedimentation damage occurred since last inspection?** Yes      If Yes, where? (check all that apply)

✓ Lake/Natural watercourse off the tract

Description: Severe sediment damage has occurred to Long Branch.

Degree of damage: Severe

8. **Contact made with (name):** Contractors

Title:

Inspection report: Sent Report

Date given/sent: June 12, 2019

9. **Corrective action needed:**

1. Submit a revised sedimentation and erosion control plan for approval for the entire project. Current plan is inadequate for the current phase of construction.
2. Submit a sediment removal plan for the affected areas of Long Branch that were impacted from the sediment release.
3. Install erosion and sediment control devices sufficient to retain sediment on the tract, specifically at all three locations of sediment release detailed in the comments.
4. Remove all off-site sediment and stabilize affected areas and any areas disturbed in the process of removing off-site material.

10. **Comments:** On June 11, 2019 the site was inspected for compliance after numerous reports of off-site sediment. Site inspection revealed three locations of off-site sediment reaching Long Branch:

- 1) A sediment trap blow out occurred near the site entrance on June 10 after heavy rainfall. Sediment was transported parallel to Killian Rd, through the culvert under Blackhawk Rd and to Long Branch. Severe sedimentation was observed on June 11 at time of inspection.

## Sedimentation/Construction Stormwater Inspection Report

North Carolina Department of Environment and Natural Resources  
Land Quality Section: 2090 US Highway 70, Swannanoa, NC 28778 (828) 296-4500

2) At the outlet of the French drain there was a berm created, a combination of rainfall and a lack of any appropriate erosion control measure overwhelmed the berm. A large gully formed, resulting in a substantial amount of sediment leaving the site and entering Long Branch.

3) At the location of the proposed sediment basin, silt fence was found to be overwhelmed and sediment had left the site and reached Long Branch. The sediment basin had not been installed, contractors on-site explained that the archaeological survey results prohibited the installation of a sediment basin.

A complete sedimentation and erosion control plan revision is required. The erosion control measures found on-site were perimeter silt fence, rock check dams and a handful of sediment traps. These measures were found to be woefully inadequate for this site in its current phase of construction.

**Reported by:** Rick Brooks

**Others present:**

**Date of inspection:** June 11, 2019

**Time arriving on site:** 9:00 AM **Time leaving site:** 10:15 AM

**cc:**