

PAT MCCRORY

Governor

DONALD R. VAN DER VAART

Secretary

TRACY DAVIS

Director

December 16, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Green Meadow, LLC
Attn: Charles Price
12601 Plantside Dr.
Louisville, Kentucky 40299

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Green Meadow, LLC
c/o NAI Carolantic
5121 Kingdom Way, Suite 200
Raleigh, North Carolina 27607

SUBJECT: Assessment of Civil Penalties
Green Meadow, LLC
Charah Rail Spur Access Road
Chatham County
Case No. LQSW 15-030

Dear Mr. Price and Mr. Kaplan:

This letter transmits notice of a civil penalty assessed against Green Meadow, LLC in the amount of **\$4,828.10**, which includes **\$828.10** in investigative costs. 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 Environmental Quality and the Director of the Division of Energy, Mineral and Land Resources. Any continuing violation(s) may be the subject of a new enforcement action, including an additional penalty.

Within **thirty (30) calendar days** of receipt of this notice, **you must do one** of the following three options:

1. Submit payment of the penalty, **OR**
2. File a request for remission of civil penalties, **OR**
3. File a written petition with the Office of Administrative Hearings.

Failure to exercise one of the above three options within thirty (30) calendar days of your receipt of these documents will result in this matter being referred to the Attorney General's Office with a request to initiate a civil action to collect the penalty.

These options are detailed below:

Option 1 – Submit payment of the penalty:

Payment should be made to the order of the Department of Environmental Quality (DEQ). You do not need to include any forms with your payment, however please reference the **Case No. LQSW 15-030** on your check or money order.

Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Payment must be sent within 30 calendar days of receipt of this notice to the attention of:

*If sending by First Class Mail via
the US Postal Service:*
Bradley Bennett
NC DEQ-DEMLR – Stormwater Permitting
1612 Mail Service Center
Raleigh, NC 27699-1612

*If sending via delivery service
(e.g. UPS, FedEx):*
or Bradley Bennett
NC DEQ-DEMLR – Stormwater Permitting
512 N. Salisbury Street
Raleigh, NC 27604

Option 2 – File a request for remission of civil penalties:

A request for remission or mitigation is limited to consideration of the reasonableness of the amount of the penalty and is not the proper procedure for contesting the accuracy of any of the statements contained in the assessment letter.

Because a remission request forecloses the option of an administrative hearing, such a request will not be processed without a waiver of your right to an administrative hearing and a stipulation that there are no factual or legal issues in dispute.

You must execute and return to this office the attached "Waiver of Right to an Administrative Hearing and Stipulation of Facts" and the attached "Justification for Remission Request" which should describe why you believe:

- (a) one or more of the civil penalty assessment factors in G.S. 143B-282.1(b) were wrongfully applied to the detriment of the petitioner;
- (b) the violator promptly abated continuing environmental damage resulting from the violation;
- (c) the violation was inadvertent or a result of an accident;
- (d) the violator had been assessed civil penalties for any previous violations;
- (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

For this option you must file your request for remission of civil penalties within **thirty (30) calendar days** of receipt of this notice. Submit this information to the attention of:

*If sending by First Class Mail via
the US Postal Service:*

Bradley Bennett
NC DEQ-DEMLR – Stormwater Permitting
1612 Mail Service Center
Raleigh, NC 27699-1612

or

*If sending via delivery service
(e.g. UPS, FedEx):*

Bradley Bennett
NC DEQ-DEMLR – Stormwater Permitting
512 N. Salisbury Street
Raleigh, NC 27604

Option 3 – File a written petition with the Office of Administrative Hearings:

This Civil Penalty Assessment can be contested as provided in Articles 3 and 4 of General Statute 150B by filing a written petition for an administrative hearing to the Office of Administrative Hearings (hereby known as OAH). A petition form may be obtained from the OAH at <http://www.ncoah.com/> or by calling the OAH Clerk's Office at (919) 431-3000 for information.

Within **thirty (30) calendar days** of receipt of this notice, a petition must be filed with the OAH. A petition is considered filed when the original and one (1) copy along with any applicable OAH filing fee is received in the OAH during normal office hours (Monday through Friday between 8:00am and 5:00pm, excluding official state holidays).

The petition may be faxed to the OAH at (919) 431-3100, provided the original and one copy of the petition along with any applicable OAH filing fee is received by the OAH within five (5) business days following the faxed transmission.

Mailing address for the OAH:

If sending via US Postal Service:
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

If sending via delivery service (UPS, FedEx, etc):
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285

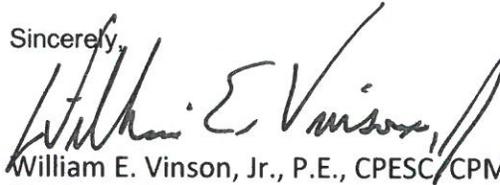
One (1) copy of the petition must also be served to DEQ:

Sam M. Hayes, General Counsel
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, NC 27699-1601

The violations addressed by this assessment and any impacts to waters must be abated and properly resolved. You are encouraged to contact John L. Holley, Jr., PE, CPESC with the DEQ Raleigh Regional Office at (910) 791-4200 if you need assistance in achieving compliance at the site. Please be advised that additional assessments may be levied for future, continuing, or other violations beyond the scope of this specific assessment.

If you have any questions, please see the following website: <http://portal.ncdenr.org/web/lr/stormwater> or contact Bradley Bennett at (919) 807 - 6378.

Sincerely,



William E. Vinson, Jr., P.E., CPESC/CPM
Division of Energy, Mineral and Land Resources

cc: RO Supervisor John L. Holley, Jr., PE, CPESC – DEMLR Raleigh Regional Office
Bradley Bennett –Stormwater Permitting Program
John A. Payne, Assistant Attorney General
DWR Regional Supervisor

JUSTIFICATION FOR REMISSION REQUEST

DEMLR Case Number: LQSW 15-030

County: Chatham

Assessed Party: Green Meadow, LLC

Permit No. (if applicable):

Amount Assessed: \$4,828.10

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 evaluating 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. Pursuant to N.C.G.S. § 143B-282.1(c), remission of a civil penalty may be granted only 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 N.C.G.S. 143B-282.1(b) were wrongfully applied to the detriment of the petitioner (the assessment factors are 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 (attach additional pages as necessary):

STATE OF NORTH CAROLINA

ENVIRONMENTAL MANAGEMENT
COMMISSION

COUNTY OF Chatham

IN THE MATTER OF ASSESSMENT)
OF CIVIL PENALTIES AGAINST)
Green Meadows, LLC)

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

CASE NO. LQSW 15-030

Having been assessed civil penalties totaling \$4,828.10 for violation(s) as set forth in the assessment document of the Director of the Division of Energy, Mineral and Land Resources dated December 16, 2015, the undersigned, desiring to seek remission of the civil penalties, 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 Energy, Mineral and Land Resources within thirty (30) calendar days of receipt of the civil penalty assessment. No new evidence in support of a remission request will be allowed after thirty (30) calendar days from the receipt of the civil penalty assessment.

This the _____ day of _____, 20_____.

NAME (printed)

SIGNATURE

ADDRESS

TELEPHONE

STATE OF NORTH CAROLINA

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

COUNTY OF CHATHAM

IN THE MATTER OF)
GREEN MEADOW, LLC)
FOR VIOLATIONS OF)
GS 143-215.1 AND 15A NCAC 2H .0126)

CASE NO. LQSW 15-030
FINDINGS AND DECISION
AND ASSESSMENT OF
CIVIL PENALTIES

Acting pursuant to North Carolina General Statutes (hereby known as G.S.) 143-215.6A, I, William E. Vinson, of the Division of Energy, Mineral and Land Resources (hereby known as DEMLR), make the following:

I. FINDING OF FACT

- A. Green Meadow, LLC is responsible for the site known as Charah Rail Spur Access Road, located on Moncure Flatwood Road in Chatham County, North Carolina.
- B. Green Meadow, LLC is a company organized and existing under the laws of the State of North Carolina.
- C. On November 25, 2015, DEMLR staff conducted a site inspection as the result of a referral from Chatham County regulatory staff and observed land disturbing activity from an ongoing construction site that required an approved Erosion and Sedimentation Control Plan approval. DEMLR file review confirmed that an approved Erosion and Sedimentation Control Plan has not been issued for this site by DEMLR or a local delegated program.
- D. An NPDES Construction General Stormwater Permit No. NCG010000 is issued upon the approval of an Erosion and Sedimentation Control Plan. This permit applies to projects that receive an approved Erosion and Sedimentation Control Plan from DEMLR or a local delegated program for construction land disturbing activities of 1 acre or greater.
- E. DEMLR file review confirmed that Green Meadow, LLC was not issued or covered by General Stormwater Permit No. NCG010000 for the land disturbance activities observed by DEMLR on November 25, 2015.
- F. For construction activities disturbing one or more acre of land, Stormwater General Permit Number NCG010000 is required. This permit is issued to all owners and operators of stormwater point source discharges associated with construction activities including clearing, grading and excavation activities resulting in the

disturbance of land in accordance with G.S. 143-215.1 and Title 15A North Carolina Administrative Code (herby known as NCAC) 02H .0126.

- G. On June 1, 2015 DEMLR issued a Notice of Violation and Recommendation for Enforcement (hereby known as NOV) to Green Meadow, LLC and Moncure Holdings, LLC for similar impacts and violations on the Charah Rail Spur site. These issues were resolved by Green Meadow, LLC obtaining an approved Erosion and Sedimentation Control Plan from Chatham County and coverage under Stormwater General Permit NCG010000.
- H. On November 25, 2015 DEMLR issued a NOV to Green Meadow, LLC and Moncure Holdings, LLC for the impacts and violations on the subject site (Charah Rail Spur Access Road). DEMLR records indicate that the NOV was received electronically via email on November 25, 2015. On December 4, 2015, DEMLR received a written response to the NOV and the violations have been resolved by the December 7, 2015 approval of the Erosion and Sedimentation Control Plan approval for this site by Chatham County. This approval included with it coverage under Stormwater General Permit NCG010000.
- I. The cost to the State of the enforcement procedures in this matter totaled \$828.10.

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

II. CONCLUSION OF LAW

- A. Green Meadow, LLC is a “person” within the meaning of G.S. 143-215.6A pursuant to G.S. 143-212 (4).
- B. Green Meadow, LLC violated G.S. 143-215.1 and Title 15A NCAC 02H .0126 by conducting land disturbing activities and disturbing one or more acres of land without first securing coverage under Stormwater General Permit NCG010000.
- C. Green Meadow, LLC may be assessed civil penalties in this matter pursuant to G.S. 143-215.6A (a)(2), which provides that a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation per day may be assessed against a person who is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part.
- D. Green Meadow, LLC may be assessed civil penalties pursuant to G.S. 143-215.6A (a)(6) which provides that a civil penalty of not more than twenty-five thousand dollars (\$25,000.00) per violation may be assessed against a person who violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).

- E. The State's enforcement cost in this matter may be assessed against Green Meadow, LLC pursuant to G.S. 143-215.3 (a)(9) and G.S. 143B-282.1 (b)(8).
- F. William E. Vinson of the DEMLR, pursuant to delegation provided by the Secretary of the Department of Environmental Quality and the Director of the DEMLR, has the authority to assess civil penalties in this matter.

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

III. DECISION

Accordingly, Green Meadow, LLC is hereby assessed a civil penalty of:

\$ 4,000.00 for violation of G.S. 143-215.1 and Title 15A NCAC 2H .0126 by conducting land disturbing activities and disturbing one or more acres of land without first securing coverage under Stormwater General Permit NCG010000.

\$ 4,000.00 TOTAL CIVIL PENALTY, authorized by G.S. 143-215.6A

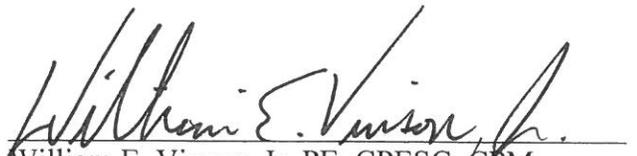
\$ 828.10 Enforcement Cost

\$ 4,828.10 TOTAL AMOUNT DUE

As required by G.S. 143-215.6A(c), in determining the amount of penalty, I considered the factors set out in 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 violations;
- (2) The duration and gravity of the violations;
- (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 violations were 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

12/16/2015
Date


William E. Vinson, Jr, PE, CPESC, CPM
Division of Energy, Mineral and Land Resources