

## Gaither, Allen

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**From:** Stacey Smith [stacey@rsgengineers.com]  
**Sent:** Tuesday, November 15, 2011 8:59 PM  
**To:** Tasha.l.mccormick@usace.army.mil  
**Cc:** Norris, Buddy; Aja, Deborah; Gaither, Allen; Philip May  
**Subject:** Avery County Landfill - Nationwide Permit 39 - Project Certification - Action ID 2008-03130  
**Attachments:** Letter11-15-11.pdf

Ms. McCormick,

Please accept the attached certification for the Avery County Landfill project.

Please feel free to contact me with any questions. A hard copy will follow in the mail.

Thanks,

Sas

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Stacey A. Smith, P.E.  
President, Senior Engineer  
Richardson Smith Gardner & Associates, Inc.  
Raleigh, North Carolina  
[www.rsgengineers.com](http://www.rsgengineers.com)

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November 15, 2011

Ms. Tasha McCormick

*Project Manager*

**U.S. Army Corps of Engineers**

Attn: CESA-W-RG-A

151 Patton Avenue, Room 208

Asheville, North Carolina 28801-5006

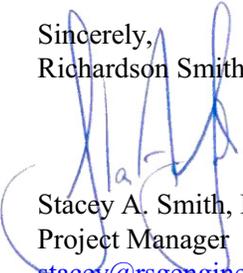
**Re: Stream Buffer Restoration Project  
404/401 Permit Certification  
Avery County C&D Landfill – Permit No. 2008-03130**

Dear Ms. McCormick:

On behalf of Avery County, Richardson Smith Gardner & Associates (RSG) is pleased to provide the **enclosed** and executed certification by Avery County regarding the stream buffer restoration project included as a part of facility's NW39 Modification under U.S. Army Corps of Engineers Action ID 2008-03130 (**attached**).

If you have any questions, or require further information, please contact me at (919) 828-0577, ext. 127 or by email below.

Sincerely,  
Richardson Smith Gardner & Associates

  
Stacey A. Smith, P.E.

Project Manager

[stacey@rsgengineers.com](mailto:stacey@rsgengineers.com)

cc: Mr. Henry "Buddy" Norris, Avery County  
Mr. Phil May, Carolina Ecosystems, Inc.  
Mr. Allen Gaither, P.E., NCDENR  
Ms. Deb Aja, NCDENR  
File

H:\Projects\Avery County (NC)\Avery-09-5 (Stream Buffer)\Letter11-4-11.doc

U.S. ARMY CORPS OF ENGINEERS  
WILMINGTON DISTRICT

Action ID. 2008-03130

County: Avery

USGS Quad: Linville Falls

**GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION**

Property Owner / Authorized Agent: Avery County Solid Waste / Attn: Buddy Norris

Address: P.O. Box 305

Newland, NC 28657

Telephone No.: 828-737-5420

Size and location of property (water body, road name/number, town, etc.): The site is located at 2175 Brushy Creek Road, near Ingles, Avery County, North Carolina.

Description of projects area and activity: This permit authorizes placement of fill and culverts for the expansion of an existing landfill. Impacts to stream channels authorized by this permit total 408 linear feet (0.03 acre) of intermittent stream channel and 0.01 acre of wetland. The N.C. Wildlife Resource Commission recommended that the trout moratorium be waived along with other recommendations which are attached for your review. The mitigation plan as proposed exceeds our regulatory requirements to mitigate for 408 linear feet of channel that exhibits little aquatic function, therefore we are only including a portion of the mitigation plan as a condition of this authorization. Any additional stream channel preservation and stream buffer enhancement/restoration is voluntary but also encouraged as best management practices. Special Condition: 1) The permittee will enhance 569 linear feet of perennial stream channel on-site through sediment removal techniques. 2) The permittee will also remove 40 linear feet of culvert and restore the channel to pre-construction conditions. 3) All required mitigation work shall be completed by November 9, 2009.

Applicable Law:  Section 404 (Clean Water Act, 33 USC 1344)  
 Section 10 (Rivers and Harbors Act, 33 USC 403)  
Authorization: Regional General Permit Number:  
Nationwide Permit Number: 39

Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the attached conditions and your submitted plans. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order and/or appropriate legal action.

This verification will remain valid until the expiration date identified below unless the nationwide authorization is modified, suspended or revoked. If, prior to the expiration date identified below, the nationwide permit authorization is reissued and/or modified, this verification will remain valid until the expiration date identified below, provided it complies with all requirements of the modified nationwide permit. If the nationwide permit authorization expires or is suspended, revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the nationwide permit, activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the nationwide permit, will remain authorized provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Quality (telephone (919) 733-1786) to determine Section 401 requirements.

For activities occurring within the twenty coastal counties subject to regulation under the Coastal Area Management Act (CAMA), prior to beginning work you must contact the N.C. Division of Coastal Management.

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact Amanda Jones at 828-271-7980.

Corps Regulatory Official Amanda Jones

Date: November 9, 2008

Expiration Date of Verification: November 24, 2010

### Determination of Jurisdiction:

- A.  Based on preliminary information, there appear to be waters of the US including wetlands within the above described project area. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process ( Reference 33 CFR Part 331).
- B.  There are Navigable Waters of the United States within the above described project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- C.  There are waters of the US and/or wetlands within the above described project area subject to the permit requirements of Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- D.  The jurisdictional areas within the above described project area have been identified under a previous action. Please reference jurisdictional determination issued \_\_\_\_\_. Action ID \_\_\_\_\_

**Basis of Jurisdictional Determination:** The site contains wetlands as indicated by the 1987 USACE Wetland Delineation Manual and also contains stream channels that exhibit indicators of ordinary high water marks. The stream channel on the property is an unnamed tributary to Brushy Creek which ultimately flows into the French Broad River and ultimately flows to the Atlantic Ocean through the Gulf of Mexico.

**Appeals Information:** (This information does not apply to preliminary determinations as indicated by paragraph A. above).

Attached to this verification is an approved jurisdictional determination. If you are not in agreement with that approved jurisdictional determination, you can make an administrative appeal under 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

District Engineer, Wilmington Regulatory Program  
Attn: Amanda Jones, Project Manager  
151 Patton Avenue, Room 208  
Asheville, North Carolina 28801

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address within 60 days from the *Issue Date* below.

**\*\*It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.\*\***

Corps Regulatory Official: Amanda Jones

Issue Date: November 9, 2008

Expiration Date: Five years from *Issue Date*

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete the Customer Satisfaction Survey located at our website at <http://regulatory.usacesurvey.com/> to complete the survey online.

**SURVEY PLATS, FIELD SKETCH, WETLAND DELINEATION FORMS, PROJECT PLANS, ETC.,  
MUST BE ATTACHED TO THE FILE COPY OF THIS FORM, IF REQUIRED OR AVAILABLE.**

Copy Furnished:

Carolina Ecosystems, Inc., Attn: Phil May, 8208 Brian Court, Garner, NC 27529

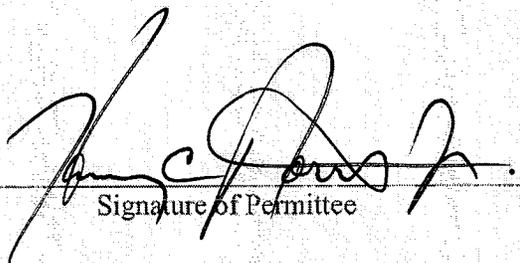
Permit Number: 2008-03130  
Permit Type: NW39  
Name of County: Avery  
Name of Permittee: Avery County Solid Waste / Attn: Buddy Norris  
Date of Issuance: November 9, 2008  
Project Manager: Amanda Jones

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Attention: CESAW-RG-A  
151 Patton Avenue, Room 208  
Asheville, North Carolina 28801-5006

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

  
Signature of Permittee

11/9/11  
Date

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL**

Applicant: Avery County Solid Waste / Attn: Buddy Norris      File Number: 2008-03130      Date: November 9, 2008

Attached is:      See Section below

<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

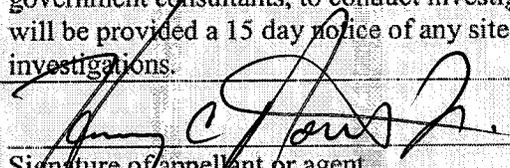
If you have questions regarding this decision and/or the appeal process you may contact:

Amanda Jones, Project Manager  
USACE, Asheville Regulatory Field Office  
151 Patton Ave, Room 208  
Asheville, NC 28806  
828-271-7980

If you only have questions regarding the appeal process you may also contact:

Mr. Michael F. Bell,  
Administrative Appeal Review Officer  
CESAD-ET-CO-R  
U.S. Army Corps of Engineers, South Atlantic Division  
60 Forsyth Street, Room 9M15  
Atlanta, Georgia 30303-8801

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

  
Signature of appellant or agent.

Date: 11/9/11

Telephone number: (828) 737-5420

**For appeals on Initial Proffered Permits and approved Jurisdictional Determinations send this form to:**

**District Engineer, Wilmington Regulatory Division, Attn: Amanda Jones, Project Manager, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, NC 28801.**

**For Permit denials and Proffered Permits send this form to:**

**Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Mike Bell, Administrative Appeal Officer, CESAD-ET-CO-R, 60 Forsyth Street, Room 9M15, Atlanta, Georgia 30303-8801**