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February 1, 2006

To: Mayor Ragsdale, Chris Granju, Bruce Wuethrich, Mary Haley

From: Mark Quarles, P.G., Globally Green Consulting; Renée Hoyos, Tennessee Clean Water Network

Cc: Lisa Starbuck and Bob Wolfenbarger, Knox County Clean Water Alliance; Chris Moran, Enforcement, Division of Water Pollution Control; John West, Knoxville Field Office, TDEC; Jim McAdoo, MS4 Permitting, Division of Water Pollution Control

RE: Violations of state and federal clean water laws found in the proposed Knox County stormwater ordinance

INTRODUCTION

January 18, 2006 representatives from the Tennessee Clean Water Network (TCWN) and the Knox County Clean Water Alliance (KCCWA) met with Knox County Stormwater Engineers and their consultants to discuss violations of state and federal laws in the proposed stormwater ordinance. TCWN helped form the neighborhood group, KCCWA, to address County Mayor Mike Ragsdale's and Public Works and Engineering Department Head Bruce Wuethrich's refusal to protect the community's right to clean water and property from flooding.

The attached memo was drafted by TCWN and KCCWA's legal and technical experts. It summarizes the meeting. Please refer to the memo for additional points and more in depth analysis of the points below.

The memo finds at least **eleven points** in the County's proposed stormwater ordinance where the County is not in compliance with state and federal laws that protect clean water and individual properties rights. TCWN and KCCWA were not able to discuss all points of the proposed ordinance with the County in the time allowed. Therefore, more inconsistencies may need to be addressed.

TCWN is demanding Mayor Ragsdale and Wuethrich address the County's violation of state and federal clean water laws and disregard for the protection of clean water and individual property rights.

BACKGROUND

Knox County created the new stormwater ordinance to fulfill the state of Tennessee's Municipal Separate Storm Sewer System (MS4) phase II water pollution permit program. The MS4 Phase II Permit is given by the state to small municipalities to control pollution going into our waters. In particular, it is designed to control pollution that flows into our streams from over development, such as sediment or mud. The TN Department of Environment and Conservation (TDEC) labels sediment as the state's **number one source** of pollution into our river, creeks and streams. Sediment carried in water increases flooding, impacts water supplies and navigation, degrades aquatic habitat and transports chemicals.

SELECTED EXAMPLES

1. **One of the most shocking aspects of the Knox County's proposed stormwater ordinance is the total disregard for individual property rights.**

In the County's ordinance, it provides that the ultimate homeowner or landowner will be responsible for managing stormwater controls. This means if a stormwater control measure, such as a detention pond, was poorly construction and not properly inspected by the County and it fails (i.e. causes flood damage to homes or pollutes a water way) the landowner is responsible for the damages. This creates a situation where neighbors will be suing neighbors to recoup damages to their property for a developer's mistake and the County's lack of enforcement.

Knox County cannot lawfully transfer its permit obligations to private landowners in order to escape the long-term obligations imposed by the permit. Moreover, this is a direct contravention of the Phase II MS4 Permit, Sections 6.8 and 6.9. Furthermore, this portion of the ordinance is not consistent with the Federal Clean Water Act and its stormwater regulations. (See point 8 in the attached memo)

2. **Knox County is currently in violation of water quality standards.**

At the beginning of the meeting, Bob Wolfenbarger, KCCWA, passed around photos of water running thick with mud off of construction sites in the Beaver Creek Watershed and developments with no stormwater controls. These photos illustrated clear violations of the Tennessee Water Quality Control Act and the Clean Water Act. Such violations can be fined up to **several thousands of dollars per day, per violation depending on whether state or federal law is imposed.**

Under Tennessee law, as mandated by the US EPA, TDEC has the authority to *stop economic development* in Knox County if water quality standards do not improve.

3. **The County's proposed method for regulating water pollution during construction is a violation of the Tennessee Water Quality Control Act.**

Knox County has 35 streams and their associated 357 river miles on TDEC's list of the most impaired and polluted waters. Knox County's use of the minimum state's Construction General Permit as a means to regulate water pollution during construction increases the possibility of adding pollution to these streams where no additional pollution is allowed by law.

4. **Neglecting to incorporate required provisions relevant to the Threaten and Endangered Species Act.**

Mary Haley, AMEC, stated the process of determining the occurrence of threatened and endangered species is confusing and troublesome and therefore, disregarded this provision.

The County is not at liberty to ignore sections of the Permit it finds burdensome.

The methods and requirements for determining the occurrence of such species are clearly provided in the County's MS4 permit. Upon review of the list of threaten and endangered species in Knox County, federally and state protected species are present in Knox County.

CONCLUSION

- If Mayor Ragsdale intends to continue growing Knox County, the Mayor must assume Knox County's responsibility for protecting our water and individual property.
- TCWN is demanding Mayor Ragsdale and Bruce Wuethrich respond to this memo and address the proposed stormwater ordinance's violation of state and federal clean water laws and disregard of the protection of clean water and individual property rights.
- Tennessee Clean Water Network and Knox County Clean Water Alliance are open to meeting with Knox County consultants and the Department of Engineering to further address the County's noncompliance with state and federal clean water laws and disregard for the protection of clean water and individual property rights.