

**FILED**

OCT 15 2009

Clerk, U. S. District Court  
Eastern District of Tennessee  
At Knoxville

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
IN THE NORTHERN DIVISION AT KNOXVILLE**

**TENNESSEE CLEAN WATER )  
NETWORK, CHARLES MCMILLAN, )  
and JAMES MCMILLAN, )**

**Plaintiffs, )**

**vs. )**

**BABELAY FARM, LLC, CLEAR CREEK )  
CONSTRUCTION, LLC, SHARP )  
CONTRACTING, INC., THE LEGENDS )  
AT WASHINGTON PIKE, LLC, and )  
HATHAWAY CONSTRUCTION CO., )  
INC., )**

**Defendants. )**

No. 3:09-CV-449

*Phillips/Guyton*

---

**COMPLAINT**

---

Plaintiffs Tennessee Clean Water Network, Charles McMillan, and James McMillan, by and through counsel, allege as follows:

**NATURE OF THE CASE**

1. This is a citizen suit, brought pursuant to Section 505(a)(1) of the federal Clean Water Act (hereinafter "the Act"), as amended, 33 U.S.C. § 1365(a)(1), to address stormwater pollution discharged from a construction site known as the Legends at Washington Pike Subdivision ("Legends Subdivision") into Murphy Creek and Love Creek in Knox County, Tennessee. Defendants Babelay Farm, LLC ("Babelay"), Legends at Washington Pike, LLC ("Legends"), Clear Creek Construction, LLC ("Clear Creek"), Hathaway Construction Co., Inc. ("Hathaway"), and Sharp Contracting, Inc. ("Sharp") have repeatedly violated the terms of the

Act and of the National Pollutant Discharge Elimination System (hereinafter “NPDES”) permit for the Legends Subdivision issued pursuant to 33 U.S.C. § 1342. Defendants have failed to take the necessary and legally required steps to prevent the dislodging and suspension of sediment in the stormwater discharged from the Legends Subdivision to Love Creek, Murphy Creek, and their tributaries. Plaintiffs seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorney and expert witness fees, for Defendants’ repeated and continuing violations of the Act. In addition, Plaintiffs Charles and James McMillan, who own, reside on and use family property adjacent to the Legends development for raising livestock and farming, seek injunctive relief and damages under state law resulting from Defendants’ nuisance, trespass and negligence that have caused groundwater and surface water pollution on their property.

### **JURISDICTION**

2. This Court has subject matter jurisdiction under Section 505(a) of the Act, 33 U.S.C. § 1365(a), and 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction over the claims arising under Tennessee state law pursuant to 28 U.S.C. § 1367(a).

4. Plaintiffs have complied with the pre-suit notice requirements of the Act, 33 U.S.C. § 1365(b)(1)(A). On July 29, 2009, Plaintiffs mailed a notice of intent to file suit to address the violations at the Legends Subdivision to Defendants, the Administrator of the U.S. Environmental Protection Agency (hereinafter “EPA”), the Regional Administrator of the EPA, the Director of the Tennessee Department of Environment and Conservation Division of Water Pollution Control (hereinafter “TDEC”), and the U.S. Attorney General. (The notice is attached as Exhibit 1 and incorporated by reference herein.) This notice complied with 33 U.S.C. §

1365(b)(1)(A) and with 40 C.F.R. Part 135, Subpart A. More than 60 days have passed since this notice was served on Defendants and these agencies.

5. EPA has not commenced and is not diligently prosecuting a civil or criminal action in a court of the United States or a State to redress the violations of the Act by Defendants. In addition, TDEC has not commenced and is not diligently prosecuting a civil or criminal action in a court of the United States or a State to redress the violations of the Act by Defendants.

6. Neither EPA nor TDEC had commenced an administrative penalty action under Section 309(g) of the Act, 33 U.S.C. § 1319(g), or under a comparable Tennessee law, to redress violations by Defendants prior to the service of Plaintiffs' July 29, 2009 notice letter. TDEC issued an agreed order on September 15, 2009, against Babelay and Sharp. This suit has been commenced within 120 days of the service of Plaintiffs' 60-day notice.

7. Plaintiffs will, immediately upon receipt of a file stamped copy of this Complaint, mail a copy of this Complaint to the Administrator of the EPA, the Regional Administrator of EPA Region 4, and to the Attorney General of the United States.

8. Venue is appropriate in the Eastern District of Tennessee, pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this District.

### **PARTIES**

9. The Tennessee Clean Water Network ("TCWN") is an nonprofit corporation organized under the laws of the State of Tennessee with its principal office in Knoxville, Tennessee. TCWN was organized, among other reasons: to advocate for strong policies and programs that result in more effective protection and restoration of Tennessee waters; to educate organizations, decision-makers, and the public about important water resource issues; and to

ensure the protection and restoration of Tennessee's waters. TCWN is a membership organization. TCWN has members who own property and reside on or near Love Creek, Murphy Creek, and their respective tributaries, in Knox County, Tennessee, downstream from Defendants' construction site. Members of TCWN also use Love Creek, Murphy Creek, and their tributaries for fishing, other recreation, and livestock watering. Members of TCWN have been and will be directly and substantially injured in their use and enjoyment of property and in their recreational and aesthetic enjoyment of Murphy Creek, Love Creek, their respective tributaries, and downstream waters as a direct result of Defendants' violations of the Act. The relief sought in this case would provide redress for these injuries.

10. Plaintiff Charles S. McMillan is a farmer who owns real property in Knox County, Tennessee located at 4745 and 5112 McCampbell Drive (the "McMillan Farm"), Knox County Parcel ID numbers, respectively, 049031 and 059003. The McMillan Farm has belonged to members of the McMillan family for several generations. This property is adjacent to, and downstream from, the Legends Subdivision. A drinking water well situated on the property at 5112 McCampbell Drive, which is adjacent to the Legends Subdivision, has been contaminated by construction activities at the Legends Subdivision. Murphy Creek flows through the McMillan Farm and its confluence with Whites Creek is located on the McMillan Farm. These creeks have been, and continue to be, polluted by illegal stormwater discharges from the Legends Subdivision.

11. Plaintiff James McMillan, Charles' son, lives on the McMillan Farm. He pastures his cattle on the McMillan Farm, and his cattle drink from Whites Creek and Murphy Creek and also from the contaminated well.

12. Each Plaintiff is a "citizen" within the meaning of 33 U.S.C. § 1365(a).

13. Defendant Babelay is a for-profit limited liability company organized under the laws of the State of Tennessee with its principal place of business in Knoxville, Tennessee. The principal address of Babelay is 108 Stekoia Lane, Suite 103, Knoxville, Tennessee 37912. Babelay owns a significant portion of the Legends Subdivision, including the area on which a roadway from Washington Pike into the development is currently under construction. The address of the lot is 5304 McCampbell Drive, Knoxville, Tennessee 37918. The lot is designated as Knox County Parcel ID number 049 08801. Defendant Babelay has been issued a Notice of Coverage (“NOC”) under the National Pollutant Discharge Elimination System (“NPDES”) Permit issued for land disturbance at the entire Legends subdivision, Permit No. TNR100000, the General NPDES Permit for Discharges of Storm Water Associated with Construction Activities and is one of the responsible parties for compliance with that permit for construction activities on the property.

14. Defendant Legends is a for-profit limited liability company organized under the laws of the State of Georgia, and authorized to do business in Tennessee, with its principal place of business in Macon, Georgia. The principal address of Legends is 3085 Vineville Ave, Macon, Georgia 31204. Legends owns 284 lots on the portion of the Legends Subdivision on which an approximately 264-unit apartment project is currently under construction, all of which are included in Knox County Parcel ID number 049-08802. The addresses, located in Knoxville, Tennessee, include, but may not be limited to, 3617-3676 Raven Grove Way, 5600-5610 Andover Village Way, 5601-5709 Poston Way, 5602-5612 Harbor Walk Way, 5605-5716 Holly Grove Way, and 5715 Jasper Grove Way.

15. Defendant Clear Creek is a for-profit limited liability company organized under the laws of the State of Tennessee with its principal place of business in Knoxville, Tennessee.

The principal address of Clear Creek is 108 Stekoia Lane, Suite 103, Knoxville, Tennessee 37912. Clear Creek is the general contractor for construction of the roadway on the property owned by Babelay.

16. Defendant Hathaway is a for-profit corporation organized under the laws of the State of Georgia, and authorized to do business in Tennessee, with its principal place of business in Atlanta, Georgia. The principal address of Hathaway is 5901-C Peachtree, Dunwoody Road, Suite 495, Atlanta, Georgia 30328. Hathaway is the general contractor for apartment construction on the land owned by Legends.

17. Defendant Sharp is a for-profit corporation organized under the laws of the State of Tennessee, with its principal place of business in Maryville, Tennessee. The principal address of Sharp is 235 South Old Glory Road, Maryville, Tennessee 37801. Sharp is the grading subcontractor to Clear Creek for the roadway improvements. Sharp is also the grading subcontractor to Hathaway for the apartment construction.

18. Each Defendant is a “person” within the meaning of 33 U.S.C. §§ 1362(5) and 1365(a)(1).

#### **STATUTORY BACKGROUND**

19. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States except in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits such discharges that are not authorized by, or that are in violation of, a National Pollutant Discharge Elimination System (“NPDES”) Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

20. Stormwater discharges resulting from construction activities including clearing, grading, filling, and excavating that result in the disturbance of one acre or more of total land area are unlawful except when covered by, and in compliance with, a NPDES permit. 40 C.F.R. § 122.26(c).

21. The State of Tennessee has been delegated the authority to implement the permitting programs of the Act by EPA, including the NPDES permit program, pursuant to 33 U.S.C. § 1342(b). TDEC is the water pollution control agency for purposes of the Act, and has drafted regulations pursuant to that authority implementing the Act's permitting programs within the State of Tennessee. *See* Tenn. Code Ann. § 69-3-105(h)(1).

22. The Tennessee General NPDES Permit For Discharges of Storm Water Associated with Construction Activities ("TNCGP"), permit No. TNR100000 is issued by TDEC for construction activities that result in the disturbance of one acre or more of total land area. Coverage under this permit requires, among other conditions, submission of a stormwater pollution prevention plan ("SWPPP"). Once a site obtains permit coverage, the TNCGP requires, among other things, that the SWPPP meet certain minimum standards and be updated as needed, that the SWPPP be fully implemented as written, that the SWPPP be updated as required, that the permittee conduct adequate inspections, and that the stormwater discharges do not cause or contribute to water quality violations in the receiving stream.

23. A violation of an NPDES permit issued by TDEC is a violation of the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. §§ 69-3-101, *et seq.*, TDEC rules, including Chapter 1200-4-5, and the federal Clean Water Act.

24. A citizen suit, pursuant to 33 U.S.C. § 1365(a)(1), may be brought for violations of the terms of NPDES permits, as well as for discharges of pollutants from a facility into waters of the United States without a valid NPDES permit. 33 U.S.C. § 1365(f).

25. Under 33 U.S.C. § 1365(g), “citizen” means “a person or persons having an interest which is or may be adversely affected.” “Person,” pursuant to 33 U.S.C. § 1362(5), includes “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”

### **GENERAL ALLEGATIONS**

26. On July 9, 2008, Babelay submitted a Notice of Intent (“NOI”) to TDEC to obtain coverage under the TNCGP for stormwater discharges resulting from construction of a new roadway on 5.49 acres of the Legends Subdivision. United Residential Properties, the parent company of Legends, submitted a separate NOI to TDEC on March 17, 2009 to cover the additional 15.3 acres to be cleared for the apartments.

27. TDEC issued a Notice of Coverage (“NOC”) to Babelay effective August 25, 2008 under Tracking No. TNR133211. As of September 14, 2009, TDEC has not updated the NOC issued on August 25, 2008 in response to more recent NOIs. However, TDEC considers TNR133211 to cover the entire Legends subdivision construction site, including the 5.49 acre roadway improvements and the 15.3 acre apartment construction site.

28. Defendants began construction at the Legends Subdivision on or before March 31, 2009. Defendants have disturbed more than one acre of land at the Legends Subdivision construction site. At the time construction-related clearing activities began, the entire construction site became a point source under the Act. 40 C.F.R. § 122.26(b)(14)(x).

29. On numerous occasions since construction began in March 2009, Defendants have discharged stormwater containing sediment and polyacrylamide from the Legends Subdivision. This sediment and polyacrylamide are pollutants within the meaning of the Clean Water Act, 33 U.S.C. § 1362(6).

30. Defendants discharge stormwater containing these pollutants from the Washington Pike side of Legends Subdivision construction site to a tributary of Love Creek. Love Creek is a continuously flowing stream forming geographic features depicted on United States Geological Survey topographical maps. Love Creek is listed under Section 303(d) of the Act, 33 U.S.C. § 1311(d), as impaired for siltation, a condition caused primarily by land development such as that occurring at the Legends Subdivision.

31. The discharge of pollutants to Love Creek can significantly affect the chemical, physical, and biological integrity of navigable in fact waters downstream, including the Holston River, which is part of interstate waters and is widely used for boating.

32. Defendants also discharge stormwater containing pollutants to Murphy Creek from the McCampbell Drive side of the Legends Subdivision construction site. Murphy Creek is a continuously flowing stream forming geographic features depicted on United States Geological Survey topographical maps. Murphy Creek is a tributary of Whites Creek. The confluence of Murphy Creek and Whites Creek is on the McMillan farm just downstream from Defendants' discharges. Whites Creek is 303(d) listed for habitat impairment and is subject to the Fort Loudoun Lake Watershed total maximum daily load ("TMDL") for sediment. Whites Creek is a tributary of First Creek. First Creek is 303(d) listed as impaired by siltation and is also subject to the Fort Loudoun Lake TMDL.

33. The discharge of pollutants into Murphy Creek can significantly affect the chemical, physical, and biological integrity of navigable in fact waters downstream, including First Creek and the Tennessee River, which is part of interstate waters and is widely used for boating.

34. Murphy Creek, Love Creek, and Whites Creek and their tributaries, are “waters of the United States” as that term is used in the Act and as it has been interpreted by the federal courts.

35. TDEC sent a notice of violation to Babelay on May 12, 2009.

36. Knox County sent two notices of violation to Babelay on May 11, 2009.

37. Knox County sent a notice of violation to Legends on May 13, 2009 and imposed a \$5,000 penalty for breach of Detention Pond #3 on May 11, 2009. On July 22, 2009, Sharp paid a reduced penalty of \$2,500 for this single violation.

38. Knox County and TDEC held a compliance meeting with Defendants on May 14, 2009.

39. TDEC issued Director’s Order No. 09-0073 to Babelay and Sharp on June 11, 2009. The Director’s Order required revised SWPPPs, reconsideration of the use of polyacrylamide, full implementation of EPSCs, and additional inspection requirements. Babelay and Sharp both appealed the Director’s Order. The Director’s Order remained in effect during the pendency of the appeal.

40. A Notice of Intent to File Citizen Suit, dated July 29, 2009, was mailed to Defendants Babelay, Clear Creek, Sharp, Legends and Hathaway in which Plaintiffs identified numerous violations of the Tennessee Water Quality Control Act, Tenn. Code Ann. §§ 69-3-

101 *et. seq.*, and the regulations promulgated thereunder, as well as the TNCGP (hereinafter “July Notice”).

41. The July Notice is attached hereto as Exhibit 1, and the notice and the identified violations are incorporated by reference as if fully set forth herein.

42. Knox County sent a notice of violation to Legends on August 18, 2009 for failure to temporarily stabilize non-vegetated areas within 15 days.

43. TDEC issued a final Agreed Order, Case No. WPC09-0073, on September 15, 2009 to Babelay and Sharp. The Agreed Order is very similar to the Director’s Order, except that the fine was reduced by \$3,000 and responsibility for various compliance measures was allocated to Sharp, Babelay, or both. This Agreed Order imposes a \$12,000 noncontingent civil penalty for violations of the TNCGP on May 7, 2009, May 11, 2009, and June 11, 2009. Like the Director’s Order, the Agreed Order requires revised SWPPPs, full implementation of EPSCs, and additional inspection requirements. The Agreed Order does not address violations on other dates, or violations regarding discharges to Love Creek. TDEC has not filed this Agreed Order in a court.

44. Despite these notices of violation, TDEC orders, and July Notice, Defendants continue to violate the terms of the TNCGP, including, but not limited to, the following water quality violations after the July Notice.

- a. TCWN documented additional violations on August 4, 2009, when Defendants discharged sediment-laden stormwater from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) which caused objectionable color contrast at Murphy Creek, and from the McCampbell Drive driveway (referred to in the July Notice as Outfall 3) in concentrations detrimental to

livestock, fish, or aquatic organisms and which caused objectionable color contrast at Murphy Creek.

- b. TCWN documented additional violations on August 11, 2009, when Defendants discharged sediment-laden stormwater from the Washington Pike construction entrance (referred to in the July Notice as Outfall 1) in concentrations detrimental to livestock, fish, or aquatic organisms (1,100 NTU) and which caused objectionable color contrast at Love Creek, from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) in concentrations detrimental to livestock, fish, or aquatic organisms (360 NTU) and which caused objectionable color contrast at Murphy Creek, and from the McCampbell Drive driveway (referred to in the July Notice as Outfall 3) in concentrations detrimental to livestock, fish, or aquatic organisms and which caused objectionable color contrast at Murphy Creek.
- c. TCWN documented additional violations on August 16, 2009, when Defendants discharged sediment-laden stormwater from the Washington Pike construction entrance (referred to in the July Notice as Outfall 1) in concentrations detrimental to livestock, fish, or aquatic organisms (800 NTU), and from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) which caused objectionable color contrast at Murphy Creek.
- d. TCWN documented additional violations on August 19, 2009, when Defendants discharged sediment-laden stormwater from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) which caused objectionable color contrast at Murphy Creek.

- e. TCWN documented additional violations on August 20, 2009, when Defendants discharged sediment-laden stormwater from the Washington Pike construction entrance (referred to in the July Notice as Outfall 1) which caused objectionable color contrast at Love Creek.
- f. TCWN documented additional violations on August 29, 2009, when Defendants discharged sediment-laden stormwater from the Washington Pike construction entrance (referred to in the July Notice as Outfall 1) in concentrations detrimental to livestock, fish, or aquatic organisms and which caused objectionable color contrast at Love Creek, and from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) in amounts detrimental to livestock, fish, or aquatic organisms and which caused objectionable color contrast at Murphy Creek.
- g. TCWN documented additional violations on September 10, 2009, when Defendants discharged sediment-laden stormwater from the Washington Pike construction entrance (referred to in the July Notice as Outfall 1) in concentrations detrimental to livestock, fish, or aquatic organisms (3,600 NTU) and which caused objectionable color contrast at Love Creek, and from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) in amounts detrimental to livestock, fish, or aquatic organisms (1,400 NTU) and which caused objectionable color contrast at Murphy Creek.
- h. After the adoption of the final Agreed Order, TCWN documented violations on September 16, 2009, when Defendants discharged sediment-laden stormwater from the eastern tributary of Murphy Creek (referred to in the July Notice as

Outfall 2) in concentrations detrimental to livestock, fish, or aquatic organisms (1,900 NTU) and which caused objectionable color contrast at Murphy Creek.

- i. TCWN documented additional violations on September 26, when Defendants discharged sediment-laden stormwater from the Washington Pike Construction entrance (referred to in the July Notice as Outfall 1) in concentrations detrimental to livestock, fish, or aquatic organisms (550 NTU), from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) in concentrations detrimental to livestock, fish, or aquatic organisms (160 NTU), and from the McCampbell Drive driveway (referred to in the July Notice as Outfall 3) in concentrations detrimental to livestock, fish, or aquatic organisms (190 NTU).
- j. TCWN documented an additional violation on October 6, 2009, when Defendants discharged sediment-laden stormwater from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) which caused objectionable color contrast at Murphy Creek.
- k. TCWN documented an additional violation on October 10, 2009, when Defendants discharged sediment-laden stormwater from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) which caused objectionable color contrast at Murphy Creek.
- l. TCWN documented an additional violation on October 12, 2009, when Defendants discharged sediment-laden stormwater from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) which caused objectionable color contrast at Murphy Creek.

- m. TCWN documented an additional violation on October 13, 2009, when Defendants discharged sediment-laden stormwater from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) which caused objectionable color contrast at Murphy Creek.
- n. TCWN documented additional violations on October 14, 2009, when Defendants discharged sediment-laden stormwater from the Washington Pike Construction entrance (referred to in the July Notice as Outfall 1) in concentrations detrimental to livestock, fish, or aquatic organisms and from the eastern tributary of Murphy Creek (referred to in the July Notice as Outfall 2) in concentrations detrimental to livestock, fish, or aquatic organisms and which caused objectionable color contrast at Murphy Creek.

45. The McMillan Plaintiffs' property has been, and continues to be, damaged by the stormwater runoff and sediment which have been and continue to be discharged from the Legends Subdivision, in that the runoff and sediment have polluted the surface water flowing from the Legends subdivision onto the McMillan farm and have further polluted a water-supply well located on the McMillan farm such that the McMillan Plaintiffs cannot use the well.

46. Based on the history of violations at the site and numerous violations that have occurred after Plaintiffs' July Notice, Defendants' NPDES permit violations are continuing, intermittent, and are likely to recur.

## CLAIMS

### **COUNT ONE: FAILURE TO COMPLY WITH THE TERMS OF THE APPLICABLE NPDES PERMIT BY CAUSING OBJECTIONABLE COLOR CONTRAST IN THE RECEIVING STREAMS IN VIOLATION OF THE CLEAN WATER ACT**

47. Paragraphs 1-46 of this Complaint are hereby realleged and incorporated by reference herein.

48. Section 4.3.2(c) of the TNCGP provides that “the storm water discharge must not cause an objectionable color contrast in the receiving stream.”

49. Defendants have violated TNCGP § 4.3.2(c) and the Act by discharging stormwater from the Legends Subdivision construction site that was sufficiently turbid to cause objectionable color contrast in Murphy Creek and Love Creek on numerous occasions, including, but not limited to, those listed in the July Notice served by Plaintiffs and attached hereto as Exhibit 1 and incorporated by reference herein, as well as the occasions identified in Paragraph 44 above. Violations of TNCGP § 4.3.2(c) have been continuous since March 2009 and are ongoing at the time of the filing of this Complaint.

50. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

### **COUNT TWO: FAILURE TO COMPLY WITH THE TERMS OF THE APPLICABLE NPDES PERMIT BY DISCHARGING SEDIMENTS IN CONCENTRATIONS DETRIMENTAL TO HUMANS, LIVESTOCK, WILDLIFE, PLANT LIFE, OR FISH AND AQUATIC ORGANISMS IN VIOLATION OF THE CLEAN WATER ACT**

51. Paragraphs 1-50 of this Complaint are hereby realleged and incorporated by reference herein.

52. Section 4.3.2(d) of the TNCGP provides that the “storm water discharge must result in no materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.”

53. Defendants have violated TNCGP § 4.3.2(d) and the Act by discharging stormwater from the Legends Subdivision construction site that was sufficiently turbid to be detrimental to livestock, fish, and aquatic life in Murphy Creek and Love Creek on numerous occasions, including, but not limited to, those listed in the July Notice served by Plaintiffs and attached hereto as Exhibit 1 and incorporated by reference herein, as well as the occasions identified in Paragraph 44 above. Violations of TNCGP § 4.3.2(d) are continuing.

54. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

**COUNT THREE: FAILURE TO COMPLY WITH THE TERMS OF THE APPLICABLE NPDES PERMIT BY FAILING TO DESIGN EROSION PREVENTION AND SEDIMENT CONTROLS TO MINIMIZE THE DISLODGING OF SOIL AND TO RETAIN SEDIMENT ON SITE IN VIOLATION OF THE CLEAN WATER ACT**

55. Paragraphs 1-54 of this Complaint are hereby realleged and incorporated by reference herein.

56. Section 3.5.3.1(a) of the TNCGP provides that the “construction-phase erosion prevention controls shall be designed to retain mobilized sediment on site.”

57. Defendants have violated TNCGP § 3.5.3.1(a) and the Act by failing to design erosion prevention controls that retain mobilized sediment on site, as evidenced by the discharge of highly turbid stormwater during even routine rain events. There are numerous shortcomings in the erosion controls designed and implemented by Defendants, including those submitted to TDEC in August 2009 in response to the TDEC’s order. The EPSCs as designed focus on

perimeter controls and treating the stormwater that reaches the sediment basins with polyacrylamide. Much of the stormwater discharged from the site does not reach the ponds and thus is not treated prior to discharge. In addition, the EPSCs as designed do not include sufficient measures to slow the flow of water downhill through large areas of the steep construction site, resulting in fast-moving water that dislodges large amounts of sediment that are not contained by the perimeter controls. The SWPPPs do not call for a sufficient number of silt fences on portions of the site with very steep slopes as required by the Tennessee Erosion and Sediment Control Handbook.

58. As described in the July Notice served by Plaintiffs and attached hereto as Exhibit 1, and incorporated by reference herein, this is a continuous violation that began upon commencement of construction. This violation of TNCGP § 3.5.3.1(a) is continuing.

59. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

**COUNT FOUR: FAILURE TO COMPLY WITH THE TERMS OF THE APPLICABLE NPDES PERMIT BY FAILING TO SELECT, INSTALL, AND MAINTAIN EROSION PREVENTION AND SEDIMENT CONTROLS IN ACCORDANCE WITH GOOD ENGINEERING PRACTICES AND TO PREVENT RILL AND GULLY FORMATION IN VIOLATION OF THE CLEAN WATER ACT**

60. Paragraphs 1-59 of this Complaint are hereby realleged and incorporated by reference herein.

61. Section 3.5.3.1(b) of the TNCGP provides that “[a]ll control measures must be properly selected, installed, and maintained in accordance with the manufacturer’s specifications (where applicable) and good engineering practices. All control measures selected must be able to slow runoff so that rill and gully formation is prevented.”

62. Defendants have violated TNCGP § 3.5.3.1(b) and the Act by failing to properly select, install, and maintain erosion prevention controls, as evidenced by the discharge of highly turbid stormwater during even routine rain events and by the formation of rills and gullies throughout the Legends Subdivision construction site. As a result, significant amounts of sediment have been mobilized and discharged from the Legends Subdivision construction site. As described in the July Notice served by Plaintiffs and attached hereto as Exhibit 1, and incorporated by reference herein, this is a continuous violation that began upon commencement of construction. The July Notice also lists specific dates when Plaintiffs have documented violations of TNCGP § 3.5.3.1(b), including those violations listed in both sections A.2. and A.6. of the July Notice. This violation of TNCGP § 3.5.3.1(b) is continuing.

63. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

**COUNT FIVE: FAILURE TO COMPLY WITH THE TERMS OF THE APPLICABLE  
NPDES PERMIT BY FAILING TO DESCRIBE AND MAINTAIN CONSTRUCTION  
ENTRANCES TO REDUCE TRACKING OF MUD AND DIRT ONTO PUBLIC  
ROADS IN VIOLATION OF THE CLEAN WATER ACT**

64. Paragraphs 1-63 of this Complaint are hereby realleged and incorporated by reference herein.

65. Section 3.5.5(b) of the TNCGP provides that “[o]ff-site vehicle tracking of sediments ... shall be minimized. A stabilized construction access (a point of entrance/exit to a construction site) shall be described and implemented, as needed, to reduce the tracking of mud and dirt onto public roads by construction vehicles.”

66. Defendants have violated TNCGP § 3.5.5(b) and the Act by failing to maintain a stabilized construction entrance at Washington Pike sufficient to prevent the tracking of mud onto public roads.

67. Defendants have violated TNCGP § 3.5.5(b) and the Act by failing to maintain a stabilized construction entrance on McCampbell Drive sufficient to prevent the tracking of mud onto public roads.

68. As described in the July Notice served by Plaintiffs and attached hereto as Exhibit 1, and incorporated by reference herein, these are continuous violations that began upon commencement of construction. The July Notice also lists specific dates on which Plaintiffs have documented violations of TNCGP § 3.5.5(b). This violation of TNCGP § 3.5.5(b) is continuing.

69. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

**COUNT SIX: FAILURE TO COMPLY WITH THE TERMS OF THE APPLICABLE NPDES PERMIT BY FAILING TO TEMPORARILY STABILIZE INACTIVE AREAS WITHIN FIFTEEN DAYS IN VIOLATION OF THE CLEAN WATER ACT**

70. Paragraphs 1-69 of this Complaint are hereby realleged and incorporated by reference herein.

71. Section 3.5.3.2 of the TNCGP provides that “temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed not later than 15 days after the construction activity in that portion of the site has temporarily or permanently ceased.”

72. Defendants have violated TNCGP § 3.5.3.2 and the Act by failing to stabilize areas of the Legends Subdivision construction site that have not been worked for at least fifteen days. Defendants have violated this requirement on several occasions, including, but not limited to, those listed in the July Notice served by Plaintiffs and attached hereto as Exhibit 1, and incorporated by reference herein. Violations of TNCGP § 3.5.3.2 are continuing or are likely to recur..

73. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

**COUNT SEVEN: FAILURE TO COMPLY WITH THE TERMS OF THE APPLICABLE  
NPDES PERMIT SELF-INSPECTION REQUIREMENTS IN VIOLATION OF THE  
CLEAN WATER ACT**

74. Paragraphs 1-73 of this Complaint are hereby realleged and incorporated by reference herein.

75. Section 3.5.8.2 of the TNCGP imposes several self-inspection requirements that are designed to operate together to ensure that any sediment control problems, including discharges, are identified and addressed. Section 3.5.8.2(a) of the TNCGP requires that these inspections be done at least twice per calendar week, at least 72 hours apart. Section 3.5.8.2(c) requires qualified inspectors to observe “[d]isturbed areas and areas used for storage of materials that are exposed to precipitation...for evidence of, or potential for, pollutants entering the drainage system” as well as “[e]rosion prevention and sediment control measures identified in the SWPPP...to ensure that they are operating correctly.” These requirements have been superseded with respect to Sharp and Babelay by the Director’s Order and the Agreed Order effective, respectively, June 11, 2009 and September 15, 2009. Part XVII item 4(b) of these



Orders require daily self-inspections of EPSCs. The permit provisions remain in place for Hathaway, Legends, and Clear Creek and were effective with respect to Sharp and Babelay prior to being superseded.

76. Section 3.5.8.2(d) requires qualified inspectors to observe “[o]utfall points...to determine whether erosion prevention and sediment control measures are effective in preventing significant impacts to receiving waters” and “[l]ocations where vehicles enter or exit the site ... for evidence of offsite sediment tracking.”

77. Finally, Section 3.5.8.2(e) requires that “any inadequate control measures or control measures in disrepair” to be fixed “before the next rain event if possible, but in no case more than 7 days after the need is identified.” This requirement has been superseded with respect to Sharp and Babelay by Part XVII item 4(b) of the Director’s Order and of the Agreed Order effective, respectively, June 11, 2009 and September 15, 2009.

78. Defendants have violated TNCGP §§ 3.5.8.2 (c) & (d) and the Act by failing to identify EPSCs at the site that are in disrepair or otherwise not working and by failing to identify highly turbid discharges from outfalls at the site during significant rain events. As a result, failed EPSCs are not fixed in a timely manner, improved or additional EPSCs are not implemented, and discharges from the site are continuing to pollute Love Creek, Murphy Creek, and downstream waters.

79. Clear Creek has secured the services of GEOServices, LLC (“GEOS”) to conduct inspections of the driveway construction. GEOS has conducted inspections on 6/23/09, 6/25/09, 6/30/09, 7/3/09, 7/6/09, 7/10/09, 7/14/09, 7/17/09, 7/21/09, 7/24/09, 7/28/09, 7/31/09, 8/5/09, and 8/10/09. These reports were received by TDEC’s Knoxville Environmental Field Office on 7/22/09 and 8/13/09.

80. Hathaway has conducted nearly daily field inspections of best management practices for the apartment construction area beginning 3/23/09. Reports of these inspections through 8/6/09 were received by TDEC's Knoxville Environmental Field Office on 8/13/09.

81. Hathaway also secured the services of GEOS to conduct inspections of the apartment construction area. GEOS has conducted these inspections on 7/24/09, 7/28/09, 7/31/09, 8/5/09, and 8/10/09, the reports of which were later submitted to TDEC's Knoxville Environmental Field Office.

82. Additional self-inspection reports were submitted to TDEC's Knoxville Environmental Field Office on the form provided in the TNCGP. Sharp submitted reports on these forms on 5/8/09, with inspections beginning on 3/25/09 and ending 5/8/09. Clear Creek submitted reports on these forms on 7/14/09, with inspections beginning on 4/9/09 and ending 6/23/09. On August 13, 2009, Clear Creek resubmitted this form with additional monthly erosion control report summaries. Hathaway submitted reports on these forms on 7/15/09, with inspections beginning on 4/3/09 and ending on 7/17/09.

83. Many of these inspection reports have failed to identify EPSCs described in the SWPPP that are not operating correctly in violation of § 3.5.8.2(c). Defendants have violated this provision on numerous occasions, including, but not limited to, those listed in the July Notice served by Plaintiffs and attached hereto as Exhibit 1, and incorporated by reference herein. Violations of TNCGP §§ 3.5.8.2(c) are continuing.

84. Often, when inspection reports do identify inadequate control measures or control measures in disrepair, later inspection reports document that they have not been replaced, modified, or repaired as necessary before the next rain event or within seven days.

85. Other than Hathaway's self-inspections on 5/11/09 (the date of the detention pond breach) and Clear Creek's narrative report for 5/11/09 and 6/4/09, none of these self-inspection reports identify problems with discharges from outfalls at the site that may cause significant impacts to the receiving waters in violation of TNCGP § 3.5.8.2(d). Self-inspections often do not occur during or shortly after rain events, when problems at outfalls are most likely to be identified. Moreover, even when self-inspections do occur when it rains, TCWN inspections often indicate significant sediment discharges from the site that are not identified in these reports. Defendants have violated this provision on numerous occasions, including, but not limited to, those listed in the July Notice served by Plaintiffs and attached hereto as Exhibit 1, and incorporated by reference herein. Violations of TNCGP § 3.5.8.2(d) are continuing or likely to recur.

86. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

**COUNT EIGHT: FAILURE TO COMPLY WITH THE INSPECTION  
REQUIREMENTS OF THE AGREED ORDER IN VIOLATION OF THE CLEAN  
WATER ACT**

87. Paragraphs 1-86 of this Complaint are hereby realleged and incorporated by reference herein.

88. The Agreed Order imposes several additional inspection requirements on Babelay beyond those required by the TNCGP, which requirements are identical to those contained in the Director's Order which preceded it.

89. Part XVIII item 4(a) of the Agreed Order and of the preceding Director's Order requires requires weekly site inspections by a professional engineer, licensed in the State of Tennessee, to "evaluate the overall effectiveness of the SWPPP."

90. Part XVIII item 4(b) of the Agreed Order and of the preceding Director's Order requires daily inspections of EPSC measures by qualified personnel, and that "[b]ased on the results of the inspection, any EPSC measures identified as in need of maintenance must be replaced or repaired as necessary, before the next rain event if possible, but in no case more than SEVEN (7) DAYS after the need is identified."

91. Part XVIII item 4(c) of the Agreed Order and of the preceding Director's Order requires the inspections to be documented and submitted to TDEC's Knoxville Environmental Field Office on a monthly basis.

92. The Agreed Order and the preceding Director's Order are "order[s] issued by the ... State with respect to [an effluent] standard or limitation," 33 U.S.C. § 1365(a)(1)(B), and are thus subject to enforcement through a citizen suit.

93. Jeff Beckett, a professional engineer licensed in the State of Tennessee, conducted site inspections on 7/31/09 and 8/31/09, the written reports of which were later submitted to TDEC's Knoxville Environmental Field Office.

94. Inspections by Mr. Beckett have occurred monthly, not weekly. This failure to conduct inspections is a violation of Part XVIII item 4(a) of the Agreed Order and of the preceding Director's Order for each day of each week when an inspection has not occurred since 6/11/09.. These violations are continuing.

95. As a result of the acts and omissions of Babelay, Babelay has violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and

rules implementing the Act by repeatedly violating the terms of the Agreed Order and of the preceding Director's Order.

**COUNT NINE: FAILURE TO COMPLY WITH THE APPLICABLE NPDES PERMIT  
REQUIREMENTS BY FAILING TO MODIFY AND UPDATE THE SWPPPS IN  
VIOLATION OF THE CLEAN WATER ACT**

96. Paragraphs 1-95 of this Complaint are hereby realleged and incorporated by reference herein

97. The TNCGP requires dischargers to update their SWPPP when there is a "change in the scope of the project," when the "SWPPP is proving ineffective in eliminating or significantly minimizing pollutants," and to identify any new operator in violation of TNCGP § 3.4.1. Based on TCWN's review of TDEC and Knox County files, the SWPPPs have not been updated to address any of these changed conditions that have occurred on the site. As evidenced by ongoing violations of water quality standards, the EPSCs called for in even the revised SWPPPs are insufficient. The SWPPPs misidentify which receiving streams are water-quality limited for siltation. Finally, there are now at least three construction contractors on site, but the SWPPPs have not been updated accordingly.

98. The SWPPPs do not address measures to control post-construction stormwater discharges in violation of TNCGP § 3.5.4. As the SWPPPs acknowledge, the site discharges to sediment-limited receiving waters. Accordingly, the SWPPPs must address what additional controls will be installed, implemented and maintained to prevent additional sediment from entering these watersheds. There is no discussion in the SWPPPs of whether velocity dissipation devices will be used to control and reduce the flow rate of stormwater on and from the site to acceptable levels as described in the permit.

99. The SWPPPs do not include a description of construction and waste materials to be stored on the site in violation of TNCGP § 3.5.5(d). Such a list might include, in addition to soil, specific paints and sundry painting supplies; building materials including but not limited to, woods, nails, form oils, roofing materials, and exterior products; plumbing supplies including solvents, glues, metals (i.e. copper, brass, steel, galvanized), plastics, PVC materials, solder and similar products; landscaping materials such as mulch, plants, trees, shrubs, soils and associated materials; as well as other materials that might be stored in such a manner as to come in contact with stormwater as it falls or moves across the ground. Any of these materials may potentially cause pollutants to be released in stormwater discharges from the site. Neither SWPPP describes the controls that will be used to reduce these pollutants from the stormwater discharges from the site.

100. The SWPPPs do not describe procedures that ensure that vegetation, erosion and sediment control measures, buffer zones, and other protective measures identified in the plan are kept in good working and effective operating condition in violation of TNCGP § 3.5.7. Instead, there is only a bare statement that the erosion and sediment controls will be properly maintained without any description of how this statement will be implemented.

101. The SWPPPs do not address non-stormwater discharges other than a simple statement that concrete trucks are not allowed to wash out on site in violation of § 3.5.9. This is inadequate. Further, the SWPPPs do not address other sources of non-stormwater discharges such as equipment washing, landscape watering, irrigation, facility washdowns, street washing, equipment storage, fuel storage, equipment repairs, and other similar activities.

102. As a result of the acts and omissions of Defendants, Defendants have violated Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as well as the Tennessee statutes and rules implementing the Act by repeatedly violating the terms of the TNCGP.

#### **COUNT TEN: NUISANCE**

103. The allegations of paragraphs 1-102 are hereby realleged and incorporated herein by reference.

104. Defendants' unreasonable use of the Legends Subdivision property resulting in the discharge of substantial amounts of sediment flowing onto the McMillan farm and into the groundwater aquifer has substantially and unreasonably interfered with the McMillans' use and enjoyment of their property.

105. Any unauthorized discharge is a public nuisance under the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. § 69-3-114. Defendants' discharges in violation of the TNCGP and in violation of the Agreed Order constitute a public nuisance.

106. As Murphy Creek and Whites Creek both run across the McMillan farm and the McMillans' cattle drink from the water in those creeks, the McMillan Plaintiffs have suffered a greater degree of damages as a result of Defendants' public nuisance than that suffered by the general public, and at greater cost to remediate.

107. Defendants' discharges of sediment-laden stormwater into the local groundwater aquifer also constitutes a private nuisance in that defendants have caused substantial and unreasonable interference with McMillans' use and enjoyment of their property and substantial and unreasonable interference with the McMillan Plaintiffs' use of their well as the well water is regularly contaminated by Defendants' discharges.

108. Defendants' creation and maintenance of a nuisance has caused the McMillan Plaintiffs to suffer loss of use, lost rental value and diminution in the value of their property for which Defendants are liable in damages.

109. Defendants are also liable for the loss of quality of life, aggravation, and inconvenience suffered by the McMillan Plaintiffs as a result of the nuisance.

#### **COUNT ELEVEN: TRESPASS**

110. The allegations of paragraphs 1-109 are hereby realleged and incorporated herein by reference.

111. Since commencing construction and land disturbance activities in March 2009, Defendants have discharged sediment and other pollutants which have crossed onto, entered into and polluted the McMillan farm property via Murphy Creek and a well located thereon through the underground aquifer without Plaintiffs' permission.

112. Defendants intentionally discharged sediment and other pollutants to a location where it knew or should have known that it was substantially certain that the discharge would result in trespass of sediment and other pollutants onto the property of McMillans and the discharge was of the nature that would interfere with Plaintiffs' use of the surface and groundwater.

113. Defendants' trespass has caused the McMillans to suffer loss of use, lost rental value and diminution in the value of their property for which Defendants are liable in damages.

114. Defendants are also liable for the loss of quality of life, aggravation, and inconvenience suffered by Plaintiffs as a result of the trespass.

## **COUNT TWELVE: NEGLIGENCE**

115. The allegations of paragraphs 1-114 are hereby realleged and incorporated herein by reference.

116. Defendants have violated their duty of care to the McMillans by failing to prevent the discharge of sediment and other pollutants from the Legends subdivision site from entering Murphy Creek and the underground aquifer, causing these pollutants to enter onto the McMillan farm and pollute a well located thereon.

117. The Defendants knew or should have known that it was substantially certain that sediment and other pollutants leaving the Legends site would result in damage to the McMillan farm, but did not take necessary action to prevent the off-site discharge of sediment and other pollutants.

118. Defendants' negligence is the proximate cause of the McMillans' damages.

119. Defendants' negligence has caused the McMillans to suffer loss of use, lost rental value and diminution in the value of their property for which Defendants are liable in damages.

120. Defendants are also liable for the loss of quality of life, aggravation, and inconvenience suffered by Plaintiffs as a result of the negligence.

## **COUNT 13: NEGLIGENCE PER SE**

121. The allegations of paragraphs 1-120 are hereby realleged and incorporated herein by reference.

122. The Clean Water Act and the Tennessee Water Quality Control Act each create a duty of care for developers of property and those engaging in land disturbance activities, such as Defendant.

123. The Clean Water Act and The Tennessee Water Quality Control Act were enacted to protect a class of persons which includes the McMillan Plaintiffs.

124. Defendants have violated the Tennessee Water Quality Control Act and the Clean Water Act. These violations constitute negligence per se on the part of Defendants.

125. The damages to the McMillan Plaintiffs and the McMillan farm are of the types that are prohibited by the Clean Water Act and the Tennessee Water Quality Control Act.

126. Defendants' violation of the aforementioned statutes proximately caused the McMillan Plaintiffs' damages.

127. Defendants' violations have caused the McMillan Plaintiffs to suffer loss of use, lost rental value and diminution in the value of their property for which Defendants are liable in damages.

128. Defendants are also liable for the loss of quality of life, aggravation, and inconvenience suffered by the McMillan Plaintiffs as a result of the negligence.

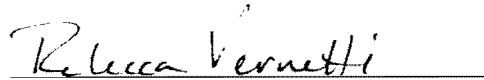
### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- a. Declare that the Defendants have violated and continue to violate the Clean Water Act;
- b. Enjoin Defendants from continuing with land disturbance and/or construction activity at the Legends Subdivision in such a manner as will result in further violations of Defendants' NPDES Permit for the site;
- c. Order Defendants to comply with all terms and conditions of the TNCGP;
- d. Enjoin Defendants from any further discharge of sediment or other pollutants into Murphy Creek, Love Creek and their tributaries.

- e. Order Defendants to pay civil penalties of up to Thirty-Seven Thousand Five Hundred dollars (\$37,500) per day for each day of each violation of Defendants' NPDES permit, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a), and 40 C.F.R. § 19.4, including those listed in this Complaint and any violations committed subsequent to those listed in this Complaint or discovered during the course of this litigation;
- f. Order the Defendants to take such steps as are necessary and proper to remedy the harm caused by their violations of the Clean Water Act;
- g. Enjoin Defendants from the maintenance of a nuisance and from continuing to cause sediment and other pollutants to trespass onto the McMillan property;
- h. Award Plaintiffs their costs (including reasonable attorney and expert witness fees) as authorized by Section 505(d) of the Act, 33 U.S.C. § 1365(d);
- i. Award the McMillan Plaintiffs damages in an amount sufficient to restore the McMillan farm to its condition prior to Defendants' trespass upon the McMillan farm and prior to the creation of a nuisance by Defendants;
- j. Award the McMillan Plaintiffs damages in an amount sufficient to compensate them for the loss of use and enjoyment of the McMillan farm due the creation of a nuisance, due to the trespass by Defendants, and due to Defendants' negligence; and
- k. Grant Plaintiffs a trial by jury for their common law damages claims at a trial of this matter; and
- l. Award such other relief as the Court deems just and appropriate.

Respectfully submitted, this the 15th day of October, 2009.



Gary A. Davis (BPR # 009766)

*gadavis@enviroattorney.com*

Rebecca C. (Kaman) Vernetti (BPR #0022870)

*rvernetti@enviroattorney.com*

James S. Whitlock (NC Bar #34304)

(Admission Requested *Pro Hac Vice*)

*jwhitlock@enviroattorney.com*

Gary A. Davis & Associates

P.O. Box 649

61 North Andrews Avenue

Hot Springs, N.C. 28743

Telephone: (828)622-0044

Stephanie D. Matheny (BPR#027783)

E.D.TN Admission Pending (10/16/09)

*stephanie@tcwn.org*

Tennessee Clean Water Network

P.O. Box 1521

Knoxville, TN 37901

Telephone: (865)522-7007 x 102