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July 29, 2009

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Tracking #7008-0500-0000-7803-1926

By Certified Mail – Return Receipt Requested

**RE: Legends at Washington Pike Subdivision
Notice of Violation Pursuant to Section 505(b)(1)(A) of the Federal Clean Water
Act, 33 U.S.C. § 1365(b)(1)(A)**

Dear Sirs:

This letter is to notify Victor Jernigan, Babelay Farm, LLC, Babelay Farm II, LLC, Clear Creek Construction, LLC, Sharp Contracting, Inc., Legends at Washington Pike, LLC, and Hathaway Construction Co., Inc., as well as the state and federal agencies listed below, of ongoing violations of the Clean Water Act (“CWA”) at the Legends at Washington Pike Subdivision located between Washington Pike and McCampbell Drive in northeast Knox County, Tennessee. The Tennessee Clean Water Network (“TCWN”), Charles S. McMillan, and James McMillan intend to file suit in the United States District Court for the Eastern District of Tennessee pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), in sixty days.

LOCATION OF VIOLATIONS

The Legends at Washington Pike Subdivision is an approximately 112.6 acre multi-phase residential development. This notice letter covers ongoing construction-related stormwater violations throughout the entire Legends at Washington Pike Subdivision, including all lots owned by any of the above-listed parties.

The site discharges stormwater from its construction entrance on Washington Pike to Love Creek. For the purpose of this letter, TCWN has designated this construction entrance as Outfall 1. Love Creek is listed under Section 303(d) of the CWA, 33 U.S.C. § 1311(d), as impaired for siltation, a condition caused primarily by land development.¹ Love Creek is a tributary of the Holston River.

The site also discharges stormwater on the McCampbell Drive side of the property. There are two streams identified on the northwestern portion of the property, both of which are unnamed tributaries to Murphy Creek.² For the purpose of this letter, TCWN has designated the discharge from the eastern stream to Murphy Creek as Outfall 2, and has designated the discharge from the western construction entrance on McCampbell Drive to Murphy Creek as Outfall 3. Murphy Creek is a tributary of Whites Creek. Whites Creek is 303(d) listed for habitat impairment and is subject to the Fort Loudoun Lake Watershed³ 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.

TCWN is aware of four additional outfalls from which the Legends construction site discharges stormwater:

1. Oak Grove AME Zion Church at 5657 Washington Pike (Love Creek)
2. Wyngate Subdivision detention pond behind Aylesbury Drive (Murphy Creek)
3. Steeple Shadow Condominiums on Steeple Shadow Way (Love Creek)
4. Construction entrance at the northeastern corner of the Legends at Washington Pike Subdivision at McCampbell Drive.

¹ Babelay Farm, LLC erroneously stated in its SWPPP that Love Creek is not 303(d) listed for siltation (SWPPP for The Legends at Washington Pike Driveway Improvements, March 2009, at § 1.1.1).

² Babelay Farm, LLC referred to these as unnamed tributaries to Whites Creek in its correspondence with permitting officials. Accordingly, TDEC documents also refer to these as tributaries to Whites Creek.

³ Fort Loudoun Lake is a section of the Tennessee River in the Knoxville area.

DESCRIPTION OF VIOLATIONS

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The entire Legends at Washington Pike Subdivision construction site is a point source. The sediment and other materials contained in stormwater runoff from the site are pollutants. Murphy Creek, Love Creek, Whites Creek and their tributaries are waters of the United States.

Pursuant to its delegated authority under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the Tennessee Department of Environment and Conservation (“TDEC”) issued the Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities (“TNCGP”), Permit No. TNR100000, for qualified construction sites of one acre or more. Babelay Farm, LLC obtained coverage for this site under the TNCGP under tracking numbers TNR133211 and TNR130217. TNR133211 covers 5.49 acres of driveway improvements at Washington Pike. TNR130217 appears to cover the balance of the subdivision.

Section 6.1.1 of the TNCGP provides that “[t]he permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Tennessee Water Quality Control Act.” Failure to comply with any condition of the TNCGP is a violation of the CWA. The following narrative section describes the nature of these violations in detail. **These violations are ongoing and are likely to continue upon filing of this lawsuit.**

A. FAILURE TO PROPERLY DESIGN AND MAINTAIN EROSION PREVENTION AND SEDIMENT CONTROLS

1. Failure to design erosion prevention and sediment controls to minimize the dislodging of soil and to retain sediment on site (§ 3.5.3.1(a))

The erosion prevention and sediment controls (“EPSCs”) proposed in the stormwater pollution prevention plans (“SWPPPs”) submitted for this site are not adequately designed. The inadequacy of the EPSCs is evidenced by the continued release of significant volumes of sediment from the site during rain events. This failure to properly design EPSCs is a continuous violation that began upon commencement of construction-related clearing activities.⁴

2. Failure to select, install and maintain erosion prevention and sediment controls in accordance with good engineering practices and to prevent rill and gully formation (§ 3.5.3.1(b))

The developers and contractors at the Legends construction site do not maintain silt fences in accordance with good engineering practices, and do not install sufficient silt

⁴ Knox County clearing and grading permits for the site were issued on March 31, 2009, so this violation began, at the latest, on that date. However, clearing at the site began earlier than that. The Legends developers and contractors have information sufficient to determine the actual date on which clearing commenced.

5/7/09
5/11/09
5/12/09
5/13/09
5/15/09
5/18/09
5/20/09
5/21/09
5/22/09
5/26/09
5/28/09
5/29/09
6/1/09
6/2/09

6. **Failure to describe and maintain construction entrances to reduce tracking of mud and dirt onto public roads (§ 3.5.5(b))**

The site has at least three construction entrances, two on McCampbell Drive and one on Washington Pike.⁶ During rain events, the entrances allow the discharge of pollutants to waters of the United States because they are not properly constructed and maintained. The SWPPPs state that the Washington Pike entrance will be constructed, but do not include a geotextile liner under the gravel as required by the Tennessee Erosion and Sediment Control Handbook. On at least the following dates, mud has been tracked to public roads in violation of § 3.5.5(b):

3/11/09 (Outfall 3)
3/13/09 (Outfall 3)
3/18/09 (Outfall 3)
4/7/09 (Outfall 1)
4/8/09 (Outfall 1)
4/26/09 (Outfall 3)
5/8/09 (Outfall 3)
5/11/09 (Outfall 3)
5/24/09 (Outfall 3)
5/26/09 (Outfall 3)
6/12/09 (Outfall 3)

In addition, on at least the following dates, the large volume of sediment-laden water discharged from the construction entrances also indicates that the Legends developers and contractors are failing to properly maintain their EPSCs in violation of § 3.5.3.1(b) in addition to failing to maintain a stabilized construction entrance per § 3.5.5(b):

3/14/09 (Outfall 3)

⁶ The SWPPPs identify only the construction entrance on Washington Pike.

3/27/09 (Outfall 3)
4/10/09 (Outfall 1)
4/10/09 (Outfall 3)
5/1/09 (Outfall 3)
5/3/09 (Outfall 3)
5/9/09 (Outfall 1)
5/9/09 (Outfall 3)
5/15/09 (Outfall 1)
5/15/09 (Outfall 3)
5/25/09 (Outfall 1)
5/25/09 (Outfall 3)
6/3/09 (Outfall 1)
6/3/09 (Outfall 3)
6/4/09 (Outfall 1)
6/4/09 (Outfall 3)
6/10/09 (Outfall 1)
6/10/09 (Outfall 3)
6/11/09 (Outfall 3)
6/21/09 (Outfall 1)
6/21/09 (Outfall 3)
6/22/09 (Outfall 3)
6/28/09 (Outfall 3)
7/9/09 (Outfall 3)
7/13/09 (Outfall 1)
7/13/09 (Outfall 3)
7/26/09 (Outfall 1)

7. Failure to comply with local erosion prevention and sediment control measures (§ 3.5.6)

In addition to the specific provisions of the TNCGP, the Legends developers and contractors must also comply with all conditions of the Knox County Stormwater Management Ordinance (Ordinance O-07-8-101, § 1, September 24, 2007). Knox County has noted several violations of its ordinance in Notices of Violation issued on May 11, 2009 and May 13, 2009 and in its inspection reports. These include violations of Knox County Ordinance §§ 2.2 (SWPPP does not adequately reflect the current site conditions, at least from 5/7/09 to 5/26/09), 5.1 (failure to temporarily stabilize, on 5/7/09, 5/11/09, 5/12/09, 5/13/09, 5/15/09, 5/18/09, 5/20/09, 5/21/09, 5/22/09, 5/26/09, 5/28/09, 5/29/09, 6/1/09, 6/2/09), 7.1 (failure to install sediment basins according to approved design plans, at least from 5/7/09 to 5/26/09), 7.2 (failure to control the discharge of muddy water, on 5/11/09).⁷

⁷ Some of these violations are identical to violations of other TNCGP sections. Identical violations of Knox County and other TNCGP would be treated as a single violation for each day.

B. CAUSING OR CONTRIBUTING TO WATER QUALITY VIOLATIONS

Section 4.3.1 of the TNCGP provides that any discharge that would result in a violation of state water quality standards constitutes a permit violation. These water quality violations are particularly serious because they demonstrate that failure to properly implement EPSCs at the Legends construction site has resulted in harm to the environment.

1. 4.3.2(c) – The storm water discharge must not cause an objectionable color contrast in the receiving stream.

Discharges from the Legends construction site routinely cause objectionable color contrast at Outfalls 2 and 3 to Murphy Creek. TCWN has documented violations of this parameter on at least the following dates:

3/14/09 (Outfall 3)
3/28/09 (Outfall 3)
4/1/09 (Outfall 3)
4/3/09 (Outfall 3)
4/20/09 (Outfall 3)
5/3/09 (Outfall 3)
5/4/09 (Outfall 2)
5/5/09 (Outfall 2)
5/6/09 (Outfall 2)
5/7/09 (Outfall 2)
5/9/09 (Outfall 3)
5/10/09 (Outfall 2)
5/11/09 (Outfall 2)
5/12/09 (Outfall 2)
5/15/09 (Outfall 2)
5/16/09 (Outfall 2)
5/17/09 (Outfall 2)
5/25/09 (Outfall 2)
5/18/09 (Outfall 2)
6/3/09 (Outfall 2)
6/3/09 (Outfall 3)
6/4/09 (Outfall 2)
6/5/09 (Outfall 2)
6/6/09 (Outfall 2)
6/11/09 (Outfall 2)
6/16/09 (Outfall 2)
6/17/09 (Outfall 2)
6/21/09 (Outfall 3)
6/22/09 (Outfall 3)
6/28/09 (Outfall 3)
7/9/09 (Outfall 2)

7/9/09 (Outfall 3)
7/12/09 (Outfall 2)
7/12/09 (Outfall 3)
7/13/09 (Outfall 2)
7/15/09 (Outfall 2)
7/15/09 (Outfall 3)
7/26/09 (Outfall 2)
7/27/09 (Outfall 2)

In addition, TCWN documented objectionable color contrast from Outfall 1 to Love Creek on 6/21/09. TCWN believes that there are additional violations at this location, but has not documented them because of the difficulty in accessing the site.

2. Discharging sediments in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream (§ 4.3.2(d))

During significant rain events, the Legends site discharges substantial concentrations of sediment, causing very high turbidity, at Outfalls 2 and 3 to Murphy Creek and at Outfall 1 to Love Creek. This turbidity is detrimental to livestock, fish and aquatic organisms. TCWN has tested samples of the Legends discharges, and found turbidity levels ranging up to 18,600 NTU. By comparison, the United States Environmental Protection Agency's proposed numeric effluent guideline for stormwater discharges is 13 NTU. On other occasions, TCWN has photographs tracking sediment discharged from the Legends construction site through Outfalls 2 & 3 to Murphy Creek and then to Whites Creek. The Legends construction site has discharged pollutants in violation of this section on at least the following dates:

4/20/09 (Outfall 3 – 18,600 NTU)
5/3/09 (Outfall 2 – 1,230 NTU)
5/3/09 (Outfall 3 – 1,650 NTU)
5/8/09 (Outfall 2)
5/8/09 (Outfall 3)
5/11/09 (Outfall 2 – 700 NTU)
5/15/09 (Outfall 2)
5/15/09 (Outfall 3)
6/4/09 (Outfall 3)
6/10/09 (Outfall 2 – 4,300 NTU)
6/16/09 (Outfall 2 – 450 NTU)
6/28/09 (Outfall 2 – 400 NTU)
6/28/09 (Outfall 3 – 700 NTU)
7/9/09 (Outfall 2 – 450 NTU)
7/9/09 (Outfall 3 – 1,400 NTU)
7/12/09 (Outfall 2)
7/12/09 (Outfall 3)
7/15/09 (Outfall 2 – 140 NTU)

7/15/09 (Outfall 3 – 550 NTU)

7/15/09 (Outfall 1 – 210 NTU)

C. FAILURE TO PREPARE AND UPDATE STORMWATER POLLUTION PREVENTION PLANS IN CONFORMANCE WITH THE TNCGP

The TNCGP establishes minimum requirements for stormwater pollution prevention plans. These requirements are intended to ensure that permittees have adequately considered and planned for the erosion and sediment controls that will be implemented onsite. Pursuant to § 3.1, SWPPPs must be prepared in accordance with good engineering practices and the Tennessee Erosion and Sediment Control Handbook. The SWPPPs prepared for the Legends at Washington Pike Subdivision are grossly inadequate and fail to conform to permit requirements. All SWPPP violations began on the date that construction commenced (see footnote 4), and are continuous.

1. Failure to modify and update the SWPPP (§ 3.4.1)

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. 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. First, the scope of the project has changed since the time that the 2005 SWPPP was submitted for the former McCampbell Farms Subdivision, but the public files do not indicate that the SWPPP for this area (which appears to cover everything but the 5.49 acre roadway improvements) has been updated. Second, as noted in TDEC Director’s No. 09-0073 dated June 11, 2009 and evidenced by ongoing violations of water quality standards, there are likely inappropriate EPSCs on site. Finally, ownership of portions of the site has changed hands and there are now at least three construction contractors on site, but the SWPPPs have not been updated accordingly.

2. Failure of the SWPPP for TNR130217 to describe structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and discharge of pollutants from exposed areas of the site. (§ 3.5.3)

The McCampbell Farms Subdivision SWPPP submitted by Babelay Farm, LLC in January 2005 (TNR130217) does not describe the structural practices to divert flows from exposed areas or otherwise limit discharge of pollutants from the exposed areas of the site. There is no indication of Babelay Farm, LLC’s plans to use diversion dikes, sediment traps, or other structural controls.

3. Failure of the SWPPPs to describe measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed (§ 3.5.4)

The SWPPPs do not address measures to control post-construction stormwater discharges. 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.

4. Failure of the SWPPPs to include a description of construction and waste materials expected to be stored on-site with updates as appropriate (§3.5.5(d))

The SWPPPs do not include a description of construction and waste materials to be stored on the site. 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.

5. Failure of the SWPPPs to describe how protective measures will be maintained (§ 3.5.7)

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. 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.

6. Failure of the SWPPPs to address non-stormwater discharges (§ 3.5.9)

The SWPPPs do not address non-stormwater discharges other than a simple statement that concrete trucks are not allowed to wash out on site. This is inadequate. It is common practice in this area and throughout the region and country for cement trucks to washout on site, and this is likely to occur at the Legends at Washington Pike Subdivision. 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.

D. INADEQUATE SELF-INSPECTIONS

1. Failure of self-inspections to identify failing erosion prevention and sediment controls (§3.5.8.2(c))

To date, both Sharp Construction and Clear Creek Construction have submitted inspection reports signed by certified stormwater inspectors as required by § 3.5.8.1. However, these inspection reports have failed to identify problems with on-site EPSCs that are evidenced by TDEC and Knox County inspections, as well as TCWN observations on at least the following dates⁸:

5/11/09
5/15/09
6/11/09
6/16/09
6/23/09

2. Failure to inspect outfall points to determine whether erosion prevention and sediment control measures are effective in preventing significant impacts to receiving waters (§ 3.5.8.2(d))

TCWN has evidence that indicates that EPSCs were not effective in preventing significant impacts to receiving waters. The Legends developers and contractors have failed to inspect outfalls during rain events to determine whether their EPSCs are effective. At a minimum, each date on which there was a self-inspection that corresponds to a date of a water quality violation or another discharge violation (i.e., discharging excess sediments due to ineffective EPSCs) is also a violation of this permit section. The Legends site has violated this requirement on at least the following dates:

5/1/09 (Clear Creek and Sharp)
5/4/09 (Clear Creek)
5/5/09 (Sharp)
5/6/09 (Clear Creek and Sharp)
5/7/09 (Sharp)
5/11/09 (Clear Creek)
5/26/09 (Clear Creek)
6/5/09 (Clear Creek)
6/11/09 (Clear Creek)
6/16/09 (Clear Creek)

E. FAILURE TO SUBMIT NOTICES OF INTENT

Section 1.4.1 of the TNCGP requires all site operators to submit a notice of intent (“NOI”) in order to obtain permit coverage. Section 2.1 of the TNCGP requires any party that has either operational and design control or day-to-day operational control to submit an NOI. Section 2.4.3 requires a new operator to submit a supplemental NOI no later than 2 days prior to assuming control or conducting work at the site. Therefore, any site operator who has failed to submit an NOI is not covered by the permit and is discharging pollutants to waters of the United

⁸ All of the listed dates were inspections by Clear Creek Construction. Also, the most recent self-inspection report in the TDEC files is complete through the end of June 2009. Hence, there may be additional violations in July prior to the date of this notice letter.

States without an NPDES permit in violation of Sections 301 and 402 of the CWA, or they are discharging in violation of the TNCGP and Sections 301 and 402 of the CWA. Only Babelay Farm, LLC has submitted an NOI.⁹ All other entities that have operational and design control or day-to-day operational control are in violation of these requirements. These violations began on the date when each respective operator obtained control, and are ongoing.

F. CREATING NUISANCE AND HEALTH HAZARDS

Sediment-laden water from the Legends site has contaminated groundwater that reaches a well on the McMillan farm. This well is used as both a domestic water supply and as a source of water for livestock. This well contamination constitutes a private nuisance and a health hazard. The well contamination is ongoing and is likely to be permanent. In addition, Legends discharges excessive amounts of sediment-laden water to Washington Pike and to McCampbell Drive. These discharges constitute public nuisance. TCWN has documented violations of this provision on the following dates:

- 4/10/09 (McCampbell Drive)
- 5/5/09 (well)
- 5/8/09 (well)
- 5/10/09 (well)
- 5/15/09 (Washington Pike)
- 5/16/09 (well)
- 5/17/09 (well)
- 5/18/09 (well)
- 5/19/09 (well)
- 5/20/09 (well)
- 6/4/09 (well)
- 6/4/09 (McCampbell Drive)
- 6/5/09 (well)
- 6/6/09 (well)
- 6/9/09 (well)
- 6/10/09 (McCampbell Drive)
- 6/11/09 (McCampbell Drive & well)
- 6/21/09 (McCampbell Drive & well)
- 6/22/09 (well)
- 6/24/09 (well)
- 7/9/09 (McCampbell Drive)
- 7/13/09 (well)
- 7/15/09 (well)

⁹ Babelay Farm, LLC has instead violated § 2.3.1(e) because it is a permittee with design control who has failed to ensure that all operators on the site have permit coverage.

G. FAILURE OF THE SWPPPS TO IDENTIFY EACH OUTFALL

Section 3.5.1(g) of the TNCGP requires SWPPPs to include a “careful identification on the site map of outfall points intended for coverage under the general permit for storm water discharges from the site.” The SWPPPs submitted by Babelay Farm, LLC for the driveway improvements associated with TNR133211 fail to identify outfalls to the Wyngate Subdivision, and to the Steeple Shadow Condominiums. The January 2005 SWPPP submitted by Babelay Farm, LLC for the McCampbell Farms Subdivision (TNR1301217) indicates fails to identify outfalls at the two McCampbell Drive construction entrances and to the Wyngate Subdivision. In addition, because the outfalls must be properly identified in the SWPPP in order to obtain permit coverage, *any* discharge from these outfalls is unpermitted and violates Sections 301 and 402 of the CWA. These failures to identify all outfalls and to obtain permit coverage for each outfall are continuous violations that began upon commencement of construction-related clearing activities (see footnote 4).

H. FAILURE TO COMPLY WITH TDEC DIRECTOR’S ORDER NO. 09-0073

Babelay Farm, LLC and Sharp Contracting, Inc. are in violation of TDEC Director’s No. 09-0073 dated June 11, 2009.¹⁰ This Director’s Order is “an order issued by the ... State with respect to [an effluent] standard or limitation,” 33 U.S.C. § 1365(a)(1)(B), and is thus subject to enforcement through a citizen suit. Specifically, Babelay Farm, LLC and Sharp Contracting have not: submitted a certification by a licensed professional engineer indicating whether the current SWPPP has been implemented (XVIII(1)); submitted an updated SWPPP modifying inappropriate EPSC measures (XVIII(2)); fully implemented new EPSC measures (XVIII(3)); complied with all provisions of the TNCGP and secured weekly inspections by a professional engineer (XVIII(4)); and paid a non-contingent civil penalty (XVIII(5)(a)). These violations began on the dates that they were due to TDEC as specified in the order,¹¹ and are ongoing.

PERSONS RESPONSIBLE FOR VIOLATIONS

Victor Jernigan, Babelay Farm, LLC, Babelay Farm II, LLC, and Legends at Washington Pike, LLC are liable as owners/developers pursuant to TNCGP § 2.2.1 and as permittees with design control pursuant to TNCGP § 2.3.1. Sharp Contracting, Inc., Clear Creek Construction, LLC, and Hathaway Construction Co., Inc. are liable as permittees with day-to-day operational control pursuant to TNCGP § 2.3.2. All parties that violate their duty to comply with the TNCGP are liable under the CWA.

¹⁰ TCWN is aware that both respondents have appealed this order. However, absent a stay, the order remains in full effect during the pendency of these appeals.

¹¹ Section XVIII specifies compliance deadlines based on the date of receipt of the order. The order was mailed on June 11, and was likely received within 2-3 days. The first 2 items were due within 15 days of receipt of the order. New EPSCs were to be implemented within 7 days of updating the SWPPP. Weekly inspections by a professional engineer were to begin immediately. The noncontingent penalty was due within 30 days.

PERSONS GIVING NOTICE

The Tennessee Clean Water Network is a Tennessee nonprofit corporation. TCWN empowers Tennesseans to claim their right to clean water and healthy communities by fostering civic engagement, building coalitions and advancing water policy for a sustainable future. In recent years, TCWN has focused on stormwater violations in east Tennessee, and has repeatedly requested that TDEC, Knox County, and other governmental bodies enforce applicable permit limitations. TCWN is a membership organization, and has several members who are injured by illegal discharges from the Legends at Washington Pike Subdivision.

Charles S. McMillan is a farmer who owns an approximately 179-acre property adjacent to the Legends at Washington Pike Subdivision, including the domestic well that has been contaminated by the Legends construction site. Murphy Creek and Whites Creek both flow through his property. James McMillan, Charles' son, pastures his cows on the property. His cows drink from Whites Creek and Murphy Creek and also from the contaminated well.

The names, addresses, and phone numbers of the persons giving notice are:

Renee Hoyos
Tennessee Clean Water Network
123A South Gay Street
Knoxville, TN 37902
865-522-7007 x 100

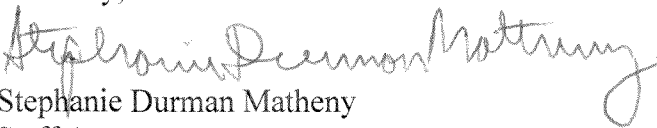
Charles S. McMillan
4715 McCampbell Drive
Knoxville, TN 37918
865-687-6833

James McMillan
4715 McCampbell Drive
Knoxville, TN 37918
(865) 689-1502

TCWN and the McMillans demand that you immediately cease these serious violations of the Clean Water Act and remedy the damage that your violations have caused. TCWN and the McMillans intend to file suit under section 505(a) of the CWA in sixty days unless a voluntary settlement is reached during that time. Pursuant to the CWA, this suit will seek penalties of up to \$37,500 per day per violation, injunctive relief, fees and costs of litigation, and revocation of coverage under the TNCGP.

All communication relating to this matter should be directed to me at the address and phone number listed above.

Sincerely,


Stephanie Durman Matheny
Staff Attorney

Albert Ettinger, of counsel
Environmental Law & Policy Center
65 E. Wacker Drive, Suite 1300
Chicago, IL 60601

Gary A. Davis & Jamie Whitlock, of counsel
Gary A. Davis & Associates
61 North Andrews Avenue
Hot Springs, North Carolina 28743

cc: (by certified mail, return receipt requested)

Ms. Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Tracking #7008-0500-0000-7803-1933

Stan Meiburg, Acting Regional Administrator
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Tracking #7008-0500-0000-7803-1940

Eric H. Holder
Attorney General of the United States
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