

April 11, 2011

Commissioner Robert Martineau  
Tennessee Department of Environment and Conservation  
L & C Tower  
401 Church Street  
Nashville, TN 37243

Re: Construction Stormwater Violations at Mercy North, TNR133683

Dear Commissioner Martineau:

Pursuant to Tenn. Code Ann. § 69-3-118(a), I am writing to inform you of ongoing violations of the Tennessee Water Quality Control Act at the Mercy Health Facility construction site (hereinafter “Mercy North”) in Knox County (TNR133683). I appreciate the opportunity to submit this information for your consideration, and look forward to TDEC’s prompt resolution of this matter.

Mercy North is a 47.6-acre construction site. Construction at the site began on or before June 25, 2010. Since then, the Tennessee Clean Water Network has observed numerous violations of the Tennessee General NPDES Permit for Discharges Associated with Construction Activities, No. TNR100000 (hereinafter “CGP”). Violations of the CGP are violations of the Tennessee Water Quality Control Act. Tenn. Code Ann. § 69-3-108(b).

Mercy North discharges to a tributary of Beaver Creek, which TDEC has listed pursuant to Section 303(d) of the Clean Water Act as impaired due to excess sedimentation. Beaver Creek is covered by a Total Maximum Daily Load for Siltation and Habitat Alteration in the Lower Clinch River Watershed (HUC 06010207).

The CGP directs permittees to prepare a stormwater pollution prevention plan (“SWPPP”) and to implement it throughout construction, with the goal of preventing the discharge of excessive sediment to our waters. Due to failures of SWPPP design and/or implementation, the Mercy North construction site has violated various provisions of the CGP and contributed to the ongoing pollution of waters of the state. The specific violations are detailed below, with representative photographs. Additional date-stamped photographs are included on a CD submitted with this complaint.

**1. Failure to prevent erosion, minimize the dislodging of soil, and retain sediment on site (§§ 3.1 & 3.5.3.1(a))**

Taken together, Sections 3.1 and 3.5.3.1(a) of the CGP prohibit the discharge of muddy water. Section 3.5.3.1(a) provides: “The construction-phase erosion prevention

controls shall be designed to minimize the dislodging and suspension of soil in water. Sediment controls shall be designed to retain mobilized sediment on site.” Section 3.1 requires the permittee to “implement the SWPPP as written from commencement of construction activity until final stabilization is complete.”

There have been numerous occasions when Mercy North has discharged stormwater containing excess sediment in violation of Sections 3.5.3.1(a) & 3.1 of the CGP. This discharge is from the west side of the Mercy North property to a tributary of Beaver Creek behind Bishop Road. This photograph documents the failure of Mercy North to control the discharge of sediment-laden water on February 25, 2011:



The attached CD includes photographs documenting the discharge of sediment-laden water on the following dates:

9/11/10

10/25/10

10/26/10

10/27/10

10/31/10

11/4/10

11/16/10

11/17/10

11/29/10

11/30/10

12/1/10

12/2/10  
12/4/10  
1/1/11  
1/2/11  
1/4/11 (per Knox County NOV dated 1/5/11)  
1/26/11  
2/2/11  
2/24/11  
2/25/11  
2/27/11  
3/1/11  
3/6/11  
3/9/11  
3/10/11  
4/4/11

**2. Failure to properly select, install and maintain erosion prevention and sediment controls (§ 3.5.3.1(b))**

Section 3.5.3.1(b) of the CGP requires that erosion prevention and sediment controls (“EPSCs”) be selected, installed and maintained in accordance with good engineering practices and to prevent rill and gully formation.

As a general matter, there are insufficient best management practices in place to prevent water from eroding rills and gullies throughout the site in violation of Section 3.5.3.1(b) of the CGP. The formation of these rills and gullies indicates that the eroded materials have been mobilized and are migrating offsite, as documented in this February 26, 2011 photograph:





In addition, there is a lack of inlet protection and a lack of adequate erosion prevention and sediment controls. For example, some silt fences at the site are not properly installed and maintained, as shown in this picture:



The attached CD includes photographs documenting insufficient EPSCs and/or the formation of rills and gullies on the following dates:

- 10/31/10
- 12/31/10
- 1/1/11
- 1/23/11
- 2/25/11

2/26/11

3/13/11

**3. Failure to design and/or maintain erosion prevention and sediment controls in conformance with the Tennessee Erosion and Sediment Control Handbook (§ 3.1)**

Section 3.1 of the CGP requires that the SWPPP be designed in accordance with the Tennessee Erosion and Sediment Control Handbook (“TESCH”) and be implemented as written throughout construction.

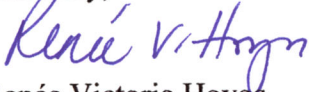
The TESCH sets forth detailed requirements for sediment basins. TDEC recommends a 72-hour drawdown time to ensure sediment removal efficiency. TESCH at SB-10. Dewatering should be done from the higher portion of the basin (*i.e.*, the “dry storage” area) where the water is cleaner, not from the “sediment-laden water found in the wet storage area” at the bottom of the basin. *Id.* The dewatering device should draw water from the top of the wet storage area of the sediment basin. *See id.* at SB-3, SB-8.

TDEC acknowledges that temporary sediment basins for construction may also be used as permanent, post-construction stormwater controls. *Id.* at SB-5. However, TDEC specifically cautions that “[c]are must be taken” to ensure that the outlet control system used during the construction period is appropriate for the “containment and settling of sediment-laden water.” *Id.*

TCWN believes that the primary sediment basin at the Mercy North site may not be designed and/or maintained in accordance with the TESCH in violation of § 3.1 of the CGP. The discharge structure appears to have a hole at the bottom, well below the wet storage level. As a result, stormwater is likely being discharged immediately without time for settling and the discharge structure may be drawing from the bottom portion of the pond where the water is the most turbid. This appears to be a post-construction design not suitable for settling of sediment-laden water.

TCWN requests that TDEC investigate these allegations and take appropriate enforcement action to prevent further pollution of Beaver Creek and its tributaries. Thank you.

Sincerely,



Renée Victoria Hoyos  
Executive Director

cc:

Paul Schmierbach, TDEC  
Chris Granju, Knox County Stormwater Management  
Ben Ochs, COO, Mercy Health Partners