
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between Harpeth River Watershed Association (hereinafter referred to as “HRWA”) and the City of Franklin, Tennessee (hereinafter referred to as “the City”), (collectively “the Parties”), with reference to the following facts:

A. The Parties desire to resolve all matters arising out of HRWA’s Clean Water Act claims against the City, *Harpeth River Watershed Association v. City of Franklin*, No. 3:14-cv-1743 (M.D. Tenn.) and the City’s claims against HRWA (“Counterclaim”);

B. As described in the Complaint and Amended Complaint (“Complaint”), HRWA brought suit against the City pursuant to Section 505(a)(1) of the Federal Clean Water Act, 33 U.S.C. §§ 1251, 1365(a)(1), to address alleged violations of the Clean Water Act by the City arising out of the City’s operation of its Sewage Treatment Plant/Water Reclamation Facility (“STP” or “WRF”) pursuant to the City’s National Pollutant Discharge Elimination System (“NPDES”) permit, NPDES Permit No. TN0028827 (the “Permit”).

C. The Parties have denied, defended, and disputed the allegations and claims contained in the Complaint and Counterclaim; and

D. The Parties desire to settle and resolve the Complaint and all other disputes and claims which have been or could have been asserted between them. The Parties each recognize that it is in their best interests to resolve their disputes and protect the Harpeth River, and the Parties each want to compromise and resolve all claims between them without admission of liability or further proceedings.

THEREFORE, for and in consideration of the mutual releases, covenants and undertakings hereinafter set forth, and for other good and valuable consideration, which each Party acknowledges, it is agreed as follows:

1. No later than thirty (30) days from the date of this Agreement, the City agrees to submit to the Tennessee Department of Environment and Conservation ("TDEC") to obtain final approval for the locations of annual bioassessments of the Harpeth River described in this paragraph. The City agrees to conduct bioassessments at five (5) locations annually including Cotton Lane Bridge, approximately five hundred (500) feet downstream of the WRF outfall, approximately fifty (50) yards upstream of the WRF outfall, and upstream and downstream of the City's Water Treatment Plant ("WTP") intake. These locations will be presented to TDEC by the parties jointly for TDEC's approval and with the understanding that the locations could later, with approval from TDEC, be modified upon review and suggestion by the Total Maximum Daily Load ("TMDL") working group currently developing a watershed-level TMDL for the Harpeth River ("TMDL working group" or "TMDL study").
2. No later than thirty (30) days from the date of this Agreement, the City agrees to begin conducting the chemical assessments described in this paragraph. Namely, the City agrees to conduct chemical assessments at four (4) locations, including the WRF's outfall. The assessments shall include analyses of the following parameters: Ammonia, Nitrite-Nitrate, TKN, Orthophosphate, Total Phosphorous, Total Nitrogen, CBOD5, TSS, pH, Temperature, Conductivity, E. coli, and Turbidity. Locations are: (a) approximately fifty (50) yards upstream of the WRF outfall; (b) the outfall; (c) approximately one hundred fifty (150) yards downstream of the WRF outfall; and (d) at the Cotton Lane

Bridge. The particular locations of the three (3) chemical assessment sites (other than the outfall) will be presented to TDEC by the parties jointly for TDEC's approval and with the understanding that the locations could later, with approval from TDEC, be modified upon review and suggestion by the TMDL working group. The parties also propose to discuss with TDEC whether to reduce the frequency of chemical assessment summer testing frequency and add chemical assessment winter testing.

3. No later than thirty (30) days from the date of this Agreement, the City agrees it will propose locations and monitoring information to TDEC jointly with HRWA for diurnal monitoring, and that the three (3) locations will include (a) the Cotton Lane Bridge for year-round monitoring, and (b) two (2) locations for summer monitoring, with one location being upriver from the City and the other downriver, with the final location later determined jointly by the parties within thirty (30) days of the May 16, 2016, meeting on the Harpeth River Watershed TMDL, or within thirty (30) days of this Agreement, whichever comes later, to be reviewed and approved by TDEC. All monitoring locations shall be inside the City limits or within one (1) river mile of the City's Urban Growth Boundary, except that, if any monitoring necessary to accurately and fair understand the effect of the STP's operations on the Harpeth River are in whole or in part outside the City's boundaries, the City agrees to endeavor in good faith to enter into any necessary interlocal agreements to conduct such monitoring. These locations will be presented to TDEC by the parties jointly and with the understanding that the locations could later, with approval from TDEC, be modified upon review and suggestion by the TMDL working group. The City will first seek to partner with the U.S. Geological Survey ("USGS") to conduct this monitoring; if USGS is unable to perform this work, the City

will begin the process of obtaining an alternate vendor by no later than sixty (60) days from the date of the final agreement. Should the City use gages installed and maintained by USGS, the City shall not be held responsible for maintenance issues beyond its control. To the extent certification is required of the river flow gages owned and maintained by USGS, the City is not required to certify data from said gages. The assessments shall include data collection for the following parameters: Temperature, Dissolved oxygen, pH, Conductivity, and Flow (year-round monitoring). Daily flow estimates shall be provided for seasonal monitors. The City agrees to have the monitors functioning and collecting data within 90 days from the date of this Agreement.

4. If the monitoring described in Paragraphs 1, 2, and/or 3, is delayed due to circumstances beyond the City's control, including, but not limited to, the inability to obtain any required landowner consents, the City shall inform TDEC as soon as practicable and propose an alternative date of compliance, along with appropriate justification for such date. If the issue is the inability to obtain TDEC concurrence by the date specified above, the City shall call a meeting with TDEC, the City and HRWA to discuss the issues asking for a final decision by TDEC. If the issue involves some other circumstance beyond the City's control (or only partial concurrence can be obtained from TDEC), the City shall nevertheless proceed with the balance of the assessments. The City will report the data collected at appropriate, predetermined time intervals, along with its Monthly Operating Reports submittal and make the data publicly available on its website (or USGS's website) no later than when the MORs are submitted. The Parties understand that any preliminary results not yet subject to usual data validation procedures will not be used to establish violations of the City's NPDES permit(s). With the understanding that data

collection in the Harpeth River (as opposed to sampling at the discharge point) will not be used to establish violations of the City's NPDES permit, the City agrees to report the values to at least three significant digits on its Monthly Operating Reports (or as reported by the laboratory). The City further agrees that if TDEC, EPA, USGS or the TMDL working group recommend different locations for any of the assessments contemplated in the final agreement based upon the data collected (or not collected), the City will relocate the applicable equipment as soon as practicable (subject to the terms of this paragraph).

5. Within sixty (60) days after and already scheduled May 16, 2016, meeting with EPA, TDEC, and USGS, the Parties agree to confer and propose comments for a structure to TDEC for the TMDL study of the Harpeth River Watershed that was announced jointly by the parties and TDEC last summer in a joint press statement with the issuance of the Aquatic Resource Alternation Permit ("ARAP") water withdrawal permit to the City (Permit No. NRS12.195). The Parties' comments will identify additional stakeholders, propose a schedule to ensure regular meetings, and recommend assignment of parties responsible for the collection and transmittal of data to TDEC and EPA so that the agencies' "gap analysis" is robust and reflects available information about the entire watershed. If the Parties are not able to agree on a proposed structure, they may separately transmit their proposal(s) to TDEC and EPA for consideration. The City will provide its water quality monitoring data that has been collected either per its NPDES permit or other programs such as stormwater management based on the direction provided by EPA and/or TDEC during the upcoming May 16, 2016 meeting, in support of the TMDL study within 30 days after such meeting. When and if additional studies are identified by the agencies during the course of the TMDL study as necessary to verify

and calibrate the TMDL model and thereby assist TDEC in establishing any necessary TMDL to cover all of the area that drains to the Harpeth River Watershed at the location of the Franklin STP (River Mile 85.2) and downstream, the City agrees to fund a proportional percentage of any required studies to ensure that the Harpeth River Watershed as a whole undergoes a study of a scientifically appropriate level of detail and the City's load allocation is fairly determined in the context of the entire watershed, but in no case shall the City expend funds on studies outside of the City's Urban Growth Boundary, except as otherwise provided in this paragraph. Because it is not yet possible to know precisely which studies in support of the TMDL study will be necessary or how costly such studies would be in support of the TMDL study, the City agrees in good faith to contribute proportionate, meaningful and appropriate funds for studies within the City's boundaries up to an amount of \$150,000.00, subject to the terms in this paragraph, and, if any studies necessary to establish an accurate and fair pollutant load allocation for the City are in whole or in part outside the City's boundaries, the City agrees to endeavor in good faith to contribute to those studies by attempting to enter into any necessary interlocal agreements. The Parties agree that HRWA will receive no money as a result of the projects funded by the City.

6. Because the Harpeth River is listed by TDEC on the Section 303(d) list as impaired for Total Phosphorus and a water quality-based effluent will therefore be required for this parameter in the Permit, and given the City's commitment to reduce its nutrient discharge as reflected in its design for the WRF's expansion, the City agrees to within ninety (90) days of the date of this agreement to hire CDM Smith to conduct an optimization study consistent with the studies previously conducted by TDEC in conjunction with The Water

Planet company. In addition, the City agrees to prioritize the installation of chemical phosphorus removal during the construction phase of the facility's expansion. The City further agrees to request a joint meeting with TDEC and the parties on or before June 15, 2016, to discuss an appropriate interim effluent limit for Total Phosphorus and limits for Total Nitrogen and Total Phosphorus in the new permit (*e.g.*, maintaining concentration, mass or reducing them tied to the 16 MGD design flow increase), unless a new Draft NPDES permit is issued within this timeframe. The City agrees not to oppose a re-opener clause in the NPDES permit should the TMDL be finalized and approved prior to the end of the NPDES Permit term and require a different loading allocation for the City.

7. The City agrees to attend a meeting with TDEC, with an invitation to EPA, and the Parties' experts no later than forty-five (45) days after the date of this Agreement to review the City's proposal to ensure accurate and representative sampling of the City's influent sampling of raw wastewater. In the alternative, the City agrees to install a composite sampler and flow meter on the return line from the equalization basin to the Influent Pump Station.
8. The City agrees to maintain and monitor the thirteen (13) permanent flow monitors inside its sanitary sewer collection system for a period of five (5) years in order to inform the prioritization process of capital improvements related to the existing, aging infrastructure in the sanitary sewer collection system and storm water management projects contemplated in paragraph 9, below. After the current contract (File # 15-0195) concludes, as part of any subsequent contract and in addition to the thirteen (13) permanent flow monitors, the City agrees to conduct additional temporary flow monitoring in the first year, or as soon as practicable based on wet weather flow

conditions, of the new contract with an appropriate number of temporary wastewater flow meters for an anticipated duration of at least four (4) months each.

9. The City agrees that it will utilize emerging technologies (including but not limited to SL RAT [Sewer Line Rapid Assessment Tool] and CCTV) to identify and prioritize sanitary sewer collection system improvements. Each calendar quarter, the City will create and report to the Board of Mayor and Aldermen (“BOMA”) a summary of the previous quarter’s activities, including amount of infrastructure inspected and assessed, feet of pipe cleaned, and repairs made.
10. The City agrees to commit to spend \$10,000,000.00 in the cumulative aggregate over a five-year period beginning July 1, 2016, on projects developed through the City’s capital investment planning efforts, which relate to the protection of the Harpeth River by prioritizing upgrading existing, aging infrastructure in the sanitary sewer collection system and, to the extent they impact loading to the Harpeth River, storm water management projects. Prior to March 1 of each year, the City’s Water Management Director, or Assistant Director, will meet with a representative from HRWA and receive input on the annual expenditures to help identify projects related to the renewal of existing sewer infrastructure.
11. The City acknowledges that no increases in sewer rates will be based this lawsuit, the Counterclaims, or the resolution of these matters.
12. The City agrees to develop a Sewer Overflow Response Plan (“SORP”) and start the process of getting it before the Board of Mayor and Aldermen by the beginning of Fiscal Year 2017. As a measurable and achievable public educational effort about overflows, the City agrees to include a public notification decision matrix in its SORP: For

overflows within public infrastructure, greater than 1,000 gallons into streams, the City will place temporary signs along the creek up to 1,000 yards at intervals of 200 yards or at public access points. Signs should remain in place for 48 hours after clean-up is completed. For overflows within public infrastructure in a residential or high traffic area, such as a school or public park, the City will place door hangers, or other form of notification, on homes or businesses that may be impacted by the overflow. For severe weather conditions resulting in widespread overflows, the City will issue a news release warning of potential hazards resulting from flooding, stormwater runoff, and overflows occurring. For all other overflows within public infrastructure, the City will post temporary signs and establish a control zone as described above. The control zone will remain in place until clean-up is complete and potential exposure to public is removed. The City will post on its website an ongoing list of overflows within public infrastructure, within two (2) business days of occurrence. Once a month, the City will post a summary of overflows on its website with the following information: date, time and duration, location by nearest intersection, estimated volume, the status of clean-up, and identified cause of blockage (if known).

13. Both Parties shall be responsible for their own attorney fees and costs related to the Clean Water Act citizen suit. In addition, HRWA agrees not to pursue the attorneys' fees and costs related to the City's counterclaim for abuse of process.
14. The Parties have drafted a joint release for the press, a copy of which is attached as Exhibit A, which may be shared after the Board of Mayor and Aldermen have approved this settlement. The Parties agree that they will reasonably endeavor to promote this Agreement in any discussion, release or statement made relating to this lawsuit or

Agreement. Nothing herein shall infringe upon any person's or party's ability to comment on the settlement or any of its terms, and the parties recognize and respect their different missions, including environmental advocacy and efficient municipal administration.

15. The Parties' Agreement is not an admission of liability, and except for consent to the Court's jurisdiction and venue, is not an adjudication or admission of any fact or law.
16. This Agreement shall be reviewable by the Court and the United States, as described in Paragraphs 21, 22.
17. The Parties agree that, prior to seeking a resolution of a dispute by the Court, they will (a) attempt to resolve any and all disputes between themselves but (b) if the complainant concludes that the parties were unable to resolve the dispute, the dispute will be submitted to a mutually-agreed upon mediator (for non-binding mediation), and (c) if the parties are unable to agree on a mediator, they will move the Court to appoint one prior to asking the Court to resolve any disputes itself. The Parties also reserve the right, if mediation is unsuccessful, to ask the Court to resolve the dispute. The Parties will bear equally the costs of any mediator and will otherwise be responsible for their own costs of mediation. The Parties will also each bear their own costs of resolving any dispute before the Court.
18. Nothing in this Agreement shall compel the City to act in violation of terms of the NPDES Permit, Draft NPDES Permit, future versions of the Permit, or any other law.
19. To the extent practicable or where appropriate, the Parties will recommend to TDEC that the settlement terms be included in the City's next NPDES Permit to avoid any conflict.

20. Nothing herein shall be deemed to waive any rights of the City or HRWA, including but not limited to, the City's or HRWA's rights to challenge the appropriateness of any permit condition or TMDL.
21. Within twenty-four (24) hours of approval by the Board of Mayor and Aldermen, the Parties will provide a copy of this Agreement to the Department of Justice for its review at the contact listed, below. To the extent that such review is required for citizen suits where there has been no admission or finding of liability, the parties will in good faith consult with the United States and work to ensure that the Department will not object to the substance of the terms of this agreement when it is reviewed by the Court.
22. The Parties will file this Agreement with a joint motion for the Court to approve the Agreement, and dismiss the case with prejudice, retaining jurisdiction to enforce the Agreement. Specifically, the Parties will provide notice to the Court within forty-eight (48) hours of the BOMA meeting approving this Agreement that the parties have reached this Agreement and have provided a copy of it to the Department of Justice. The Parties will jointly move to dismiss with prejudice, asking the Court to retain jurisdiction but withhold ruling on the motion until that the Department of Justice determines that this Agreement is not objectionable.
23. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, the City shall provide notice to HRWA, within a reasonable time after the City first knew or should have known that the event might cause a delay. The City shall also provide an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for

implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a *force majeure* event if it intends to assert such a defense; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any written notice required by this Agreement all available documentation.

24. The terms of this Agreement may be modified only by a subsequent written agreement signed by all the Parties, or by order of the Court. Where the modification constitutes a material change to any term of this Agreement, it shall be effective only upon approval by the Court.
25. This Agreement shall be effective for a term of five (5) years after it is approved.
26. Upon approval by the Court, this Agreement shall be deemed to settle all claims asserted by HRWA in this case against the City and by the City against HRWA. Accordingly, the Parties mutually release and discharge each other from any and all claims and causes of action raised in the Complaint in this Action, the 60-day Notice to the City, and/or the City's counterclaim related thereto. This release does not waive or release any claims, demands, or liabilities arising under or in connection with the Agreement, nor does it waive or release any claims, demands, or liabilities based on future events.
27. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Agreement, they shall be made in writing and sent by e-mail as follows:

To the United States:

Frederick H. Turner
Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
202-305-0641
frederick.turner@usdoj.gov

To the State of Tennessee:

Tisha Calabrese-Benton
Director, Division of Water Resources
Tennessee Dept. of Environment and Conservation
615.532.0789 Office
865.599.3685 Cell
Tisha.Calabrese@tn.gov

To HRWA:

Dorene Bolze
Executive Director
Harpeth River Watershed Association
P.O. Box 1127
Franklin, TN 37065
615-790-9767 (office)
DorieBolze@harpethriver.org

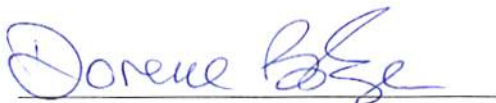
To the City:

Shauna R. Billingsley
City Attorney
City of Franklin
Law Department
109 3rd Avenue South
Franklin, Tennessee 37064
P: (615) 550-6603
F: (615) 550-6998
shauna.billingsley@franklintn.gov

28. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provide above.

29. This Agreement has been executed by the Parties' duly authorized representatives. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors and assigns, including any conservation organization which gives written notice that it is a successor to HRWA and assumes HRWA's obligations hereunder in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of May 10th, 2016.



Dorene Bolze
Executive Director
Harpeh River Watershed Association

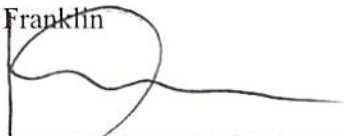
Date: May 10, 2016



Matt Dobson
Board Chair
Harpeh River Watershed Association

Date: May 10, 2016

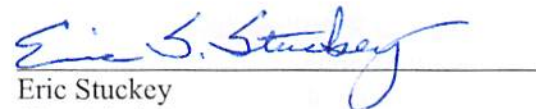
City of Franklin



Dr. Ken Moore
Mayor

Date: May 10, 2016

Attest:



Eric Stuckey
City Administrator

MEDIA RELEASE



HISTORIC
FRANKLIN
TENNESSEE

FOR IMMEDIATE RELEASE

Milissa Reierson
Communications Manager
615.550.6629
milissa.reierson@franklintn.gov

May 10, 2016

City of Franklin, HRWA Reach Settlement Agreement over Harpeth River Lawsuit

Franklin— The City of Franklin and the conservation organization, Harpeth River Watershed Association (HRWA), have resolved their differences regarding the City’s operation of its Water Reclamation Facility, ending a 2014 federal Clean Water Act lawsuit filed by HRWA in which HRWA has been represented by the Southern Environmental Law Center (SELC). The parties are moving forward and are participating in a comprehensive study focusing on the entire Harpeth River watershed, the first such study in the State of Tennessee. This study, led by the Tennessee Department of Environment and Conservation (TDEC), will involve other stakeholders associated with the Harpeth River and will assess the health of and the risks to the Harpeth River and its tributaries. The study will document and establish a plan to ensure activities and priorities in the Harpeth River watershed are accounted for so the river will meet water quality standards.

“The agreement allows all parties to move forward in serving our vibrant community, focusing on this most important resource, the Harpeth River,” said City Administrator Eric Stuckey. “Franklin has always been a committed steward of the Harpeth River. The City will continue important initiatives as outlined in its 30-year Integrated Water Resource Plan (IWRP), the first of its kind in the State of Tennessee. We welcome partnerships and new efforts to continue protecting the river.”

“In addition to being a beloved place for our community, the State Scenic Harpeth River is one of the unique freshwater river systems in the Southeast,” said Dorie Bolze, executive director of HRWA. “We are glad to reach this agreement in regards to the Harpeth River, and we look forward to working with the City and many other partners on new solutions to safeguard the river’s health and clean water for everyone.”

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