

January 13, 2014

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

The Honorable Dr. Ken Moore
Mayor, City of Franklin, Tennessee
City Hall
109 3rd Avenue South
Franklin, TN 37064

Mr. Eric S. Stuckey
City Administrator, City of Franklin, Tennessee
109 3rd Avenue South
Franklin, TN 37064

Mr. Mark S. Hilty
Director, Franklin Water Management Department
City of Franklin, Tennessee
405 Hillsboro Road
Franklin, TN 37064

Re: 60-Day Notice of Violations and Intent to File Citizen Suit under Section 505 of the
Clean Water Act

Dear Mayor Moore, Mr. Stuckey, and Mr. Hilty:

This letter is sent to notify you, the City of Franklin, the Tennessee Department of Environment and Conservation, the United States Environmental Protection Agency, and the other entities and individuals named in this letter that the Harpeth River Watershed Association (“HRWA” or the “Watershed Association”) and its members have identified violations of the Clean Water Act,¹ the Tennessee Water Quality Control Act,² and regulations promulgated by the Board of Water Quality, Oil & Gas³ at the Franklin Sewage Treatment Plant. The Watershed Association hereby notifies you that it is prepared to file an action in the U.S. District Court for the Middle District of Tennessee pursuant to § 505(a) of the Clean Water Act,⁴ sixty days from the date of this letter or soon thereafter. This lawsuit will seek injunctive relief, appropriate

¹ 33 U.S.C. §§ 1251-1387.

² Tenn. Code Ann. § 69-3-101 *et seq.*,

³ *See* Tenn. Code Ann. § 69-3-105 (2013). This board was previously known as the “Tennessee Water Quality Control Board.” *See* Tenn. Code Ann. § 69-3-104 (2011).

⁴ 33 U.S.C. § 1365(a)(1).

monetary penalties, fees and costs of litigation, and such other relief as the Court deems appropriate, in order to address and correct the violations that are described in this letter.⁵

I. LOCATION OF VIOLATIONS

A. The Harpeth River

The Harpeth River, which flows for 125 miles through middle Tennessee, has been partially designated for special protection as a State Scenic River.⁶ It is home to freshwater mussels, fish, insects, crustaceans, beavers, and otters; it runs through Harpeth River State Park for forty miles, “connect[ing] several natural, archeological and historic sites including nine access points,”⁷ such as those used by fishermen and paddlers. It also provides a portion of the drinking water supplied to the City of Franklin’s residents.⁸

Unfortunately, in Williamson County, the Harpeth River appears on the Tennessee’s 303(d) list of waterways that do not meet water quality standards under the Clean Water Act. The river is impaired because of organic enrichment (perhaps more appropriately classified as “nutrient enrichment”)⁹ and low dissolved oxygen.¹⁰

B. The Franklin Sewage Treatment Plant

The Franklin Sewage Treatment Plant (“Franklin STP” or “the Sewage Treatment Plant”) is located at 135 Claude Yates Drive in the City of Franklin, Williamson County, Tennessee. NPDES Permit No. TN0028827 authorizes the discharge of wastewater from Outfall 001 into the Harpeth River at river mile 85.2. This is where a majority of the violations identified in this letter have occurred. Violations also occurred at overflow sites (*i.e.*, where sewage was released from any portion of the collection, transmission, or treatment system other than through permitted outfalls), as described the chart labeled “Numeric Violations, Bypasses, and Overflows.” *See infra* Section II.A.

⁵ See 33 U.S.C. §§ 1365, 1319.

⁶ Certain rivers have “outstanding scenic, recreational, geological, fish and wildlife, botanical, historical, archaeological and other scientific and cultural values of great present and future benefit to the people.” Such rivers are designated “State Scenic Rivers.” See Tenn. Code Ann. § 11-13-101(b); Tenn. Code Ann. § 11-13-104. The Tennessee General Assembly decided to provide special protection for these rivers because, “Few . . . are left in the eastern United States and the general assembly feels . . . it must not deny the people of this generation and their descendants the opportunity to refresh their spirits with the infinite beauties of the unspoiled stream.” *Id.*

⁷ *Harpeth River State Park*, <http://tnstateparks.com/parks/about/harpeth-river> (last visited Jan. 9, 2014).

⁸ See Tennessee Aquatic Resource Alteration Permit No. NRS06.332 (authorizing withdrawal of water from Harpeth River for use as a municipal water supply by City of Franklin).

⁹ *Final Organic Enrichment/Low Dissolved Oxygen: Total Maximum Daily Load (TMDL) for Waters in the Harpeth River Watershed (HUC 05130204)*, p. 9 (EPA Sept. 2004).

¹⁰ See 33 U.S.C. § 1313; 40 C.F.R. § 130.10; see also TDEC Proposed Final Year 2012 303(d) List available at http://tn.gov/environment/water/docs/wpc/2012_pf_303d_list.pdf (last visited Jan. 14, 2014). Some sections that are designated scenic are also on the 303(d) list.

The Sewage Treatment Plant serves approximately 62,000 people and has a design flow of 12 million gallons per day. This makes it the largest point source discharge in the approximately 870-square-mile Harpeth River watershed. Because of the river's characteristic low flows, especially during the summer, a significant portion (from 35% to 90% according to some estimates)¹¹ of the water in the Harpeth downstream of the plant is treated effluent.

The specific segment of the Harpeth River—No. TN05130204016_1000—that receives the sewage plant's discharge is currently impaired as a result of low dissolved oxygen and organic enrichment.¹² Moreover, as described below, the City does not know how the Sewage Treatment Plant's discharges are affecting the river, particularly with respect to nutrients, because it has failed to conduct all of the monitoring required by the permit.

II. DESCRIPTION OF THE VIOLATIONS

Section 301(a) of the Clean Water Act¹³ prohibits the discharge of a pollutant to waters of the United States except, in relevant part, pursuant to a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to § 402.¹⁴ "Discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source,"¹⁵ and "pollutant" includes "solid waste, . . . sewage, garbage, sewage sludge, . . . chemical wastes, biological materials, . . . heat, . . . rock, sand, . . . and industrial, municipal, and agricultural waste discharged into water."¹⁶

Under authority of the Tennessee Water Quality Control act of 1977 and the authority delegated to the State of Tennessee from the U.S. Environmental Protection Agency,¹⁷ TDEC has issued NPDES permit number TN0028827 for the Franklin Sewage Treatment Plant. This permit limits discharges into the Harpeth River and sets specific requirements for monitoring and

¹¹ See (11/13/2013 Ltr. from HRWA to TDEC re: Draft NPDES Permits, p. 7) (referencing charts and graphs submitted in prior permit comment periods).

¹² "2010 Waterbody Report for Harpeth River," USEPA, *available at* http://iaspub.epa.gov/tmdl_waters10/attains_waterbody.control?p_list_id=TN05130204016_1000&p_cycle=2010&p_report_type= (last visited Jan. 14, 2014).

¹³ 33 U.S.C. § 1311(a).

¹⁴ 33 U.S.C. § 1342. In addition to the Clean Water Act, Tennessee state law recognizes that water is a resource held in a public trust, such that no one, not even a permittee, has the absolute right to use, divert, or contaminate it. *See* Tenn. Code Ann. §§ 69-3-102, 68-221-702. *Cf.* Tenn. Code Ann. § 69-1-110 (2013); *Cox v. Howell*, 65 S.W. 868, 869 (Tenn. 1901) ("What is a reasonable and permissible diversion of the water of a running stream, with respect to the rights of riparian proprietors, depends upon the size and character of the stream, the purpose for which the diversion is made, and, as a general proposition, upon the circumstances of the particular case."). The City's conduct may implicate other federal and state laws, and the Watershed Association reserves the right to add additional claims based on the same or similar pattern of violations and to seek additional remedies under state and federal law; it does not intend, by giving this notice, to waive any other rights or remedies.

¹⁵ 33 U.S.C. § 1362(12)(A).

¹⁶ 33 U.S.C. § 1362(6).

¹⁷ 33 U.S.C. § 1342(b).

reporting these discharges.¹⁸ The most recent version of this permit was effective as of November 1, 2010 and modified February 2, 2011. The permit was set to expire on November 30, 2011, and requires the City to have applied for a new permit no later than 180 days prior to the expiration date. *See* § 2.1.1 (2010). Usually permits are issued for five years, but TDEC explained that it authorized a shortened term because, in relevant part: “[T]he division considers that it needs to get additional treatment plant effluent characterization data/instream information, and correspondingly have the permittee investigate/implement wastewater treatment plant operational performance enhancements.” *See* Permit Rationale, R4(e).

Upon information and belief, the 2010 permit has been administratively extended by TDEC pending issuance of a new permit. The City’s application was stamped “received” on September 26, 2011, less than 180 days before November 30, 2011,¹⁹ though the City had requested an extension to 90 days, which was granted April 19, 2011.²⁰

The 2010 permit states, “Any permit noncompliance constitutes a violation of applicable state and federal laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.” *See* Permit § 2.3.1 (2010). The City of Franklin is required to record and submit Discharge Monitoring Reports (“DMRs”) and Monthly Operating Reports (“MORs”) to show that it is complying with the permit. *See* Permit §§ 1.3.1; 1.3.4 (2010). These reports must be signed and certified. *See* Permit § 1.3.1 (2010).²¹ The City must report any permit non-compliance on the DMRs. *See* Permit § 2.3.2 (2010).

Based on the Watershed Association’s review of these reports and other records prepared or kept by TDEC, the City of Franklin has violated the terms of NPDES Permit No. TN0028827. First, the City has failed to ensure that all discharges “shall be limited and monitored by the permittee as specified” in Section 1.1, which contains a table detailing effluent limitations by pollutant and monitoring parameter. Second, the City has submitted incomplete or inconsistent reports. Third, the City has sometimes failed to report its noncompliance on the DMRs and make sure that any such report “shall contain all information concerning the steps taken, or planned, to reduce, eliminate, and prevent recurrence of the violation and the anticipated time the violation is expected to continue.” *See* Permit § 2.3.2 (2010).

¹⁸ These requirements are examples of the State of Tennessee’s exercise of its delegated authority to impose permitting limitations in furtherance of the objectives of the Clean Water Act. *See, e.g.*, Tenn. Comp. R. & Regs. 1200-04-05-.07 (Terms and Conditions of Permits) (2013); Tenn. Comp. R. & Regs. 0400-40-05-.07 (2014). As a result, the permit is enforceable through a citizen suit under the Clean Water Act. *See* 33 U.S.C. §§ 1370, 1311(b)(1)(B).

¹⁹ *Cf.* (07/09/2013 Ltr. from TDEC to City of Franklin re: Compliance Evaluation Inspection, p. 1) (“The NPDES permit for this facility expired November 30, 2011. With an extension granted, the application for permit reissuance was timely received on September 1, 2011.”).

²⁰ (04/19/2011 Email from TDEC to City of Franklin re: NPDES Permit extension).

²¹ *See also* 40 C.F.R. § 122.22(d) (requiring certification by authorized agent of permittee that information submitted with DMR is “true, accurate, and complete”); Tenn. Comp. R. & Regs. 1200-04-10-.03(e)(4) (2013); Tenn. Comp. R. & Regs. 0400-40-05-.07(f) (2014).

A. Each day when the Franklin Sewage Treatment Plant has operated in violation of its permit and each unauthorized discharge of a pollutant constitute a separate violation.

Each violation of the permit—and each discharge that is not expressly authorized by the permit—constitutes a separate violation of the Clean Water Act. *See, e.g.*, 33 U.S.C. § 1319(d) (“penalty . . . per day for each violation”); *Sierra Club, Hawaii Chapter v. City & Cnty. of Honolulu*, 486 F. Supp. 2d 1185, 1190 (D. Haw. 2007) (summarizing holdings).

B. The Franklin Sewage Treatment Plant’s own reports reveal numeric, monitoring, reporting, and narrative violations.

Based on a review of the DMRs, MORs, and other reports prepared by the Sewage Treatment Plant and sent to TDEC, the Harpeth River Watershed Association has identified approximately 750 numeric violations (including bypasses and overflows), 100 monitoring violations, and 100 reporting violations of the permit held by the City of Franklin to discharge pollutants into the Harpeth River. 40 C.F.R. § 135.3(a).²²

i. City reported numeric violations, bypasses, and overflows

The City violated Section 1.1’s numeric effluent limitations and prohibition on overflows. *See also* Permit §§ 2.3.3 & 2.3.6 (2010). The first two columns of the chart show the date of the violations and the number of days the City was in violation. The next columns identify the “**Permit Parameter Violated**” (*i.e.*, which Permit § 1.1 effluent limitation or overflow/bypass prohibition was violated); the “**Permit Limit**” (*i.e.*, the maximum or minimum effluent parameter value that the permit requires the Utility to achieve); whether the information was “**Reported on DMR (or MOR)**” (*i.e.*, the numeric quantity for the parameter as reported on the DMR or MOR; if derived from an MOR, the information is placed in parentheses); and additional detail, particularly where there is a conflict between the MOR and DMR. All alleged violations of numeric limitations are based on the permittee’s DMR submissions, except where the MOR supplements or indicates an error in the DMR, in which case reliance on the MOR is noted.²³

Date of Violation(s)	Number of Days in Violation	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
February 26, 2009	1	Dry Weather Overflow	0	1	Ivy Glen Pump Station
March 20, 2009	1	Dry Weather Overflow	0	1	Ladd Park Subdivision
May 13, 2009	1	Dry Weather Overflow	0	1	3453 Carothers Parkway
September 9, 2009	1	Daily CBOD mg/L max.	12	12.16	

²² These charts are compilations of information from public records, and each is intended to provide notice of the pattern of violations described in this letter. These charts are not intended to be a definitive legal representation of all material facts.

²³ This chart is current through the November 2013 DMRs and MORs.

Date of Violation(s)	Number of Days in Violation	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
February 28, 2010	1	Dry Weather Overflow	0	1	624 Westminster Drive / Watson Branch
May 1 - May 3, 2010	3	Wet Weather Overflow	0	41 total	Fieldstone Farms Pump Station #2
May 1 - May 4, 2010	4	Wet Weather Overflow	0	41 total	Behind 716 Riverview Drive
May 1 - May 4, 2010	4	Wet Weather Overflow	0	41 total	133 5th Avenue South
May 2 - May 3, 2010	6 (?)	Wet Weather Overflow	0	41 total	96 East, Hillsboro Road, & Franklin Road; report notes multiple manhole overflows
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	1500 West Main Street
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	5th Avenue & North Margin
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	330 11th Avenue
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	138 West Fowlkes Street
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	412 Perkins Drive
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	700 West Meade Blvd.
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	720 & 725 West Main Street
May 2 - May 4, 2010	3	Wet Weather Overflow	0	41 total	513 Overview Lane
June 4, 2010	1	Dry Weather Overflow	0	1	Lewisburg Pike & Sullivan Farms Subdivision / Donelson Creek
June 22, 2010	1	Daily Ammonia as Nitrogen mg/L max.	0.8	(1.9)	
June 23, 2010	1	Daily Ammonia as Nitrogen mg/L max.	0.8	(1.5)	
June 24, 2010	1	Daily Ammonia as Nitrogen mg/L max.	0.8	(1.5)	
June 25, 2010	1	Daily Ammonia as Nitrogen mg/L max.	0.8	(2.0)	
June 26, 2010	1	Daily Ammonia as Nitrogen mg/L max.	0.8	2.2	
June 27, 2010	1	Daily Ammonia as Nitrogen mg/L max.	0.8	(0.95)	
June 20 - June 26, 2010	7	Weekly Ammonia as Nitrogen mg/L avg.	0.6	1.41	
June 1 - June 30, 2010	30	Monthly Ammonia as Nitrogen mg/L avg.	0.4	0.41	
September 8, 2010	1	Bypass	0	1	1343 Carnton Lane
December 12, 2010	1	Daily <i>E. Coli</i> cfu/100mL max.	941	2419.6	
December 18, 2010	1	Dry Weather Overflow	0	1	720 West Main Street
February 15, 2011	1	Dry Weather Overflow	0	2 total	2009 Mallory Lane / Spencer Creek
					No. of Excursions "0"

Date of Violation(s)	Number of Days in Violation	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
February 21, 2011	1	Dry Weather Overflow	0	2 total	198 Edmond Court / Harpeth River No. of Excursions "0"
April 25, 2011	1	Dry Weather Overflow	0	1	4040 Murfreesboro Road / Watson Branch No. of Excursions "0"
June 14, 2011	1	Dry Weather Overflow	0	1	713 Murfreesboro Road / North Ewingville Creek
October 7, 2011	1	Dry Weather Overflow	0	1	112 Tamara Circle
December 14, 2011	1	Dry Weather Overflow	0	3 total	401 Sugartree Lane / Watson Branch
December 18, 2011	1	Dry Weather Overflow	0	3 total	528 Hopewood Court / Robinson Lake
December 29, 2011	1	Dry Weather Overflow	0	3 total	700 West Main Street / Sharp Branch
January 8, 2012	1	Daily Ammonia as Nitrogen mg/L max.	3.0	4.8	
January 9, 2012	1	Daily Ammonia as Nitrogen mg/L max.	3.0	(4.0)	
January 20, 2012	1	Dry Weather Overflow	0	1	1014 Columbia Avenue / Sharp Branch
February 13, 2012	1	Dry Weather Overflow	0	1	2000 Mallory Lane / Spencer Creek
April 24, 2012	1	Dry Weather Overflow	0	1	707 Hillsboro Road / Harpeth River
May 7, 2012	1	Dry Weather Overflow	0	1	Jordan Road / North Ewingville Creek
August 7, 2012	1	Dry Weather Overflow	0	2 total	1137 West Main Street / Quarry Branch
August 8, 2012	1	Dry Weather Overflow	0	2 total	363 Stonegate Drive / Donelson Creek
October 14 - October 20, 2012	7	Weekly Ammonia as Nitrogen mg/L avg.	0.60	0.63	No. of Excursions "0"
October 19, 2012	1	Daily <i>E. Coli</i> cfu/100mL max.	941	(1011.2)	
October 20, 2012	1	Daily <i>E. Coli</i> cfu/100mL max.	941	(1413.6)	
October 21, 2012	1	Daily <i>E. Coli</i> cfu/100mL max.	941	1986.3	
October 22, 2012	1	Daily <i>E. Coli</i> cfu/100mL max.	941	(1299.7)	
October 23, 2012	1	Daily <i>E. Coli</i> cfu/100mL max.	941	1986.3	
October 24, 2012	1	Daily Chlorine Residual mg/L max.	0.02	0.05	
October 25, 2012	1	Daily <i>E. Coli</i> cfu/100mL max.	941	(1299.7)	

Date of Violation(s)	Number of Days in Violation	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
November 17, 2012	1	Dry Weather Overflow	0	1	510 New Highway 96 D-1
July 1, 2012-December 31, 2012	180	Semiannual selenium mg/L avg.	0.005	<0.01	December 2012 DMR ²⁴
December 3, 2012	1	Dry Weather Overflow	0	1	605 Chickasaw Place / Sharp Branch
January 8, 2013	1	Dry Weather Overflow	0	1	910 Brentwood Pointe / North Prong Spencer Creek
January 14, 2013	1	Wet Weather Overflow	0	1	325 4th Avenue North Marked as a “dry” overflow on the MOR
January 1 - March 31, 2013	90	IC ₂₅ (<i>Ceriodaphnia dubia</i>) toxicity test	>100%	“MNR” in January and February >100% in March	Letter from lab dated Feb. 6 2013 indicates test failure of 50% for survival; required follow-up does not negate initial violation
March 3, 2013	1	Dry Weather Overflow	0	1	1247 West Main Street / West Main Branch
April 28, 2013	1	Wet Weather Overflow	0	6 total	Alicia Drive / Quarry Branch
April 28, 2013	1	Wet Weather Overflow	0	6 total	4th Avenue North / Sharp Branch
April 28, 2013	1	Wet Weather Overflow	0	6 total	712 West Main Street / Sharp Branch
April 28, 2013	1	Wet Weather Overflow	0	6 total	Mount Hope Street / Sharp Branch
April 28, 2013	1	Wet Weather Overflow	0	6 total	5th Avenue South / Sharp Branch
April 29, 2013	1	Wet Weather Overflow	0	6 total	Franklin Road / Harpeth River
May 2, 2013	1	Wet Weather Overflow	0	1	410 Luna Court / Watson Branch
May 6, 2013	1	Dry Weather Overflow	0	1	407 Church Street / Sharp Branch
June 12, 2013	1	Daily Ammonia as Nitrogen mg/L max.	0.80	(0.90)	only 6 excursions reported
June 13, 2013	1	Daily Ammonia as Nitrogen mg/L max.	0.80	7.10	only 6 excursions reported
June 13, 2013	1	Dry Weather Overflow	0	1	515 Cairnview Drive
June 14, 2013	1	Daily Ammonia as Nitrogen mg/L max.	0.80	(7.00)	only 6 excursions reported
June 15, 2013	1	Daily Ammonia as Nitrogen mg/L max.	0.80	(6.90)	only 6 excursions reported
June 9 - June 15, 2013	7	Weekly Ammonia as Nitrogen mg/L avg.	0.60	3.26	only 6 excursions reported

²⁴ A previous month’s MORs showed violations for Silver (<1.0 mg/L) and Selenium (<3.0 mg/L). See September 2012 MOR.

Date of Violation(s)	Number of Days in Violation	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
June 9 - June 15, 2013	7	Weekly Ammonia as Nitrogen lb/day avg.	60	183.0	only 6 excursions reported
June 16, 2013	1	Daily Ammonia as Nitrogen mg/L max.	0.80	(5.10)	only 6 excursions reported
June 17, 2013	1	Daily Ammonia as Nitrogen mg/L max.	0.80	(1.30)	only 6 excursions reported
June 16 - June 2, 2013	7	Weekly Ammonia as Nitrogen mg/L avg.	0.60	(1.20)	only 6 excursions reported
June 16 - June 22, 2013	7	Weekly Ammonia as Nitrogen lb/day avg.	60	(66.0)	only 6 excursions reported
June 1 - June 30, 2013	30	Monthly Ammonia as Nitrogen lb/day avg.	40	60.3	only 6 excursions reported
June 1 - June 30, 2013	30	Monthly Ammonia as Nitrogen mg/L avg.	0.4	1.08	only 6 excursions reported
January 1 - June 30, 2013	181	Semiannual cyanide mg/L avg.	0.00478	<0.0200	May DMR, June DMR
January 1 - June 30, 2013	181	Semiannual selenium mg/L avg.	0.005	<0.01	March DMR, May DMR, June DMR
July 23, 2013	1	Dry Weather Overflow	0	1	624 Westminster Drive / Watson Branch
August 26, 2013	1	Dry Weather Overflow	0	1	McEwen Drive & Resource Parkway / South Prong Spencer Creek
July 1 - September 30, 2013	92	IC ₂₅ (<i>Ceriodaphnia dubia</i>) toxicity test	>100%	44.5%	
October 19, 2013	1	Dry Weather Overflow	0	2 total	2040 Fieldstone Parkway / Stramble Creek
October 28, 2013	1	Dry Weather Overflow	0	2 total	821 Murfreesboro Road / North Ewingville Creek
November 8, 2013	1	Dry Weather Overflow	0	1	Royal Oaks Blvd. & Creekstone Blvd. / Watson Branch

ii. *The City's reports reveal monitoring violations*

The City violated the permit's requirement that all discharges "shall be . . . monitored . . . as specified" in Section 1.1. This section of the permit includes (1) a table that specifies how frequently and where to monitor each parameter and (2) further notes and instructions.

The first two columns of the following chart show the date of the violations (the monitoring period during which the requirement was violated) and the number of days the City was in violation for failing to meet the minimum monitoring requirements of its permit. The next columns show the "**Parameter Violated**" (*i.e.*, the monitoring provision violated during the relevant monitoring period); the "**Monitoring Required by the Permit**" (*i.e.*, the minimum number of measurements per monitoring period); and the "**Monitoring Actually Reported**" (*i.e.*,

the actual number of measurements performed by the permittee during the monitoring period, as listed in the permittee’s MOR and used in the permittee’s DMR to satisfy the permit’s reporting requirements). In some cases, the monitoring was not performed because the effluent was characterized in the reports as depleted.

Date of Violations	Number of Days in Violation	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
November 29 - December 5, 2009	7	Effluent Dissolved Oxygen monitoring	7/week	6/week
November 29 - December 5, 2009	7	Effluent pH monitoring	7/week	6/week
May 2 - May 8, 2010	7	Influent Carbonaceous Biochemical Oxygen Demand monitoring	7/week	5/week
May 1 - May 31, 2011	31	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
May 1 - May 31, 2011	31	Insoluble Phosphorus monitoring	2/month	0/month
December 4 - December 10, 2011	7	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	7/week	2/week
December 4 - December 10, 2011	7	Influent Carbonaceous Biochemical Oxygen Demand monitoring	7/week	2/week

iii. *The City violated the duty to report non-compliance*

The City violated the duty to report non-compliance violations, as described in the following chart. The column labeled “*Date of Reporting Violation*” indicates the period during which the violation occurred (*i.e.*, the month during which the non-compliance report was required to be submitted); the “*Number of Days in Violation*” (*i.e.*, the number of days in violation for each type of non-compliance with the identified permit requirement); and the “*Permit Requirement Violated.*” As relevant, the “*Additional Detail of Violation*” column provides additional information on the alleged violation from the City’s MORs and DMRs. Failure to report is only accounted for from December 2010 until the present, because of the three-year retention requirement of the permit (§ 1.2.5).²⁵

Date of Violation	Number of Days in Violation	Permit Requirement Violated	Additional Detail of Violation
October 2012	1	Duty to Report Noncompliance	Ammonia as Nitrogen weekly mg/L average (1 week)

iv. *The City’s reporting violations.*

The City violated the reporting requirements of its permit. The “*Month of Reporting Violation*” column indicates which DMR shows or is missing a required report; the “*Number of Violations*” column states how many violations stem from the DMR’s report on an effluent parameter, which is identified by “*Reporting Parameter Violated*”; the “*Explanation of Reporting Violation*” column provides a brief description of how the information reported on the

²⁵ The November DMRs and MORs are the last available.

DMR violates the reporting obligations of the permit. The reporting violations in this chart stem from DMR entries left blank, the incorrect entry of monitoring data, the failure to properly report an excursion, and instances where reporting the failure to monitor a parameter as an effluent discharge measurement of “0.0.” While many of these values were reported on daily MORs, the failure to report them to TDEC’s headquarters on the DMRs constitutes a violation.

Month of Reporting Violation	Number of Violations	Reporting Parameter Violated	Explanation of Reporting Violation
November 2010	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
November 2010	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
December 2010	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
December 2010	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
January 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
January 2011	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
February 2011	1	Overflow reporting	Excursion not indicated on DMR
February 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
February 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
April 2011	1	Overflow reporting	Excursion not indicated on DMR
March 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
March 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
April 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
April 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
May 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
May 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
June 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
June 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
July 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
July 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
August 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
August 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
September 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
September 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
October 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
October 2011	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
November 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
November 2011	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
December 2011	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
December 2011	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
January 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
January 2012	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR

Month of Reporting Violation	Number of Violations	Reporting Parameter Violated	Explanation of Reporting Violation
February 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
February 2012	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
March 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
March 2012	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
April 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
April 2012	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
May 2012	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
June 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
June 2012	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
July 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
July 2012	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
August 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
August 2012	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
September 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
September 2012	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
October 2012	1	Ammonia as Nitrogen Effluent Reporting	Weekly lb/day average violates permit limit, excursion not indicated on DMR
October 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
October 2012	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
November 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
November 2012	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
December 2012	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
December 2012	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
January 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
January 2013	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
February 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
February 2013	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
March 2013	1	IC ₂₅ Toxicity Reporting	IC ₂₅ toxicity test failed, DMR improperly reports >100% and zero excursions without noting initial test failure and violation
March 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
March 2013	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR
April 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
April 2013	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on

Month of Reporting Violation	Number of Violations	Reporting Parameter Violated	Explanation of Reporting Violation
			DMR
May 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
May 2013	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
June 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
June 2013	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
June 2013	6	Ammonia as Nitrogen Effluent reporting	DMR and noncompliance letter only indicate 6 excursions; MOR indicates 12
July 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
July 2013	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
August 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
August 2013	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
September 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
September 2013	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
October 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
October 2013	1	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR
November 2013	1	Total Phosphorus reporting	Influent Total P mg/L avg. not reported on DMR
November 2013	2	Total Nitrogen reporting	Influent Total N mg/L avg. not reported on DMR; Total N monthly lb/day avg. not reported on DMR

C. The City failed to develop and implement a Nutrient Management Plan.

The City failed to develop a Nutrient Management Plan (“NMP”) pursuant to the requirements of Permit § 3.8 and Attachment 2. The NMP was supposed to have been submitted within nine months of the permit’s effective date. The City was also required to update the report each year by February 15.

When the permit was renewed, TDEC noted that the receiving stream’s fish and aquatic life designated usage was not being fully supported and noted that the City’s discharge contained contaminants that contributed to the impairment. The permit therefore included additional discharge requirements and several investigation requirements, including the development and implementation of an NMP.

During the draft permit stage, the City “request[ed] that the Nutrient Management Plan . . . be incorporated into [its] future phases of the IWMP [Integrated Water Management Plan] and be removed from the permit at this time.”²⁶ See Addendum to Rationale, Page AD-8 (2010). TDEC, however, declined to delete the NMP requirement. TDEC reiterated that the City had three months to propose changes and, “Should the Division agree in writing with the permittee’s written Attachment 2 changes request, then no permit modification will be required.” *Id.*²⁷

²⁶ Elsewhere called the Integrated Water Resources Plan (“IWRP”).

²⁷ See “Addendum to Rationale” p. 56 (“[T]he permittee will have up to three month[] from the permit’s effective date to propose changes to the provisions addressed in Attachment 2. Should the division agree in writing with the permittee’s written Attachment 2 changes request, then no permit modification will be required”).

When the permit issued, it still contained the NMP requirement. The City first requested additional time to comply with this provision.²⁸ Later, the City “submit[ted] [to TDEC] that the Integrated Water Resources Plan is inclusive of the requirements of the Nutrient Management Plan,” which was to be implemented “in the coming years.”²⁹ TDEC acknowledged receipt of the City’s proposal,³⁰ which was similar to the one it had previously rejected, but an email from October 2013 indicates that no further correspondence was exchanged after mid-2011.³¹ Based on the materials reviewed by the Harpeth River Watershed Association, it appears that the City never developed or implemented a Nutrient Management Plan. It also appears that TDEC never agreed in writing to proposed changes to Attachment 2 or to absolve the City of its duty to develop and implement an NMP.

Each day that the City has discharged wastewater into the Harpeth since August 2011 (9 months after its permit was granted) and/or after its extension ended is a violation; each day after February 15, 2012 that the City failed to submit an annual update is a violation; and each day after February 15, 2013 that the City failed to submit another annual update is a violation. Each month that the City failed to report its non-compliance on the DMR for failure to submit an NMP is a violation; each month since February 2012 that the City failed to report its non-compliance on the DMR for failure to submit an annual update is a violation; and each month since February 2013 that the City failed to report its non-compliance on the DMR for failure to submit an annual update is a violation. The number of days in violation is more than 1,500.

D. TDEC’s records indicate that the City failed to conduct instream monitoring.

In addition, it appears that the City continues to violate the permit’s receiving stream monitoring and reporting requirements. *See* Permit § 3.7 (2010).

During the draft permit stage, the City requested that the receiving stream monitoring and reporting provisions contained in Attachment 1 (“particularly those related to the diurnal investigations and the implementation of advanced methods for improving receiving stream water quality”) be deleted. *See* Addendum to Rationale, Page AD-7 (2010). The City requested that the provisions should be “replaced with conditions and requirements that match those identified in our scope of work Attachment [for the IWMP³²].” *Id.* TDEC responded that it appreciates the City’s decision to develop an IWMP and noted that the IWMP work plan include “assessing existing data regarding ‘water quality on nutrients, DO, bacteria, chlorophyll, TSS,

²⁸ *See* (01/31/2011 Ltr. from City of Franklin to TDEC) (“[T]he City of Franklin requests an additional 120 days to consider proposed changes. It is the intent of the City to develop an effective and appropriate Nutrient Management Plan . . .”).

²⁹ *See* (07/31/2011 Email from City of Franklin to TDEC).

³⁰ *See* (08/01/2011 Email from TDEC to City of Franklin re: Nutrient Management Plan); *see also* (09/19/2011 Email from TDEC to TDEC) (“I’m just wondering, have you seen an NMP report?”).

³¹ *See* (10/23/2013 Email from City of Franklin to TDEC) (“[W]e had submitted the first phase of the IWRP and scope for phase II to see if these efforts would in part or in whole, meet the intent of the NMP in our permit and start the discussion on how the NMP would be implemented. I don’t recall any other correspondence beyond that point, perhaps due to the ongoing nature of the planning process at that time.”).

³² Elsewhere called the Integrated Water Resources Plan (“IWRP”).

etc.” TDEC then stated: “However, the division considers additional instream monitoring will be necessary to identify the receiving stream characteristics. As such, the permittee will have up to three months from the permit’s effective date to propose changes to the provisions addressed in Attachment 1.” *Id.*

Subsequently, the permit issued with the following provision: “[A]s defined in Attachment 1, the permittee **shall complete supplemental instream monitoring** – diurnal investigations and identify enhancements for improving its receiving stream water quality.” *Id.* (emphasis added). Attachment 1 extended the previous permit’s requirement of morning and evening “grab” sampling.³³ It also added a requirement for diurnal investigations with continuous monitoring, which “should involve” one site upstream and two monitoring sites downstream of the discharge. That addendum indicated that, “Following written approval from the division, the permittee shall proceed with the diurnal testing,” and the permit informed that, “Should the division agree in writing with the request, no permit modification will be required.” *Id.*

The City “request[ed] proposed changes” to the Attachment 1 requirements.³⁴ However, rather than one upstream site and two downstream monitoring sites, the City proposed continuous monitoring at one upstream site (3 miles above the STP) and one downstream site (0.9 miles below the STP). Both proposed locations represented existing USGS monitoring stations, which are believed to gather water flow information rather than water quality data. TDEC’s files reveal that the City’s proposal was disfavored.³⁵ It does not appear that TDEC ever provided written approval or comments on this plan to the City.³⁶ Presumably, the USGS stations that were in operation have continued to operate, but the City has not conducted any investigations itself. The City’s proposal was contrary to the purpose of the provision. Therefore, it appears that the City submitted a timely but non-compliant proposal then failed to conduct any continuous monitoring. Each of the approximately 1,000 days that the City failed to conduct instream monitoring as required by the permit constitutes a separate violation.

E. The City failed to properly monitor its Total Nitrogen and Total Phosphorus percentage removals.

Section 1.1 of the permit states that the City is to “report monthly influent and effluent . . . percentage removals based on 2/month monitoring” of Total Nitrogen and Total Phosphorus. *Accord* Rationale, pp. R-6 to R-8 (2010). While the City’s Monthly Operating Reports indicate that the influent and effluent is monitored for these parameters, it appears that influent measurements are taken on different days than effluent measurements. In order to accurately

³³ The City may have failed to conduct the evening sample until notified by TDEC in mid-2013.

³⁴ (12/23/2010 City of Franklin, TN Proposal Response to NPDES Permit No. TN0028827, Attachment 1: Receiving Stream Investigation, Additional Instream Monitoring Stations-Diurnal Investigation).

³⁵ *See* (12/28/2010 Email from Smith re: Franklin’s proposed diurnal plan) (“I do have some concerns about how these locations will specifically related to the effects of the STP discharge”); (01/07/2011 Email from Chen re: In-stream wq monitoring plan).

³⁶ *See* (12/28/2010 Email from Smith (TDEC)) (discussing City’s proposal re: continuous diurnal monitoring and concerns with the proposal); (01/07/2011 Email: TDEC internal) (discussing City’s proposal).

measure the percentage removals for Total Nitrogen and Total Phosphorus, the Watershed Association believes that the influent and effluent should be monitored on the same day. As it is being done by the City at the Franklin Sewage Treatment Plant, percentage removal is not being accurately quantified and therefore cannot be considered to have been monitored. Each of the approximately 1,000 days that the City has not accurately monitored these parameters is a violation.

F. TDEC has found violations caused by inaccurate flow measurements.

In July 2013, TDEC once again found that the City's influent sampling data are compromised and that the City's sampling practices are contrary to the permit's requirements.³⁷ These problems could indicate that the City has discharged pollutants into the Harpeth River in excess of the terms of its NPDES permit, because, as TDEC noted, "inaccurate flow measurements and/or un-representative influent sampling affects plant hydraulic loading data, pounds per day loading and percent removal calculation, and influent parameter sample concentrations."³⁸ This problem has been brought to the plant's attention for years but has not been fixed.³⁹ The City acknowledges the issue but insists that it "is being assessed as part of our treatment plant expansion and upgrade in the near future."⁴⁰ Indeed, the City's comments on the pending draft NPDES permit state, "The City recognizes that the current flow monitoring practices at the water reclamation facility do not fully meet the intent of the permit requirements,"⁴¹ though the City wants to work with TDEC during the facility modifications and upgrades.⁴² However, for years and in the meantime, the problem persists. Without accurate data, the City may be discharging pollutants in excess of the limits in its permit. These violations cannot await abatement until a new plant is constructed, and each day the City used inaccurate flow measurements (which is possibly throughout the life of this permit, approximately 1,000 days) is a violation.

³⁷ (07/09/2013 Ltr. from TDEC to City of Franklin re: Compliance Evaluation Inspection, p. 2) ("In reviewing the MOR flow data, it was observed that the average influent flow was from 0.5 to 2.4 MGD greater than the combined effluent and reuse water flows. Several large plant flows such as from the sludge handling process and backwash of the Tetra filters are routed to a small collection system line which enters the WWTP pump station upstream of influent flow monitoring. The permit requirement for influent sampling is prior to mixing with other wastewater returned to the head of the plant and would include flows such as those from the solids handling building and backwash water from the Tetra filters. . . . The problem with the influent sampling point was recently brought to your attention and is under consideration for necessary corrective measures.").

³⁸ (07/09/2013 Ltr. from TDEC to City of Franklin re: Compliance Evaluation Inspection, p. 2).

³⁹ See (08/22/2012 Ltr. from TDEC to City of Franklin, p. 2) ("A significant difference in the influent flow and the combined effluent and reuse flows was also noted during that CEI. During the past year, the average influent flow was from 1.3 to 2.4 MGD greater than the combined effluent and reuse water flows [Mr. Davis] indicated that a significant volume of plant water (from before effluent flow measurement) is used in the sludge processing building and in backwashing the Tetra filters and returned to the main pump station upstream of influent flow measurement. This should be further investigated to determine if this is the source of the flow difference. Any other in plant uses that could influence these flow readings should also be investigated.").

⁴⁰ (08/05/2013 Ltr. from City of Franklin to TDEC re: Compliance Evaluation Inspection, p. 1).

⁴¹ (11/13/2013 Ltr. from City of Franklin to TDEC re: Draft NPDES Permit, Attachment p. 11).

⁴² *Id.*

G. TDEC’s plant inspection reports describe apparent system bypasses.

TDEC’s mid-2013 compliance evaluation also identified a probable system bypass that has not been reported: “Only two of the three oxidation ditches were in service at the time of the inspection. . . . Monthly average influent flow for 2012 was 9.0 MGD and for 2013 through May was 13.4 MGD. The inability to properly operate all three units, at times, reduces the treatment capacity of this facility to below the average influent flow rates.”⁴³ The City’s response was: “Comments are noted. No response is necessary.”⁴⁴ The Watershed Association disagrees. Bypasses and overflows must be reported. Permit § 1.3.5 (2010). A “bypass” is “the intentional diversion of waste streams from any portion of a treatment facility,” and is permissible only in limited circumstances. Permit § 2.3.6 (2010). The schematic for the Franklin Sewage Treatment Plant shows three aeration or oxidation basins. *See* (Appendix 1 to Rationale). Each oxidation basin contains an anoxic zone “that provides denitrification and an aeration zone that removes biological oxygen demand (BOD) and provides ammonia nitrification.”⁴⁵ If all oxidation ditches or basins were not used at all times, meaning that the plant was not being used as designed, it is a bypass. Decreased treatment time and biological contact affects the plant’s ability to remove pollutants before they reach the river. Each day there was a system bypass would constitute a separate violation.

H. TDEC has found violations that indicate problems with the pre-treatment program.

TDEC recently noted longstanding testing problems related to selenium and cyanide discharges:

Some of the sample results reported the minimum detection limit (MDL) from the laboratory report rather than the reported detection limit (RDL) on the MORs. The sample results for cyanide on some of the MORs were reported in units of g/L rather than mg/L. Care should be taken when copying data from the laboratory reports to the MORs and DMRs. A number of sample results for selenium and cyanide, reported from January 2012 through May 2013, revealed that the detection limits used during analysis were not low enough to demonstrate compliance with the permit limits. Results where the reported detection limit is greater than the permit limit are considered to be violations.⁴⁶

The City explained that the lab with which it contracted was not testing down to the required detection limit and that it was switching labs.⁴⁷ However, the results of the City’s toxicity testing, coupled with the recurring and high levels of ammonia, indicates that the pre-treatment program may be insufficient to prevent industrial chemicals from passing through the

⁴³ (07/09/2013 Ltr. from TDEC to City of Franklin re: Compliance Evaluation Inspection, p. 3).

⁴⁴ (08/05/2013 Ltr. from City of Franklin to TDEC re: Compliance Evaluation Inspection, p. 1).

⁴⁵ *See* Addendum to 2006 Permit Application, p. 3 (describing “Oxidation Basin Nos. 1, 2, and 3).

⁴⁶ (07/09/2013 Ltr. from TDEC to City of Franklin re: Compliance Evaluation Inspection, p. 2).

⁴⁷ (07/12/2013 Ltr. from City of Franklin to TDEC, p. 1).

system and into the Harpeth River and may indicate violations of § 3.2, which requires an adequate pretreatment program.

I. Pollutants have entered the Harpeth River and TDEC does not have sufficient information to determine whether the NPDES permit’s parameters are able to meet the TMDL and prevent the Harpeth River’s further degradation.

The Franklin Sewage Treatment Plant has violated its permit, and these violations must be redressed. Many of the violations have effectively prevented TDEC from obtaining sufficient information to determine whether the NPDES permit’s parameters are able to meet the TMDL and prevent the Harpeth River’s further degradation.

The Harpeth River is water quality limited for nutrients and low dissolved oxygen.⁴⁸ It experiences “*significant* diurnal fluctuations”⁴⁹ in dissolved oxygen levels. Excess nutrients in a waterbody can have many detrimental effects, including feeding algae which affects dissolved oxygen levels.⁵⁰ Therefore, in order for the City of Franklin to legally discharge pollutants into the Harpeth River, TDEC included multiple provisions in the permit that obligated the City to watch the river and limit the nutrients leaving the sewage treatment plant. In fact, TDEC explained that it was requiring the City to develop a Nutrient Management Plan because “[e]xact . . . treated effluent nutrient control requirements needed for remedying the summer low-flow receiving stream reduced dissolved oxygen/elevated phosphorus problems are not well known at this time.”⁵¹

However, the City failed to remedy a well-known influent sampling problem; failed to develop or implement a plan to control nutrients (§ 3.8); and failed to propose and implement a continuous monitoring program that would investigate relevant points in the river to determine the impact of its discharges (§ 3.7). In addition, the plant as of 2013 is not using all three oxidation ditches as designed, has had ammonia violations in the summer, toxicity test violations, and has numerous overflows in the collection system. These failures mean that the City violated its permit, but—more importantly—they mean that the river’s central impairments (nutrient enrichment and low dissolved oxygen levels) were probably exacerbated, and that the NPDES permit’s limitations are not compatible with the TMDL.

⁴⁸ *Final Organic Enrichment/Low Dissolved Oxygen: Total Maximum Daily Load (TMDL) for Waters in the Harpeth River Watershed (HUC 05130204)*, p. 9 (EPA Sept. 2004).

⁴⁹ *Id.* at p. 13.

⁵⁰ *Id.* at Appendix A (“Excess nutrients in a waterbody can have many detrimental effects on designated or existing uses, including drinking water supply, recreational use, aquatic life use, and fishery use.”).

⁵¹ Permit Rationale, Page R-28 (2010). *See also id.* at § R7.5 (explaining basis for Total Nitrogen and Phosphorus monitoring imposed in support of State/Federal Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico).

III. THE VIOLATIONS ARE LIKELY TO CONTINUE

There is a reasonable likelihood that the violations identified in this letter will continue. *See Gwaltney of Smithfield v. Chesapeake Bay Found.*, 484 U.S. 49 (1987). The Tennessee Department of Environment and Conservation is aware of some of these violations but has failed to sufficiently address them.⁵² The extent of the violations as laid out above, and the fact that they have been occurring consistently over time, indicate that they are ongoing and continuing violations.

For example, the permit requires that certain chemical parameters be sampled at one location upstream of the outfall point and two locations downstream from May to October, once in the morning and once in the afternoon.⁵³ From May 2011 until May 2013, the City conducted morning sampling but not afternoon sampling; from May until August 2013, the City conducted the afternoon sampling. It appears that both morning and afternoon sampling were from the bank—not mid-channel or mid-depth, as required.⁵⁴ The City has indicated that it has since re-adjusted its sampling.⁵⁵ For years, the City’s sampling did not comply with the permit and missed the daily swing critical to a meaningful understanding of the Harpeth River’s condition. Sufficient information about the rising and falling dissolved oxygen is necessary in order to evaluate the effectiveness of the TMDL and prepare an accurate river model. Years of data are now missing. This kind of information is necessary to know whether the system can handle the nearly 7,000 residential units approved but not yet hooked up to the system.

IV. PERSONS RESPONSIBLE FOR VIOLATIONS

A citizen may commence a civil action against any person who is alleged to be in violation of the Clean Water Act. 33 U.S.C. § 1365(a)(1). Under the Act, “person” includes municipalities. 33 U.S.C. § 1362(5). *See also* 33 U.S.C. § 1362(4). Franklin STP is owned by the City of Franklin and operated by the Franklin Water Management Department.⁵⁶ Related parties include the City’s Mayor,⁵⁷ the City Administrator, and the Director of the Franklin Water Management Department.

⁵² *See* (07/09/2013 Ltr. from TDEC to City of Franklin: Compliance Evaluation Inspection) (noting that the City monitored selenium, silver and cyanide more frequently than required or had been reported, which is a violation of Permit § 1.3.2 (Additional Monitoring by Permittee)); (08/05/2013 Ltr. from City of Franklin to TDEC re: Compliance Evaluation Inspection, p. 1) (apologizing for the misunderstanding and informing TDEC that the City would discontinue quarterly monitoring).

⁵³ Franklin STP Permit, § 3.7 (issued Sept. 30, 2010); (07/09/2013 Ltr. from TDEC to City of Franklin re: Compliance Evaluation Inspection, p. 4).

⁵⁴ (07/09/2013 Ltr. from TDEC to City of Franklin re: Compliance Evaluation Inspection, p. 4).

⁵⁵ (08/05/2013 Ltr. from City of Franklin to TDEC re: Compliance Evaluation Inspection, p. 2). *See also* Franklin STP Permit, § 4.1, at p. 30 (Definitions) (defining “grab sample”); Franklin STP Permit, Attachment 1, p. 35.

⁵⁶ *See* Charter for the City of Franklin, Tennessee at n.1 (“Priv. Acts 1967, ch. 126, is the current basic charter act for the City of Franklin, Tennessee.”); *see also* Franklin, Tennessee, Code of Ordinances, Article I, § 1 (Corporate Capacity).

⁵⁷ Franklin, Tennessee, Code of Ordinances, Article VI, § 1 (Chief Executive).

V. PERSONS GIVING NOTICE

The Harpeth River Watershed Association is a non-profit corporation organized under the laws of the State of Tennessee with its principal office at 215 Jamestown Park, Brentwood, TN 37027. The Watershed Association's mission is to protect the State Scenic Harpeth River and clean water in Tennessee. The Watershed Association is a science-based conservation organization; it is a membership organization with members who live along the Harpeth River near the City of Franklin's sewage treatment plant and its outfall or who recreate on the Harpeth River near the STP. The violations identified above have negatively impacted the Harpeth River, its watershed, the Watershed Association, and the Watershed Association's members. The name, address, and telephone number of the persons giving notice is:

Harpeth River Watershed Association
215 Jamestown Park, Suite 101
Franklin, TN 37027
(615) 790-9767

Ms. Dorene Bolze
Executive Director, Harpeth River Watershed Association
P.O. Box 1127
Franklin, TN 37065
(615) 790-9767

Mr. Matt Dobson
Chairman, Board of Directors, Harpeth River Watershed Association
P.O. Box 1127
Franklin, TN 37065
(615) 790-9767

VI. CONCLUSION

If you have any questions concerning this letter or the described violations, or if you believe it is incorrect in any respect, please contact the undersigned counsel at the Southern Environmental Law Center. During the notice period, we are available to discuss this matter with you. For many years, the Harpeth River Watershed Association has worked with sewage treatment plants, local municipalities, and state and federal agencies on projects to study, maintain, restore, and protect the Harpeth River. This letter is not meant to disrupt these productive relationships. Although sent pursuant to 33 U.S.C. § 1365, the Watershed Association believes a negotiated settlement of the identified violations, codified through a court-approved agreement, would be more productive than protracted litigation. Injunctive relief, appropriate monetary penalties, fees and costs of litigation are potentially available remedies, *see* 33 U.S.C. §§ 1365, 1319, 1365, but the Watershed Association would prefer to work with City and the other relevant parties to come up with a plan to further study, develop and implement a plan that ensures the Harpeth River meets all requisite water quality standards.

Thank you for your prompt attention to this matter.

Sincerely,



Delta Anne Davis
Managing Attorney
Southern Environmental Law Center
2 Victory Avenue, Suite 500
Nashville, TN 37213



Anne E. Passino
Staff Attorney
Southern Environmental Law Center
2 Victory Avenue, Suite 500
Nashville, TN 37213

cc: (via email)

Ms. Regina A. McCarthy
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue
Mail Code: 1101A
Washington, D.C. 20460

Mr. A. Stanley Meiburg
Acting Regional Administrator
U.S. EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Main Code: 9T25
Atlanta, GA 30303-8960

Mr. Robert J. Martineau, Jr.
Commissioner
Tennessee Department of Environment and
Conservation
312 Rosa L. Parks Avenue
Tennessee Tower, 2nd Floor
Nashville, TN 37243

Ms. Shauna Billingsley
City Attorney
City of Franklin, Tennessee
109 3rd Avenue South
Franklin, TN 37065

Ms. Shari Meghreblian
Deputy Commissioner, TDEC

Ms. Sandra Dudley
Director, Division of Water Resources, TDEC

Mr. Gary Davis
Division of Water Pollution Control, TDEC

Mr. Vojin Janjin
Manager Permit Section, TDEC