



Why Sue Franklin?

Harpeth River Watershed Association

August 2014
Fact Sheet 2

Tennessee Code § 69-3-102(a) states that “the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state” and that Tennesseans “have a right to unpolluted waters.” **Franklin does not own and does not have a right to pollute the Harpeth.**

HRWA has made the decision to file a complaint against the City of Franklin for being in violation of its Clean Water Act (CWA) permit. Following HRWA and the Southern Environmental Law Center's exhaustive review of state and city records of the sewage plant's operation over the past 5 years, HRWA sent Franklin a CWA 60 day notice detailing the violations HRWA discovered. The purpose of the 60 day notice requirement is to give a permittee time to comply with its permit before a citizen suit is filed. HRWA has given the City over 200 days to comply with its permit. On May 6 of this year, HRWA sent the City a letter proposing reasonable terms to resolve its claims, focused solely on the protection of the Harpeth River and improved operation of the City's sewer plant. While HRWA has signed letters of intent to settle with both Harpeth Wastewater Cooperative and Cartwright Creek on similar terms as those proposed to Franklin, the City has refused to negotiate with HRWA (see *Fact Sheet 3*). The following facts further support the decision to file suit:

The Harpeth River is listed by the State of Tennessee as an impaired (polluted) waterway because it fails to meet water quality standards for Fish and Aquatic Life during periods of low summer flow. A main cause of this impairment is low levels of dissolved oxygen. Oxygen in the water is depleted as bacteria feed on the pollutants from the treated sewage and on excessive algal growth in the river. Sewer plant discharge is also high in Nitrogen and Phosphorus, which fuel algal blooms that cause oxygen levels in the river to drop to low levels daily. Low dissolved oxygen levels stress fish and wildlife and can create conditions harmful to public health and livestock.

Franklin has not conducted studies of the river's water quality, even though its permit has required such studies since 2010. Furthermore, the City objects to the inclusion of such studies in its new draft permit, as well as new limitations on the key pollutants causing poor water quality.

The City is not complying with several permit provisions, including (see *Fact Sheet 4 for details*):

1. Preventing sewage overflows,
2. Determining the sources of several violations of pollution limits,
3. Developing a Nutrient Management Plan,
4. Implementing a continuous, 24-hour summer water quality monitoring program, and
5. Accurately measuring influent flow, which is necessary to accurately measure pollutant loads.

Franklin has ignored HRWA's efforts to meet with the City to negotiate a resolution that brings the sewage plant into compliance with its permit and takes steps



towards improved water quality for the Harpeth. For 15 years, HRWA has worked with the City, often securing grant funds for projects and funding studies by engineers and economists. Instead of cooperating with HRWA, Franklin has now decided to hire a DC law firm and is unwilling to discuss what is best for our river and the people of Franklin.

What Is a Clean Water Act Citizen Suit?

This lawsuit is being brought under the "Citizen Suit" provision of the CWA, which allows a private party to bring an enforcement suit on behalf of the government against a permittee (such as Franklin) that is in violation of its permit. The purpose of such suits is to allow private parties affected by permit violations to assist the state or federal government in enforcing the CWA. To that end, citizen suit parties are often referred to as "private attorneys general." HRWA is seeking the civil penalties and attorneys' fees that it had agreed to waive in its settlement offer; however, **any civil penalties assessed against Franklin are required by law to be paid to the U.S. Treasury Department, not HRWA.**



Why Is Permit Compliance Important?

The City is failing to adequately account for the Harpeth River's impairment in its plans to construct a sewage plant expansion that is projected to cost at least \$75 million. City consultants are currently spending **\$5 million** on sewage plant expansion design. Failing to provide sufficient Nitrogen and Phosphorus controls risks the construction of a sewage plant that will prevent the Harpeth from meeting water quality standards in the future and will be in violation of its permit once Tennessee implements its Nutrient Reduction Strategy.



Tennessee is one of twelve states in the Mississippi Basin working with EPA to implement a Nutrient Reduction Strategy (NRS). Franklin's draft permit includes a reopener provision that allows TDEC to alter Nitrogen and Phosphorus limits upon completion of the NRS. Continuous water quality monitoring and the development of a Nutrient Management Plan, which have been requirements in Franklin's permit since 2010, were intended as steps towards preparing for the implementation of Tennessee's NRS by identifying current sewer methods of operation that could reduce Nitrogen and Phosphorus loads and by increasing understanding of the Harpeth's downstream impairment. Franklin objected to preparing and implementing a Nutrient Management Plan, instead claiming that its 2012 Integrated Water Resources Plan (IWRP) was sufficient, even though the IWRP (1) was

"not to provide a definitive statement about whether or not the IWRP will achieve water quality standards," (2) does not address **current** plant operations, (3) surveyed alternative expansions that all **increased** Nitrogen and Phosphorus loads, and (4) resulted in the City recommending a **toilet-to-tap** plan to the Aldermen that was not adopted.

The City is gambling with ratepayer/taxpayer money by not accounting for imminent regulation and the need to improve water quality in its important effort to design for expanding sewer treatment needs.

Let Franklin know that the **best Southern town** deserves the **best Southern river!**

- **Contact Mayor Moore and the Aldermen** at www.franklin-gov.com
- **Attend BOMA meetings** on the 2nd and 4th Tuesday of every month at 7 PM
- E-mail us at HRWA@harpethriver.org to get involved and help protect our river