



CWA Lawsuit Summary

Harpeth River Watershed Association

August 2014
Fact Sheet 4

The federal Clean Water Act (CWA) requires a permit for the discharge of pollutants into any of the nation's surface waters. Following an extensive review of state and city public records relating to the operation of Franklin's sewage treatment plant since 2009, HRWA and the Southern Environmental Law Center sent a 60 day notice to the City of Franklin identifying all violations that were discovered during the review. HRWA anticipated that the City would meet to discuss the operational and monitoring issues identified in the 60 day notice. While the City has refused to meet and negotiate, HRWA has signed letters of intent to settle with both Harpeth Wastewater Cooperative and Cartwright Creek (see *Fact Sheet 3*). Due to the City's failure to discuss the ongoing problems with the sewage plant's operation, HRWA has filed a CWA complaint that addresses the following permit violations:

Untreated Sewage Overflows:

An overflow is the release of raw, untreated sewage from the collection system. Such releases are hazardous to both citizens and the Harpeth River, and they violate Franklin's CWA permit. Franklin has sometimes failed to report the occurrence of overflows or the estimated quantity of raw sewage released.

City has inadequate overflow response procedures. In 2013, the EPA stated in its Compliance Evaluation Inspection Report of sewage overflows that Franklin's Sewer Overflow Response Plan is "**severely inadequate**" and recommended that Franklin undertake numerous improvements to its response plan. Franklin has not produced any evidence that it has implemented several of the recommendations made by EPA, including:

- Gravity Line Preventative Maintenance Program,
- Continuing Sewer System Assessment Program,
- Infrastructure Rehabilitation Program (IRP), and
- Pump Station Operations and Preventive Maintenance Program.



Franklin needs to be a national leader in preventing, responding to, and notifying the public of overflows. Franklin is located next to a small, impaired river that is particularly vulnerable to raw sewage pollution. In April of this year, six overflows occurred, one of which released an estimated 65,250 gallons of untreated sewage into the Harpeth River at Pinkerton Park – an area that is popular for paddlers.

HRWA seeks an injunction requiring Franklin to establish a compliance schedule for limiting overflows, to adopt a proactive approach to identifying the occurrence of overflows, to establish a public awareness program – similar to the one being implemented in Knoxville – for informing the public of overflows, and to establish programs – such as the EPA recommended programs listed above – to ensure future compliance.

Failure to Implement Continuous In-stream Water Quality Monitoring in the Harpeth River:

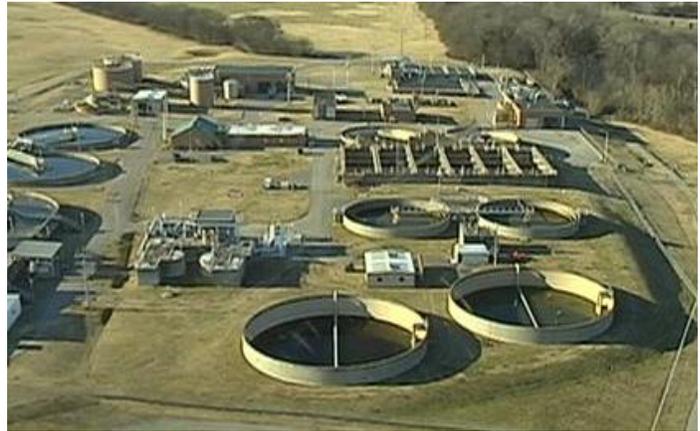
Franklin is in violation of its CWA permit for failing to conduct continuous in-stream water quality monitoring. The state government required these monitoring stations in the Harpeth in order to gather valuable information on how the sewer plant's discharge of treated sewage affects the river's downstream water quality impairment. HRWA seeks an injunction requiring Franklin to conduct continuous in-stream monitoring, as the City's permit has required since 2010.

Failure to Implement a Nutrient Management Plan (NMP):

Franklin is in violation of its CWA permit for not implementing a management plan that identifies changes in plant operations that reduce Nitrogen and Phosphorus pollutant discharges. These pollutants fuel algal growth that depletes oxygen levels in the river (see Fact Sheet 2). The NMP is intended to prepare sewage plants for implementation of Tennessee's Nutrient Reduction Strategy and **excludes major capital expenditures** from consideration. Franklin objected to preparing and implementing a NMP, claiming that its Integrated Water Resources Plan (IWRP) should suffice. However, it does not address current plant operations and the report plainly states that it does not know if "the IWRP will achieve water quality standards." The IWRP proposed sewage treatment expansions that **increase – not reduce** – Nitrogen loads and does not consider Phosphorus loads. HRWA seeks an injunction requiring Franklin to implement a NMP.

Toxicity Test Failures:

Since January of 2013, Franklin has failed four quarterly toxicity tests. Franklin is required to test the "whole toxicity" of its effluent once every three months. This test measures how Franklin's effluent affects the survival and reproductive rates of test organisms. Franklin completed a Toxicity Identification Evaluation (TIE) without discovering the source of these toxicity failures. HRWA seeks an injunction requiring Franklin to determine the source(s) of its repeated toxicity violations.



Ammonia Numeric Limitation Violations:

Franklin's sewage plant has repeatedly violated its permit limits for both the concentration and amount of ammonia that it may discharge into the Harpeth River. Ammonia is a form of nitrogen that is toxic to aquatic life when excess amounts are in the water. The sources of some of these recurring violations – including the most recent and severe violations – have not been identified. HRWA seeks an injunction requiring Franklin to allow third party inspection of operation and testing in order to help determine the cause of the ammonia failures and to decrease the likelihood of recurring violations.

Inaccurate Flow Monitoring at the Sewer Plant:

According to state inspection letters, Franklin's measurements of influent flow have been inaccurate since at least 2012. Influent flow is the amount of raw sewage that enters the sewage plant, and inaccurate influent flow measurements **prevent the accurate determination of the amount of pollutants released** into the Harpeth. HRWA seeks an injunction requiring Franklin to implement a means of obtaining accurate measurements.

Civil Penalties and Attorneys' Fees:

HRWA is seeking the civil penalties and attorneys' fees that it had agreed to waive in its settlement offer. **Any civil penalties assessed against Franklin are required by law to be paid to the U.S. Treasury, not HRWA.**

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