

January 13, 2014

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Berry's Chapel Utility, Inc.  
106 Mission Street, Suite 203-A  
Franklin, TN 37067

Mr. Tyler Ring  
President  
Berry's Chapel Utility, Inc.  
106 Mission Street, Suite 203-A  
Franklin, TN 37067

Mr. John Ring  
President  
Berry's Chapel Utility, Inc.  
106 Mission Street, Suite 203-A  
Franklin, TN 37067

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

Dear Messrs. Ring and Ring:

This letter is sent to notify you, Berry's Chapel Utility, Inc., 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,<sup>1</sup> the Tennessee Water Quality Control Act,<sup>2</sup> and regulations promulgated by the Board of Water Quality, Oil & Gas<sup>3</sup> at the Berry's Chapel Utility Sewage Treatment Plant. The Watershed Association hereby notifies you that it is prepared to take action in the U.S. District Court for the Middle District of Tennessee pursuant to § 505(a) of the Clean Water Act,<sup>4</sup> sixty days from the date of this letter or soon thereafter. This lawsuit will seek injunctive relief, appropriate 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.<sup>5</sup>

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<sup>1</sup> 33 U.S.C. §§ 1251-1387.

<sup>2</sup> Tenn. Code Ann. § 69-3-101 *et seq.*,

<sup>3</sup> 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).

<sup>4</sup> 33 U.S.C. § 1365(a)(1).

<sup>5</sup> See 33 U.S.C. §§ 1365, 1319.

## 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.<sup>6</sup> 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,”<sup>7</sup> 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.<sup>8</sup>

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”)<sup>9</sup> and low dissolved oxygen.<sup>10</sup>

### B. The Berry’s Chapel Utility Sewage Treatment Plant

Berry’s Chapel Utility Sewage Treatment Plant (“Berry’s Chapel” or the “Sewage Treatment Plant”) is located at 180 Cottonwood Drive in Franklin, Williamson County, Tennessee 37069. It serves customers of a residential subdivision, and NPDES Permit No. TN0029718 authorizes it to discharge wastewater into the Harpeth River from Outfall 001 at river mile 77.9 of the Harpeth River. This is where a majority of the violations identified in this letter have occurred. Violations also occurred at the sites of overflows (*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. The specific segment of the Harpeth River—No. TN05130204009\_3000—that receives the sewage plant’s discharge is currently impaired as a result of low dissolved oxygen and organic enrichment.<sup>11</sup>

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<sup>6</sup> 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.*

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

<sup>8</sup> *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).

<sup>9</sup> *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).

<sup>10</sup> *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](http://tn.gov/environment/water/docs/wpc/2012_pf_303d_list.pdf) (last visited Jan. 9, 2014). Some sections that are designated scenic are also on the 303(d) list.

<sup>11</sup> “EPA MyWaters Mapper,” *available at* [http://watersgeo.epa.gov/mwm/?layer=305B&feature=TN05130204016\\_1000&extraLayers=null](http://watersgeo.epa.gov/mwm/?layer=305B&feature=TN05130204016_1000&extraLayers=null) (last visited Jan. 9, 2014); “2002 Waterbody Report for Harpeth River,” USEPA,

## II. DESCRIPTION OF THE VIOLATIONS

Section 301(a) of the Clean Water Act<sup>12</sup> 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.<sup>13</sup> “Discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source,”<sup>14</sup> 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.”<sup>15</sup>

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,<sup>16</sup> TDEC has issued NPDES permit number TN0029718 to Berry’s Chapel. This permit limits discharges into the Harpeth River and sets specific requirements for monitoring and reporting these discharges.<sup>17</sup> The most recent version of this permit was issued in 2010 and was set to expire on November 30, 2011. It required Berry’s Chapel to apply for a new permit no later than 180 days period to the permit’s expiration date. On November 8, 2011, less than 180 days before the permit expired, Berry’s Chapel notified TDEC that it mailed its application on May 31, 2011. Upon information and belief, having deemed the application timely, the 2010 permit was administratively extended by TDEC pending issuance of a new permit.

The 2010 permit states that “[a]ny 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). Berry’s Chapel is required to record and submit Discharge Monitoring Reports (“DMRs”) and Monthly

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[http://ofmpub.epa.gov/tmdl/attains\\_waterbody.control?p\\_list\\_id=TN05130204009\\_3000&p\\_cycle=&p\\_report\\_type](http://ofmpub.epa.gov/tmdl/attains_waterbody.control?p_list_id=TN05130204009_3000&p_cycle=&p_report_type)  
= (last visited Jan. 9, 2014).

<sup>12</sup> 33 U.S.C. § 1311(a).

<sup>13</sup> 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 Sewage Treatment Plant’s conduct 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.

<sup>14</sup> 33 U.S.C. § 1362(12)(A).

<sup>15</sup> 33 U.S.C. § 1362(6).

<sup>16</sup> 33 U.S.C. § 1342(b).

<sup>17</sup> 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).

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); *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). Berry’s Chapel must report any permit non-compliance on the DMRs. *See* Permit § 2.3.2 (2010).

Based on the Harpeth River Watershed Association’s review of these reports and other records prepared or kept by TDEC, Berry’s Chapel has violated the terms of NPDES Permit No. TN0029718 in the ways described below. First, for example, Berry’s Chapel has failed to ensure that all discharges “shall be limited and monitored by the permittee as specified” in § 1.1, which contains a table detailing effluent limitations by pollutant and monitoring parameter. Second, Berry’s Chapel has submitted incomplete or inconsistent reports. Third, Berry’s Chapel 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).

**A. Each day in which the Berry’s Chapel 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—constitute 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 Berry’s Chapel 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 Berry’s Chapel Sewage Treatment Plant and sent to TDEC, the Harpeth River Watershed Association has identified approximately 45 numeric violations, 8,500 monitoring violations, and 140 reporting violations of the permit held by Berry’s Chapel Utility to discharge pollutants into the Harpeth River. 40 C.F.R. § 135.3(a).<sup>18</sup>

*i. Berry’s Chapel reported numeric violations, bypasses, and overflows*

Berry’s Chapel violated § 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 this chart show the date of the violations and the number of days Berry’s Chapel was in violation. The next columns identify the “**Permit Parameter Violated**” (*i.e.*, which Permit § 1.1 effluent limitation or

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<sup>18</sup> 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.

overflow/bypass prohibition was violated); the “*Permit Limit*” (*i.e.*, the maximum or minimum effluent parameter value that the permit requires Berry’s Chapel 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.<sup>19</sup>

Date of Violation(s)	Number of Violations	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
July 3, 2009	1	Daily Chlorine mg/L max.	0.03	(0.10)	DMR indicates “0.05” for the maximum result and “0” exceedances/excursions
July 13, 2009	1	Daily Chlorine mg/L max.	0.03	(0.20)	DMR indicates “0.05” for the maximum result and “0” exceedances/excursions
July 15, 2009	1	Daily Chlorine mg/L max.	0.03	(0.09)	DMR indicates “0.05” for the maximum result and “0” exceedances/excursions ”
August 3, 2009	1	Daily Total Suspended Solids mg/L max.	45	54	
March 1 - March 31, 2010	31	Monthly Total Suspended Solids % removal avg.	85%	82.2%	
May 1 - May 4, 2010	3	Wet Weather Overflow	0	1	DMR indicates “1” wet weather overflow exceedances/excursions; noncompliance report states lost control on May 1, regained full operations on May 4. Also self-reported “flood” on May 5.
December 31, 2010	1	Daily Chlorine mg/L max.	0.03	(0.10)	DMR indicates 0.01 with no exceedances/excursions
April 5, 2011	1	Daily Chlorine mg/L max.	0.03	0.20	
April 6, 2011	1	Daily Chlorine mg/L max.	0.03	(0.07)	
March 3 - March 5, 2013	3	Dry Weather Overflow	0	3	
August 8, 2013	1	Daily Dissolved Oxygen mg/L min.	6.0	5.9	
August 8, 2013	1	Daily Dissolved Oxygen mg/L min.	6.0	5.9	

<sup>19</sup> The last DMRs and MORs available were from October 2013.

Date of Violation(s)	Number of Violations	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
August 9, 2013	1	Daily Carbonaceous Biochemical Oxygen Demand mg/L max.	10.0	12.2	DMR indicates "0" exceedances/excursions

ii. *Berry's Chapel's reports reveal monitoring violations*

Berry's Chapel's reports show that it violated the permit's requirement that all discharges "shall be . . . monitored . . . as specified" in § 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. For example, in addition to the daily, weekly, and monthly limitations on Total Nitrogen and Total Phosphorus that are listed in the table, § 1.1 appears to require additional monitoring of quarterly influent and effluent average concentrations, mass loadings and percentage removals for Total Nitrogen and Total Phosphorus. Another provision within § 1.1 limits the annual average amount of Total Nitrogen allowed, necessarily requiring that it be monitored and reported.<sup>20</sup>

The first two columns of the chart show the date of the violations and the number of days Berry's Chapel was in violation. 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).<sup>21</sup>

Date of Violations	Number of Violations	Monitoring Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
January 25 - January 31, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
January 25 - January 31, 2009	7	Effluent pH monitoring	5/week	4/week
January 25 - January 31, 2009	7	Effluent Chlorine monitoring	5/week	4/week
February 1 - February 7, 2009	7	Effluent pH monitoring	5/week	3/week
February 22 - February 28, 2009	7	Effluent <i>E. coli</i> monitoring	3/week	0/week

<sup>20</sup> The limit in the permit is the same in the TMDL (i.e., 22 lbs/day). *Final Organic Enrichment/Low Dissolved Oxygen: Total Maximum Daily Load (TMDL) for Waters in the Harpeth River Watershed (HUC 05130204)*, p. 55 (EPA Sept. 2004).

<sup>21</sup> The last DMRs and MORs available were October 2013.

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
March 29 - April 4, 2009	7	Effluent <i>E. coli</i> monitoring	3/week	2/week
April 19 - April 25, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
April 19 - April 25, 2009	7	Effluent pH monitoring	5/week	4/week
April 19 - April 25, 2009	7	Effluent Chlorine monitoring	5/week	4/week
April 26 - May 2, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
April 26 - May 2, 2009	7	Effluent pH monitoring	5/week	4/week
April 26 - May 2, 2009	7	Effluent Chlorine monitoring	5/week	4/week
June 21 - June 27, 2009	7	Effluent Chlorine monitoring	5/week	3/week
June 28 - July 4, 2009	7	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
June 28 - July 4, 2009	7	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
June 28 - July 4, 2009	7	Influent Total Suspended Solids monitoring	3/week	2/week
June 28 - July 4, 2009	7	Effluent Total Suspended Solids monitoring	3/week	2/week
June 28 - July 4, 2009	7	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
June 28 - July 4, 2009	7	Effluent <i>E. coli</i> monitoring	3/week	2/week
July 5 - July 11, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
July 12 - July 18, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
October 11 - October 17, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
October 11 - October 17, 2009	7	Effluent pH monitoring	5/week	4/week
November 22 - November 28, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
November 22 - November 28, 2009	7	Effluent pH monitoring	5/week	4/week
November 22 - November 28, 2009	7	Effluent Chlorine monitoring	5/week	4/week
November 29 - December 5, 2009	7	Effluent pH monitoring	5/week	4/week
November 29 - December 5 2009	7	Effluent Chlorine monitoring	5/week	4/week
November 29 - December 5, 2009	7	Effluent <i>E. coli</i> monitoring	3/week	2/week
December 6 - December 12, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
December 20 - December 26, 2009	7	Effluent Dissolved Oxygen monitoring	5/week	3/week

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
December 20 - December 26, 2009	7	Effluent pH monitoring	5/week	3/week
December 20 - December 26, 2009	7	Effluent Chlorine monitoring	5/week	3/week
December 27 - January 2 2010	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
December 27 - January 2, 2010	7	Effluent pH monitoring	5/week	3/week
December 27 - January 2, 2010	7	Effluent Chlorine monitoring	5/week	3/week
February 28 - March 6, 2010	7	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
March 28 - April 3, 2010	7	Effluent <i>E. coli</i> monitoring	3/week	2/week
April 25 - May 1, 2010	7	Influent Flow monitoring	7/week	6/week
April 25 - May 1, 2010	7	Effluent Flow monitoring	7/week	6/week
April 25 - May 1, 2010	7	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	1/week
April 25 - May 1, 2010	7	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	1/week
May 2 - May 8, 2010	7	Influent Flow monitoring	7/week	3/week
May 2 - May 8, 2010	7	Effluent Flow monitoring	7/week	3/week
May 2 - May 8, 2010	7	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	1/week
May 2 - May 8, 2010	7	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	1/week
May 2 - May 8, 2010	7	Effluent Ammonia as Nitrogen monitoring	3/week	0/week
May 2 - May 8, 2010	7	Influent Total Suspended Solids monitoring	3/week	0/week
May 2 - May 8, 2010	7	Effluent Total Suspended Solids monitoring	3/week	0/week
May 2 - May 8, 2010	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
May 2 - May 8, 2010	7	Effluent pH monitoring	5/week	2/week
May 2 - May 8, 2010	7	Effluent Chlorine monitoring	5/week	2/week
May 2 - May 8, 2010	7	Effluent <i>E. coli</i> monitoring	3/week	0/week
May 9 - May 15, 2010	7	Effluent Ammonia as Nitrogen monitoring	3/week	0/week
May 23 - May 29, 2010	7	Influent Total Suspended Solids monitoring	3/week	2/week
May 23 - May 29, 2010	7	Effluent Total Suspended Solids monitoring	3/week	2/week
June 13 - June 19, 2010	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
June 20 - June 26, 2010	7	Effluent Dissolved Oxygen monitoring	5/week	3/week



<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
August 29 - September 4, 2010	7	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
August 29 - September 4, 2010	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
August 29 - September 4, 2010	7	Effluent pH monitoring	5/week	4/week
August 29 - September 4, 2010	7	Effluent Chlorine monitoring	5/week	4/week
October 3 - October 9, 2010	7	Effluent Ammonia as Nitrogen monitoring	3/week	1/week
November 28 - December 4, 2010	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
December 12 - December 18, 2010	7	Influent Flow monitoring	7/week	2/week
December 19 - December 25, 2010	7	Influent Flow monitoring	7/week	0/week
December 26 - January 1, 2011	7	Influent Flow monitoring	7/week	0/week
January 2 - January 8, 2011	7	Influent Flow monitoring	7/week	5/week
March 6 - March 12, 2011	7	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
January 1 - March 31, 2011	90	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	90	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	90	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	90	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	90	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	90	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	90	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	90	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
March 27 - April 2, 2011	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
March 27 - April 2, 2011	7	Effluent pH monitoring	5/week	4/week
March 27 - April 2, 2011	7	Effluent Chlorine monitoring	5/week	3/week
April 3 - April 9, 2011	7	Effluent pH monitoring	5/week	3/week
April 3 - April 9, 2011	7	Effluent Chlorine monitoring	5/week	2/week
May 22 - May 28, 2011	7	Effluent <i>E. coli</i> monitoring	3/week	2/week

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
May 1 - May 31, 2011	31	Total Nitrogen monitoring	2/month	1/month <sup>22</sup>
May 1 - May 31, 2011	31	Total Phosphorus monitoring	2/month	1/month <sup>23</sup>
May 1 - May 31, 2011	31	Insoluble TKN monitoring	2/month	1/month
May 1 - May 31, 2011	31	Insoluble Phosphorus monitoring	2/month	1/month
May 29 - June 4, 2011	7	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
May 29 - June 4, 2011	7	Effluent Chlorine monitoring	5/week	4/week
April 1 - June 30, 2011	91	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	91	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	91	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	91	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	91	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	91	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	91	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	91	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	92	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
October 30 - November 5, 2011	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
October 30 - November 5, 2011	7	Effluent pH monitoring	5/week	4/week
October 30 - November 5, 2011	7	Influent Total Suspended Solids monitoring	3/week	2/week

<sup>22</sup> Note that the second measurement taken during May 2011 showed “0.00” as the test result for both Total Nitrogen and Total Phosphorus.

<sup>23</sup> *Id.*

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
October 30 - November 5, 2011	7	Effluent Total Suspended Solids monitoring	3/week	2/week
October 30 - November 5, 2011	7	Effluent Chlorine monitoring	5/week	4/week
October 30 - November 5, 2011	7	Effluent <i>E. coli</i> monitoring	3/week	0/week
November 20 - November 26, 2011	7	Effluent Dissolved Oxygen monitoring	5/week	4/week
November 20 - November 26, 2011	7	Effluent pH monitoring	5/week	4/week
November 20 - November 26, 2011	7	Effluent Chlorine monitoring	5/week	4/week
October 1 - December 31, 2011	92	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	92	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	92	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	92	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	92	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	92	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	92	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	92	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
January 29 - February 4, 2012	7	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
January 29 - February 4, 2012	7	Effluent Settleable Solids monitoring	3/week	2/week
January 29 - February 4, 2012	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
January 29 - February 4, 2012	7	Effluent pH monitoring	5/week	3/week
January 29 - February 4, 2012	7	Influent Total Suspended Solids monitoring	3/week	2/week
January 29 - February 4, 2012	7	Effluent Total Suspended Solids monitoring	3/week	2/week
January 29 - February 4, 2012	7	Effluent Chlorine monitoring	5/week	3/week
January 29 - February 4, 2012	7	Effluent <i>E. coli</i> monitoring	3/week	2/week
February 26 - March 3, 2012	7	Effluent Ammonia as Nitrogen monitoring	3/week	0/week
March 4 - March 10, 2012	7	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
January 1 - March 31, 2012	91	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
January 1 - March 31, 2012	91	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	91	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	91	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	91	Quarterly Total Nitrogen % kl.,	1/quarter	0/quarter
January 1 - March 31, 2012	91	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	91	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	91	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	91	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
August 1 - August 31, 2012	31	Total Phosphorus monitoring	2/month	1/month <sup>24</sup>
July 1 - September 30, 2012	92	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	92	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	92	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	92	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	92	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	92	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	92	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	92	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter

<sup>24</sup> Note that the second measurement taken during August 2012 showed “0.00” as the test result for both Total Nitrogen and Total Phosphorus.

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
October 14 - October 20, 2012	7	Effluent Chlorine monitoring	5/week	4/week
November 18 - November 24, 2012	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
November 18 - November 24, 2012	7	Effluent pH monitoring	5/week	3/week
November 18 - November 24, 2012	7	Influent Total Suspended Solids monitoring	3/week	2/week
November 18 - November 24, 2012	7	Effluent Total Suspended Solids monitoring	3/week	2/week
November 18 - November 24, 2012	7	Effluent Chlorine monitoring	5/week	3/week
December 23 - December 29, 2012	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
December 23 - December 29, 2012	7	Effluent pH monitoring	5/week	4/week
December 23 - December 29, 2012	7	Effluent Chlorine monitoring	5/week	3/week
October 1 - December 31, 2012	92	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	92	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	92	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	92	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	92	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	92	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	92	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	92	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
December 30 - January 5, 2013	7	Effluent Settleable Solids monitoring	3/week	2/week
December 30 - January 5, 2013	7	Effluent Dissolved Oxygen monitoring	5/week	3/week
December 30 - January 5, 2013	7	Effluent pH monitoring	5/week	3/week
December 30 - January 5, 2013	7	Effluent Chlorine monitoring	5/week	3/week
January 1 - March 31, 2013	90	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	90	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	90	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	90	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Monitoring Parameter Violated</b>	<b>Monitoring Required by Permit</b>	<b>Monitoring Actually Reported</b>
January 1 - March 31, 2013	90	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	90	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	90	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	90	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
June 2 - June 8, 2013	7	Effluent Chlorine monitoring	5/week	4/week
April 1 - June 30, 2013	91	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	91	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	91	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	91	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	91	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	91	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	91	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	91	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	92	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter

*iii. Berry's Chapel violated reporting and duty to report non-compliance provisions of its permit*

Berry's Chapel violated reporting requirements contained in its permit. The column of the following chart labeled "**Month of Reporting Violation**" indicates the monthly reporting period during which the violation occurred; the "**Number of Violations**" column identifies how many violations stem from the reporting failure; the "**Permit Requirement Violated**" column

identifies whether the violation involves the duty to report noncompliance or the failure to properly report the monitoring of a particular effluent parameter; and the “*Explanation of Reporting Violation*” column provides additional information on the alleged violation from the MORs and DMRs submitted by Berry’s Chapel. Failure to report is accounted for from December 2010 to the present,<sup>25</sup> due to the three year record retention requirement of Permit § 1.2.5.

Month of Reporting Violation	Number of Violations	Permit Requirement Violated	Explanation of Reporting Violation
January 2009	1	Ammonia as Nitrogen Effluent reporting	Ammonia as Nitrogen weekly lb/day average DMR entry lists 0.10; MOR indicates an entry of 0.70
April 2009	1	TSS Effluent reporting	Total Suspended Solids weekly lb/day average DMR entry lists 22.0; MOR indicates an entry of 20.2
July 2009	3	Effluent Chlorine reporting	Chlorine daily mg/L of 0.10, 0.20, & 0.09 violate permit limit, excursions not indicated on DMR
December 2010	2	Duty to Report Noncompliance	Dissolved Oxygen monitoring (1 week); chlorine daily mg/L maximum
December 2010	1	Effluent Chlorine reporting	Chlorine daily mg/L of 0.10 violates permit limit, value of 0.01 listed on DMR and excursion not noted
January 2011	1	Effluent Dissolved Oxygen reporting	Dissolved Oxygen daily mg/L DMR entry lists 10.3; MOR indicates an entry of 9.1
March 2011	9	Duty to Report Noncompliance	Ammonia as Nitrogen monitoring (1 week: March 6-12); quarterly nutrient monitoring (8 violations)
April 2011	7	Duty to Report Noncompliance	Dissolved Oxygen monitoring (1 week); pH monitoring (2 weeks); chlorine monitoring (2 weeks); chlorine daily mg/L maximum (2 violations)
May 2011	1	Duty to Report Noncompliance	<i>E. coli</i> monitoring (1 week)
June 2011	10	Duty to Report Noncompliance	Ammonia as Nitrogen monitoring (1 week); chlorine monitoring (1 week); quarterly nutrient monitoring (8 violations)
September 2011	8	Duty to Report Noncompliance	Quarterly nutrient monitoring (8 violations)
November 2011	9	Duty to Report Noncompliance	Dissolved Oxygen monitoring (2 weeks); pH monitoring (2 weeks); Influent & Effluent Total Suspended Solids monitoring (1 week each); chlorine monitoring (2 weeks); <i>E. coli</i> monitoring (1 week)
December 2011	8	Duty to Report Noncompliance	Quarterly nutrient monitoring (8 violations)
February 2012	8	Duty to Report Noncompliance	Ammonia as Nitrogen monitoring (1 week); settleable solids monitoring (1 week); Dissolved Oxygen monitoring (1 week); pH monitoring (1 week); Influent & Effluent Total Suspended Solids monitoring (1 week each); Chlorine monitoring (1 week); <i>E. coli</i> monitoring (1 week)

<sup>25</sup> The last DMRs and MORs available were October 2013.

<b>Month of Reporting Violation</b>	<b>Number of Violations</b>	<b>Permit Requirement Violated</b>	<b>Explanation of Reporting Violation</b>
March 2012	10	Duty to Report Noncompliance	Ammonia as Nitrogen monitoring (2 weeks); quarterly nutrient monitoring (8 violations)
April 2012	1	MOR not submitted	Neither TDEC field office nor headquarters has copy of MOR
June 2012	8	Duty to Report Noncompliance	Quarterly nutrient monitoring (8 violations)
August 2012	1	Total Phosphorus reporting	One measurement of Total Phosphorus stated as "0.0" on MOR, while corresponding Insoluble Phosphorus value is "3.57"; Phosphorus DMR entries rely on these measurements
September 2012	8	Duty to Report Noncompliance	Quarterly nutrient monitoring (8 violations)
October 2012	1	Duty to Report Noncompliance	Chlorine monitoring (1 week)
November 2012	5	Duty to Report Noncompliance	Dissolved Oxygen monitoring (1 week); pH monitoring (1 week); Influent & Effluent Total Suspended Solids monitoring (1 week each); Chlorine monitoring (1 week)
December 2012	11	Duty to Report Noncompliance	Dissolved Oxygen monitoring (1 week); pH monitoring (1 week); Chlorine monitoring (1 week); Quarterly nutrient monitoring (8 violations)
January 2013	4	Duty to Report Noncompliance	Settleable solids monitoring (1 week); Dissolved Oxygen monitoring (1 week); pH monitoring (1 week); Chlorine monitoring (1 week)
February 2013	1	TSS Effluent reporting	Total Suspended Solids monthly lb/day average DMR entry lists 0.0; MOR indicates the entry should be 0.47
March 2013	8	Duty to Report Noncompliance	Quarterly nutrient monitoring (8 violations)
May 2013	1	TSS Effluent reporting	Total Suspended Solids monthly lb/day average DMR entry lists 0.0; MOR indicates an entry of 0.1
June 2013	9	Duty to Report Noncompliance	Chlorine monitoring (1 week); Quarterly nutrient monitoring (8 violations)
August 2013	1	Duty to Report Noncompliance	Carbonaceous Biochemical Oxygen Demand daily mg/L maximum
August 2013	1	CBOD Effluent reporting	Carbonaceous Biochemical Oxygen Demand daily mg/L of 12.2 violates permit limit, excursion not indicated on DMR
September 2013	8	Duty to Report Noncompliance	Quarterly nutrient monitoring (8 violations)
October 2013	2	TSS Effluent reporting	TSS weekly lb/day & mg/L average DMR entries list values for week ending in the subsequent month
October 2013	2	Ammonia as Nitrogen Effluent reporting	Ammonia as Nitrogen weekly lb/day & mg/L average DMR entries list values for week ending in the subsequent month



**C. TDEC observed additional violations at the Berry's Chapel Sewage Treatment Plant and repeatedly found evidence of questionable or unreliable data.**

This subsection describes violations not reflected in the previous subsection and its accompanying charts. Many of these violations are premised on TDEC's observations and conclusions that much of the data that has been reported by Berry's Chapel is questionable or unreliable.

In January 2012, TDEC informed Berry's Chapel that it was in violation of its NPDES permit based on the following observations made during a September 2011 inspection:<sup>26</sup>

- Questionable Total Nitrogen (TKN) & Insoluble Phosphorus Data: "I noted that the insoluble TKN (total Kjeldahl nitrogen) and insoluble phosphorus were reported incorrectly. The permit required the analysis and reporting of insoluble TKN (total Kjeldahl nitrogen) and insoluble phosphorus twice per month during the summer months. The actual reported value was for the dissolved parameters. Apparently, the data had been incorrectly interpreted from their contract laboratory."<sup>27</sup>
- Questionable Influent Total Suspended Solids (TSS) & Carbonaceous Biochemical Oxygen Demand (CBOD) Data: "The influent sample was collected with a sump pump sitting inside a plastic garbage can that had the bottom cut off. . . . This makes the previously submitted data for influent total suspended solids and CBOD questionable."<sup>28</sup>
- Questionable Dissolved Oxygen (D.O.) Data: "The YSI 54A dissolved oxygen meter is used as both a field instrument . . . and a bench top instrument . . . . However, I did not see the calibration for the field probe performed, nor were there two calibration entries on the calibration log. This makes previously submitted data questionable."<sup>29</sup>
- Questionable Carbonaceous Biochemical Oxygen Demand (CBOD) Data: "The effluent dilutions were found to contain insufficient nutrients effectively reducing biological activity during the 5-day incubation period. . . . This makes previously submitted CBOD data invalid."<sup>30</sup> "Secondary standards are used to calibrate the instrument. I informed the operators that primary standards must be used first . . . . This makes previously submitted data questionable."<sup>31</sup>

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<sup>26</sup> (01/02/2012 Ltr. from TDEC to Berry's Chapel re: Performance Audit Inspection).

<sup>27</sup> Loudermilk, *Performance Audit Inspection Berry's Chapel Utility, Inc. (formerly Lynwood Utility Corporation) NPDES TN0029718 Sept. 21-22, 2011* (Memorandum at p. 1; Jan. 20, 2012).

<sup>28</sup> *Id.* at p. 3.

<sup>29</sup> *Id.* at p. 4.

<sup>30</sup> *Id.* at p. 5.

<sup>31</sup> *Id.* at p. 6.

- Questionable Ammonia as Nitrogen (NH<sub>3</sub>-N) Data: “I discovered that the operators were under the impression that the distillation step of the procedure was unnecessary. . . . Results will be questionable unless the distillation step is performed or the comparability study demonstrates otherwise.”<sup>32</sup>
- Questionable Escherichia coli (E. coli) Data: “I observed the sample being collected in a beaker then transferred to the sterile/preserved Colilert bottle. This improper sample collection produces questionable results.”<sup>33</sup>

Berry’s Chapel wrote a letter to TDEC explaining the actions it was taking in response to TDEC’s letter.

In February 2013, TDEC informed Berry’s Chapel that it was in violation of its NPDES permit based on the following observations made during a December 2012 inspection:<sup>34</sup>

- Questionable Sampling Data: “The composite samples are collected and stored, prior to analyses, in the 20°C biochemical oxygen demand (BOD) incubator. This could cause the BOD samples to degrade significantly, producing low values.”<sup>35</sup>
- Questionable Total Suspended Solids (TSS), Carbonaceous Biochemical Oxygen Demand (CBOD), and Influent Flow Data: “The influent composite sample is still being collected from a sump pump sitting inside a customized plastic tub. . . . The current sampler configuration makes previously submitted data for influent total suspended solids and carbonaceous biochemical oxygen demand (CBOD) results questionable. The plastic tub could also interfere with the accuracy of the influent flow measurement.”<sup>36</sup>
- Questionable Carbonaceous Biochemical Oxygen Demand (CBOD) Data: “[B]ased on the observations stated above, previously submitted results by the operator should be considered questionable.”<sup>37</sup>

TDEC noted that failure to follow EPA approved procedures can lead to inaccurate and unreliable data, which “can lead to degradation of water quality and threats to public health.”<sup>38</sup> Berry’s Chapel wrote a letter to TDEC explaining the actions it was taking in response to TDEC’s letter.

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<sup>32</sup> *Id.* at p. 7.

<sup>33</sup> *Id.* at p. 7.

<sup>34</sup> (02/04/2013 Ltr. from TDEC to Berry’s Chapel re: Compliance Sampling Inspection).

<sup>35</sup> Loudermilk, *Performance Audit Inspection Berry’s Chapel Utility, Inc. (formerly Lynwood Utility Corporation) NPDES TN0029718 December 12, 2012* (Memorandum at p. 2).

<sup>36</sup> *Id.* at pp. 2-3.

<sup>37</sup> *Id.* at p. 4.

<sup>38</sup> (02/04/2013 Ltr. from TDEC to Berry’s Chapel re: Compliance Sampling Inspection).

Although Berry's Chapel wrote responsive letters informing TDEC that the causes of the violations had been fixed, it is not known whether all data is currently reliable and all violations have in fact been addressed. For example, in both January 2012 and February 2013 (thirteen months later), TDEC informed Berry's Chapel that previously-submitted data related to Influent Total Suspended Solids ("TSS") and Carbonaceous Biochemical Oxygen Demand ("CBOD") was questionable because the "sump pump [was] sitting inside a plastic garbage can that had the bottom cut off." Therefore, each day that Berry's Chapel failed to properly sample would constitute additional violations.

**D. The Berry's Chapel Sewage Treatment Plant failed to implement a Nutrient Management Plan.**

Section 3.5 of the permit requires Berry's Chapel to develop a Nutrient Management Plan ("NMP") pursuant to the requirements of Attachment 1. Berry's Chapel was also required to update the report each year by February 15. In November 2010, Berry's Chapel filed a petition for review with the Tennessee Water Quality Control Board and requested amendments to its NPDES permit. *See In the matter of Berry's Chapel Utility, Inc.* (filed Nov. 1, 2010). Berry's Chapel appealed permit § 3.5 and "assert[ed] that a twelve month period [rather than a three month period] is necessary for it to develop an effective Nutrient Management Plan . . . ." (p. 2). *See also* Permit Addendum to Rationale at p. AD-1 (noting permittee objected to timing of NMP). This appeal appears never to have been heard or ruled upon, and no NMP appears ever to have been developed.

Appeals must be filed within thirty days after the date that public notice of the permit issuance, denial, or modification is given by way of distribution of the notice of determination to persons who meet the criteria of Rule 1200-04-05-.12(3). Tenn. Comp. R. & Regs. 1200-04-05-.12(5). Berry's Chapel's petition stated that the permit was issued on September 30, 2010, more than thirty days before the appeal was filed. Although the face of the permit indicates that it was issued on October 22, 2010, less than thirty days before the appeal was filed, there is contrary and inconsistent information contained in TDEC's files about when the permit actually issued:

- The permit for the City of Franklin STP was issued on September 30, 2010, and all of the NPDES permits for sewage treatment plants on the Harpeth River were intended to be coordinated. *See* Permit Rationale, § R.7.13 (page R-9).
- An email dated 10/08/2010 from Wade Murphy (TDEC) to O.J. Wingfield and Gary Davis (TDEC) states, "Berry's Chapel Utility, Inc. (a private, non-profit corporation) merged with Lynwood Utility Corp. and is the surviving company. The latter company was regulated by the TRA but the surviving company is not, so we proposed the financial security language in the **permit issued 09/30/2010**. The permittee **has until the end of October 2010 to appeal** these permit terms and conditions. If they don't appeal any or all of them by that date, then they will need to comply with the deadlines in Section 3.8 of the permit (beginning on page 23)." (emphasis added).

If the appeal was not timely filed, the appeal should not have served to stay the permit terms challenged by Berry's Chapel. Moreover, HRWA challenges the procedure whereby an appeal effectively stays those terms to which a permittee objects. It is believed that no hearing was set and no ruling was made on the issues appealed by Berry's Chapel. Since mid-2011, therefore, Berry's Chapel may have been discharging pollutants without complying with the terms of the permit, which would result in hundreds of additional violations.

**E. Many of the Berry's Chapel Sewage Treatment Plant's violations have 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 Berry's Chapel Utility 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. One of the issues identified by the Harpeth River Watershed Association is that the Berry's Chapel Sewage Treatment Plant does not sufficiently know how its discharges are affecting the river, particularly with respect to nutrients, because it has failed to conduct all of the required monitoring. Moreover, questionable data related to the Carbonaceous Biological Oxygen Demand concentrations discharged into the river means the plant may be adding direct oxygen demand above its permit limits into the impaired section of the Harpeth for low dissolved oxygen.

The Harpeth River's continued problems suggest that the maximum amount of pollutants that TDEC and the EPA say the Harpeth River can tolerate<sup>39</sup>—and the wasteload allocations in the permit for the Berry's Chapel Sewage Treatment Plant—are insufficient for the river to be able to attain the requisite water quality standards. Section 3.7 of the permit incorporates the anti-degradation provisions of Tennessee law into the limitations on Berry's Chapel's authority to discharge pollutants into the Harpeth River. This law requires Berry's Chapel to comply with the effluent limitations and schedules of compliance required to implement applicable water quality standards; to comply with a State Water Quality Plan or other state or federal laws or regulations; or where applicable, to comply with a standard permitting no discharge of pollutants.

In general, adding nutrients to a river feeds algae, the presence of which affects dissolved oxygen levels. Since 2002 if not long before, it has been well documented that the Harpeth River experiences “*significant* diurnal fluctuations with periodic deviations from the minimum concentration of 5mg/l specified by state water quality standards [for dissolved oxygen].”<sup>40</sup> In addition, the soil in its watershed is already rich in phosphorus. In order to discharge into the Harpeth River, therefore, the permit required Berry's Chapel to “develop/implement a Nutrient Management Plan (“NMP”) with appropriate reporting for its wastewater treatment plant” in

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<sup>39</sup> The relevant Total Maximum Daily Load (“TMDL”) was established in 2004. *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).

<sup>40</sup> *Id.* at p. 13.

accordance with requirements set forth in an attachment to the permit. As discussed above, it did not do this. Therefore, TDEC and the U.S. Environmental Protection Agency do not have sufficient information to determine how much the discharge activities of Berry's Chapel are further degrading the Harpeth River.

### **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. Ten years ago, TDEC sued Berry's Chapel Utility Inc.'s predecessor for violations of its NPDES permit. For the last few years, a pattern of violations has been established. 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.

### **IV. PERSONS RESPONSIBLE FOR VIOLATIONS**

Berry's Chapel Utility Sewage Treatment Plant ("Berry's Chapel STP") is owned and operated by Berry's Chapel Utility, Inc. (Tennessee Secretary of State Control No. 000635712). Rory Rowan is the certified operator. Tyler Ring is the President of Berry's Chapel Utility Inc. According to the 2006 NPDES Permit Application, he was also the President of Lynwood Utility Corporation. Other individuals associated with Berry's Chapel Utility, Inc. are: James B. Ford, John D. Ring, and Laura Morrissey. Berry's Chapel Utility, Inc. and these individuals are responsible for all violations at the Berry's Chapel STP.<sup>41</sup>

### **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 and recreate along the Harpeth River near the Berry's Chapel sewage treatment plan and its outfall. 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 person giving notice is:

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

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<sup>41</sup> In 2010, prior to the most recent NPDES permit, the owner and operator of this sewage treatment plant underwent a nominal change in ownership: "Lynwood Utility Corporation merg[ed] with and [is] survived by Berry's Chapel Utility, Inc." Addendum to NPDES Rationale, pg. AD-2 of AD-28. NPDES Permit No. TN0027918 transferred to Berry's Chapel Utility, Inc. *See* Articles of Merger & Agreement and Plan of Merger (Aug. 18, 2010).

Ms. Dorene Bolze  
Executive Director  
Harpeth River Watershed Association  
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Mr. Matt Dobson  
Chairman, Board of Directors  
Harpeth River Watershed Association  
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## VI. CONCLUSION

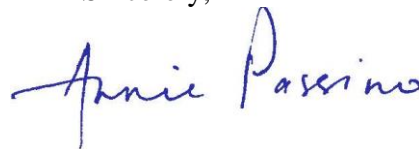
If you have any questions concerning this letter or the described violations, or if you believe it is incorrect in any respect, please contact the undersigned counsel at the Southern Environmental Law Center. During the notice period, we are available to discuss this matter with you. For many years, 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,



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cc: (via email)

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U.S. EPA, Region 4  
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Mr. Joseph Sanders  
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