



March 15, 2019

BY E-MAIL

Commissioner David Salyers, Director Jennifer Dodd,
Tennessee Department of Environment & Conservation
312 Rosa L. Parks Ave
Nashville, TN 37243

Mayor Ken Moore,
City of Franklin, Tennessee
109 3rd Avenue South
Franklin, TN 37064

Re: Moving Forward to Restore the State Scenic Harpeth River Together

Dear TDEC Commissioner Salyers, City of Franklin Mayor Moore, and Ms. Dodd:

As you know, the Harpeth Conservancy is committed to continuing to foster a collaborative effort around the entire Harpeth River system so that the State Scenic Harpeth River is a showcase of stakeholder-led solutions. We believe that process can result in an entire river system recovering and meeting water quality standards, which are set to protect wildlife and public health.

To accomplish this, **we will be dismissing our appeal with TDEC on its permit issued in 2017 for the City of Franklin’s sewage treatment plant expansion in order to concentrate on working to make the stakeholder-led pollution reduction study and plan** (“total maximum daily load” or “TMDL”) **a success**. We understand that Franklin is also interested in dismissing its own permit appeal and has similarly expressed that it is dedicated to working with TDEC and the other stakeholders, including Harpeth Conservancy, on creating a structure for the stakeholder-led TMDL that will include all communities and stakeholders in a leadership council / steering committee supported by experts. A draft of a joint order to accomplish this result is attached.

Many local governments, state and federal agencies, landowners, farmers, and others, including Harpeth Conservancy, have already contributed significantly to improvements in areas of water quality, recreational opportunities, stream restoration, drinking water upgrades, and sewer plant and collection system upgrades from the headwaters in Eagleville to the Harpeth River State Park in Cheatham County and on major tributaries in Fairview, Brentwood, and Dickson.

The city of Franklin has instituted major efforts to evaluate and invest in sewer collection system upgrades and make significant investments in its sewer plant

SCIENCE-BASED CONSERVATION FOR THE RIVERS OF TENNESSEE

Harpeth Conservancy is a Tennessee non-profit corporation and a 501(c)(3) organization.

All donations are tax deductible to the full extent allowed by law.

215 Jamestown Park Ste. 101, Brentwood, Tennessee 37027 | Phone: 615-790-9767 | <http://www.harpethconservancy.org>

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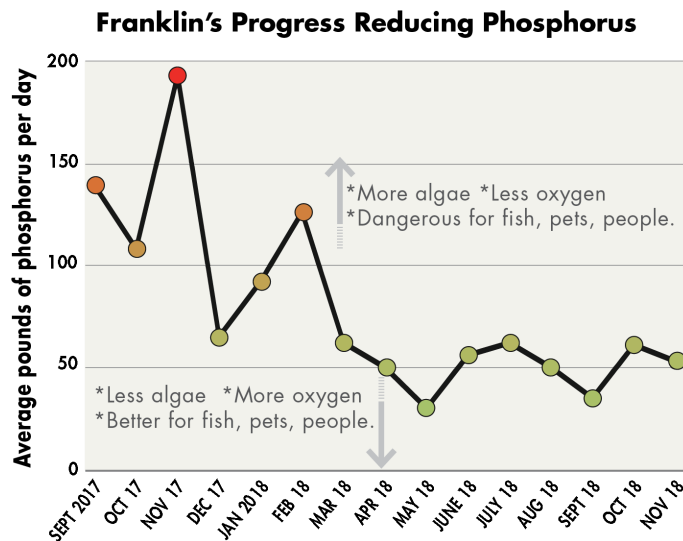
Mary Wade

Darrell Waltrip

expansion that will have the capability to reduce discharges of phosphorus and nitrogen into the Harpeth. Some of these changes were included as a result of the settlement of the 2014 action, and some from Franklin’s designs. Combined, it seems likely, based on what we know now, that Franklin’s new plant can make substantial further reductions in phosphorus discharges. As you know, TDEC has assessed much of the main Harpeth as impaired (on the State’s 303(d) list) and therefore not meeting water quality standards for phosphorus and other pollutants.

Franklin has also reduced its phosphorus discharges into the Harpeth with its current sewer plant in 2018 prior to the construction of the expansion to its facility. TDEC’s final 2017 permit included a threshold level for phosphorus that triggered sewer plant optimization efforts, which was included as a result of national experts’ concern over phosphorus discharges contained in comments on the draft permit. This provision requires Franklin to notify TDEC when its sewer plant exceeded certain phosphorus discharge thresholds. Franklin gave this notice in January 2018 and engaged with TDEC to optimize its current sewer plant. We appreciate TDEC’s work in assisting Franklin’s efforts in plant optimization. This assistance grew out of TDEC’s pilot work on plant optimization, and we would like to encourage TDEC to continue this work, as well as to finalize and implement a statewide nutrient reduction strategy so that the major challenges of nutrient pollution can be addressed without the need for major capital investments.

The chart below shows Franklin’s results in the past year based on the Franklin’s monthly reports submitted to TDEC:



In addition, Franklin has stated its commitment to reducing phosphorus discharges. City Administrator Eric Stuckey stated in the April 24, 2018 meeting of the Franklin Board of Mayor & Aldermen that, "[o]ur commitment [is] that the loading we put in that river is no more than is it today even though we are adding treatment capacity."

As you may recall, in 2016 Harpeth Conservancy provided extensive expert analysis and comments and then in 2017 appealed the final TDEC discharge permit issued to Franklin’s sewage treatment plant. This appeal was not litigation against Franklin, but an administrative process

regarding the permit itself, in which the City of Franklin could and did participate by also filing their own permit appeal. We alleged that the permit violated both Tennessee and Federal law on several grounds, including by authorizing additional discharges of phosphorus into a river that is already impaired for that pollutant and which is one of the most popular recreational waterways in the State. Phosphorus can fuel excessive growth in algae that reduces oxygen levels in the water below state standards and can lead to harmful algal blooms, which can be a public health threat. Franklin also appealed its own permit, claiming that either no phosphorus limit was necessary or that the limit should be higher.

Although our permit appeal is well-grounded in both law and fact, we are willing to set it aside to give the stakeholder-led Pollution Reduction Study and Plan (TMDL) for the Harpeth the best chance for success. The TMDL will determine the ability of the river to assimilate various pollutants and allocate pollutant input loads among various river users. For the TMDL to be successful, we will need to learn from other efforts around the country and adapt it for our region. We should foster a process that involves all stakeholders in understanding the available data, determining fair and cost-effective solutions, monitoring results, and maintaining long-term leadership around the river system.

We very much appreciate the round-table discussion hosted by Sen. Dickerson and Rep. Mitchell in July 2018 that included Harpeth Conservancy, the City of Franklin, TDEC and most of state legislators copied on this email to discuss our collective interest in working to address the challenges facing the Harpeth River.

At the November 2018 Harpeth TMDL meeting, TDEC encouraged stakeholders to work on further organizational efforts that would result in an effective stakeholder-led process. Over the past several years, we have spent significant time reviewing successful processes around the country and talked with numerous local leaders around the Harpeth as well as with state and federal agency leadership.

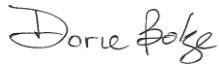
We find that there is considerable interest in a collaborative effort that establishes long-lasting processes for water quality improvements around the Harpeth that can be replicated statewide. Such efforts include a leadership / steering committee composed of elected and community leaders, supported by technical experts, which TDEC supported in 2013. The Harpeth River TMDL has the potential to accomplish, and ought to strive towards the goal of achieving, the statutory goal of removing the entire river system from the 303(d) impaired list as soon as practicable. Doing this in an innovative stakeholder-led structure would be an achievement that could furnish an example across the entire Southeast that all involved stakeholders could be proud of.

Harpeth Conservancy would also like to resolve separately the outstanding issues under the settlement of the 2014 action. We believe the primary issue is how to account for the \$150,000 Franklin has agreed to spend in support of the TMDL. We believe this should be resolved through the principle that only monies above and beyond what Franklin is already required to spend to comply with its permit should count towards this sum. Some of the remaining funds could be combined with other TMDL stakeholders' funds to hire a coordinator for the process. Harpeth Conservancy is already engaged in trying to raise funds for a coordinator and looks forward to working with TDEC, Franklin, and other stakeholders in that process.

The Harpeth River is a State Scenic River through Davidson County, and one of the most heavily recreated rivers in the State, with over 500,000 visitors to the area around the Harpeth River State Park in Cheatham County alone. The Harpeth is also a significant archeological river system as the home of the Mound Bottom complex at the northern end of the Natchez Trace, not to mention part of the Southeastern region of rivers that is the third most diverse in aquatic wildlife in the world.

We look forward to working with you and all the other stakeholders, and the EPA on a successful Pollution Reduction Plan and its implementation for the Harpeth River as a demonstration project for the Southeastern United States on how local communities collaborate, share resources, and learn from each other to restore a State Scenic River.

Sincerely yours,



Dorene Bolze
President & CEO
Harpeth Conservancy

cc: Sen. Steven Dickerson
Sen. Jack Johnson
Sen. Jeff Yarbro
Rep. John Ray Clemmons
Rep. Bo Mitchell
Rep. Brandon Ogles
Rep. Bob Freeman
Rep. Sam Whitson

David Lemke, Esq., Waller Lansden Dortch & Davis, LLP
Amanda Garcia, Esq., Annie Passino, Esq., Southern Environmental Law Center
Shauna Billingsley, Esq., City of Franklin
Stephanie Durman, Esq., TDEC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
NPDES PERMIT APPEAL)	
(PERMIT #TN0028827))	CASE NUMBERS
)	WPC17-0081 & WPC17-0082
CITY OF FRANKLIN, TENNESSEE,)	
)	
AND)	DOCKET NUMBER 04.30-145250J
)	
HARPETH RIVER WATERSHED)	JUDGE WATERHOUSE
ASSOCIATION, d/b/a HARPETH)	
CONSERVANCY,)	
)	
<i>Petitioners,</i>)	
)	
v.)	
)	
TENNESSEE DEPARTMENT OF)	
ENVIRONMENT AND)	
CONSERVATION,)	
)	
<i>Respondent.</i>)	

AGREED ORDER DISMISSING PERMIT APPEALS

The City of Franklin (the “City”) and Harpeth Conservancy, f/k/a/ Harpeth River Watershed Association (“Harpeth Conservancy”), as evidenced by the signatures of their respective counsel below, hereby agree to dismiss their respective appeals (the “Appeals”) regarding the issuance of that certain National Pollutant Discharge Elimination System Permit No. TN0028827 (the “Permit”) that is the subject of this contested case as set forth below. The Department of Environment and Conservation (the “Department,” and together with the City and Harpeth Conservancy, the “Parties”) also agrees to such dismissals on the terms contained

herein. Based upon the agreement of the Parties, and being fully advised in the premises, the undersigned Administrative Law Judge hereby ORDERS AS FOLLOWS:

1. This contested case is hereby dismissed as to both the City's and Harpeth Conservancy's respective Appeals of the Permit pursuant to Rule 41.01 of the Tennessee Rules of Civil Procedure and Tenn. Comp. R. & Regs. §1360-04-01, *et seq.*

2. The Parties shall each bear their own respective costs and expenses in connection with this contested case, including their respective attorneys' fees and expenses.

Ordered and entered this ____ day of _____, 2019.

Rachel Waterhouse
Administrative Law Judge

Approved for entry on this _____ day of January, 2019.

Stephanie A. Durman, BPR#027783
Katherine B. Barnes, BPR# 032456
Office of General Counsel
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
Stephanie.Durman@tn.gov * (615)532-3020
Katherine.Barnes@tn.gov * (615) 253-9928

*Attorneys for Tennessee Department of
Environment and Conservation*

David Lemke, BPR# 013586
David Bridgers, BPR# 016603
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700

Nashville, TN 37219
Telephone: (615) 244-6380
david.lemke@wallerlaw.com
david.bridgers@wallerlaw.com

*Attorneys for Harpeth River Watershed Association,
d/b/a Harpeth Conservancy*

Shauna R. Billingsley, BPR# 0233362
City Attorney
City of Franklin
Law Department
109 Third Avenue South
Franklin, Tennessee 37065-0305
Telephone: (615) 550-6603
shauna.billingsley@franklintn.gov

Gary Cohen (admitted pro hac vice)

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Telephone: (202) 463-1166

gcohen@hall-associates.com

J.W. Luna, BPR# 005780

Luna Law Group, PLLC

333 Union Street, Suite 300

Nashville, TN 37201

Telephone: (615)254-9146

jwluna@lunalawnashville.com

Attorneys for City of Franklin, Tennessee