

NOTICE OF DETERMINATION

NPDES # TN0082376

Water Authority of Dickson County (WADC)

East Hickman Water Reclamation Facility (EHWRF)

December 21, 2023

This notice of determination (NOD) summarizes comments regarding WADC’s proposal to build a new water reclamation facility in northeast Hickman County and to discharge treated wastewater to Lick Creek. WADC submitted the application in December 2021, and posted a notice at the proposed discharge location in January 2022. The Department of Environment and Conservation’s (TDEC’s) intent to deny the NPDES permit was public noticed on April 5, 2023. The public hearing was held on May 25, 2023. Written comments were accepted through June 5, 2023. This notice contains TDEC’s response to comments, and TDEC’s final determination to deny the proposed activity.

Note to Readers: To simplify this presentation, TDEC has summarized the lengthy comments received. TDEC does not intend to overlook or misrepresent any comment. TDEC has reviewed and considered all comments and supplemental documents received, and has posted these in their unedited forms in the file record for this permit. These documents may be viewed by querying for the permit number, TN0082376, in the “Permits” tab of TDEC’s online Water Resources Permits Dataviewer. TDEC combined all comments and all supplemental materials into two documents available at this link:

https://dataviewers.tdec.tn.gov/dataviewers/f?p=2005:34051:16259091393666:::34051:P34051_PERMIT_NUMBER:TN0082376

Due to the level of interest in this proposed permit action, this document presents comments and responses first followed by TDEC’s final determinations.

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General Comments

Q1. Why did WADC select this site? Why should Hickman County be the dumping ground for these other counties?

A1.

Dickson, Fairview, and the surrounding areas continue to grow and the three existing treatment facilities are approaching their design capacities. WADC asserts that growth is currently limited by the availability of sewer service, and proposes to provide sewer service to the currently unserved area in Hickman and Williamson Counties along Hwy 100. WADC provided information about site selection in its supplemental application materials, asserting that no alternative locations were practicable. As stated in the Rationale for the proposed denial, TDEC does not agree that alternatives to the proposed degradation of Lick Creek are not practicable.

Q2. Where is the treatment plant going to be located?

A2.

The exact location of the proposed treatment facility was not identified in the application, but the February 17, 2022, supplement includes a map that indicates the general proposed location in the northeast quadrant of Hickman County. This area is depicted by the box labeled "Water Reclamation Facility Approximate Location" on page R-3 of the Rationale.

Q3. Where is the outfall location?

A3.

WADC proposed to locate the outfall at mile 10.6 of Lick Creek, near the Hwy 7 bridge. The proposed outfall location is depicted by a star on page R-3 of the Rationale.

Q4. Is there potential for land being seized via eminent domain for the plant or the transfer pipe right-of-way?

A4.

This question should be directed to the WADC.

Q5. Why are we just now hearing about this?

A5.

This question was posed shortly after the sign was posted in January 2022. At that time, discussions about this project with WADC and TDEC staff had been ongoing for several years. Public outreach would have been premature at that time as the scope of the project was not complete. State water quality standards required WADC to demonstrate that its proposed alternative could meet water quality standards as part of submitting a complete application. This water quality modeling work took several years.

WADC posted a notice when requested by TDEC. Between that time and the date of TDEC's formal public notice, WADC's proposal had been publicized for over a year.

Q6. What is TDEC going to do to ensure water quality is protected in perpetuity?

A6.

TDEC is denying this proposed action. However, if the permit had been issued, it would have included water quality-based effluent limitations sufficient to prevent condition of pollution.

Q7. Why would TDEC knowingly allow degradation of water quality?

A7.

Tennessee law prohibits pollution but allows degradation when properly justified. Degradation is the alteration of the property of waters by the addition of pollutants, while pollution involves harm such as violation of water quality criteria. Tennessee's Antidegradation Statement establishes what an applicant needs to demonstrate in order to justify greater than *de minimis* degradation of Exceptional Tennessee Waters such as Lick Creek. In this case, TDEC has determined that WADC did not make this required demonstration.

Q8. Is TDEC funding any of this project?

A8.

TDEC is not funding the proposed project. However, WADC may seek TDEC funding for an alternative proposal in the future.

Q9. Why did TDEC not require more for the public notice? This is regarding the poor placement/location of the public notice sign and the fact it did not provide much information for stakeholders to respond.

A9.

TDEC required WADC to comply with public notice rules, and the public was more than amply notified regarding this project. Per Rule 0400-40-5-.06(1) for an application for a new discharge, the applicant shall notify the public of the application by posting a sign near the point of entrance to such facility and within view of a public road. The exact location of the treatment facility has not been identified. Therefore, the sign was posted near the proposed new discharge location on January 10, 2022, and remained posted until February 25, 2022. The sign was visible from a public road, and fulfilled its intended role of ensuring that local residents were aware of the proposed new discharge. Moreover, in accordance with applicable rules, additional public notice of the draft permit decision was provided and TDEC hosted a well-attended public hearing.

Q10. Has TDEC conducted a study of Lick Creek? Conducted any independent sampling? I understand Tennessee Tech conducted a study within the past three years with a contractor working with the WADC. Has TDEC seen this study? If so, can you please share the information generated?

A10.

TDEC routinely samples reservoirs, rivers and streams by collecting biological, chemical, bacteriological, and physical data. Sampling is conducted according to the [Watershed Management Approach](#). Existing data and reports from appropriate agencies and organizations are compiled and used to describe the current conditions and status of rivers and streams. Review of all data and comparison of agency work plans guide the development of an effective monitoring strategy. According to TDEC's latest water quality assessment, Lick Creek is fully supporting of its fish and aquatic life, irrigation and livestock watering, and wildlife designated uses. You can also view current water quality assessment data on our website here: <https://tdeconline.tn.gov/dwr/> and on EPA's website here: <https://www.epa.gov/waterdata/how-my-waterway>. TDEC suggests contacting Tennessee Tech directly regarding any of their data, which has not been submitted to TDEC.

Q11. Has WADC had any spills/violations from the other three plants they operate?

A11.

You can view overflow reports and other documentation, including Notices of Violation, for each facility on TDEC's dataviewer here: [Fairview webpage](#); [White Bluff webpage](#); [Jones Creek](#)

[webpage](#). You can also review enforcement and compliance history on EPA's website here: [Fairview webpage](#); [White Bluff webpage](#); [Jones Creek webpage](#). Alternatively, these records may be viewed by querying respectively for TN0062332, TN0020460 and TN0066958 within the permits tab on the Division of Water Resources Data Viewer at <https://www.tn.gov/environment/about-tdec/tdec-dataviewers.html> and within the facility ID field in EPA's ECHO database at <https://echo.epa.gov>.

Q12. WADC's other three plants are reportedly near capacity. How did they get to this high level of capacity and what are they doing to keep in compliance so that spills do not occur?

A12.

Allocating capacity in a sewer system is the responsibility of the system owner, so WADC is the best source for this information.

Q13. In the alternative analysis, how was the creek valued in terms of its cost/benefit analysis? It seems like they have only assessed future value as a sewage discharge stream, not the current value as a community source for recreation, fishing, and drinking/irrigation water.

A13.

The demonstration of a lack of practicable alternatives to degradation is not a cost/benefit analysis. Rather, it is a showing that there are no other practicable ways to manage wastewater needs that would result in less degradation. A separate requirement is that the applicant must demonstrate that the degradation is necessary for important social or economic development in the area of the waters. In this second analysis, impacts to recreation and other uses may be considered. However, in no event may TDEC issue a permit for an activity that would impair any classified uses, which include fish and aquatic life and recreation.

Q14. Is there a 7Q10 for Lick Creek in Hickman County? What location was used?

A14.

According to StreamStats, a flow calculation tool developed by the United States Geological Survey, and the latitude and longitude at the proposed discharge location, the lowest 7-day average flow that occurs once every 10 years is approximately 13.2 CFS. A copy of the StreamStats report is included as Appendix 2 to the Rationale. This report was prepared based on the proposed outfall location in Lick Creek at Highway 7.

Q15. Does TDEC have data showing whether Lick Creek includes nonnatural products now, such as cattle waste and agricultural runoff?

A15.

TDEC samples rivers and streams statewide every five years to assess whether water quality standards are being met or not (see also A10). You can view current water quality assessment data on our website here: <https://tdeconline.tn.gov/dwr/> and on EPA's website here: <https://www.epa.gov/waterdata/how-my-waterway>. Lick Creek currently meets all applicable water quality criteria for its designated uses.

Q16. Are there any endangered or threatened species in Lick Creek?

A16.

Lick Creek, from the Duck River to the headwaters, is listed as an Exceptional Tennessee Waters. Previously, this listing was based on the presence of one listed species – the state threatened coppercheek darter (*Etheostoma aquali*). The Tennessee Wildlife Resources Agency conducted additional surveys in 2022, and also found the federally endangered pale lilliput and state threatened saddled madtom in Lick Creek upstream of Highway 7.

Q17. What does the presence of trout in Lick Creek indicate, and will TDEC's regulations protect them?

A17.

According to TDEC's most recent water quality assessment, Lick Creek is fully supporting of fish and aquatic life, irrigation and livestock watering, and wildlife designated uses. Lick Creek is not classified as a naturally reproducing trout stream, so water quality criteria specific to

trout are not applicable. Refer to Q23 and A23 for additional detail regarding use classifications.

Q18. WADC has asked for a 12 MGD permit – is that for treatment capacity at the proposed plant or actual release into the stream? Does any WWTF’s daily release permit ever exceed the 7Q10 of the receiving stream?

A18.

WADC proposes an advanced biological treatment facility with an initial design capacity of 2 MGD, which would then expand in 2-4 MGD increments up to the ultimate design capacity of 12 MGD. The 12 MGD is both the ultimate proposed treatment capacity and discharge to Lick Creek. Yes, there are a number of wastewater treatment plants where design flow exceeds receiving stream critical low flow. The Division does authorize discharges of treated effluent from facilities whose design flow rates exceed the 7Q10 of the receiving stream. All three of WADC’s sewage treatment works have design flow rates greater than the 7Q10 of the receiving streams. This scenario requires the permittee to meet more stringent effluent limits to maintain water quality suitable for designated uses.

Q19. Residents are concerned about how sewage placed in Lick Creek could end up on private property since the area is prone to flooding. Does TDEC plan on conducting an environmental study on how the facility could affect the waterway and its residents?

A19.

Environmental studies, such as Environmental Impact Statements, apply to federal actions pursuant to federal regulations. Tennessee permits are not federal activities subject to studies evaluating environmental, cultural and historical impacts. Additionally, the National Flood Insurance Program (NFIP), managed by the Federal Emergency Management Agency (FEMA), enables homeowners, business owners and renters in participating communities to purchase federally backed flood insurance. It is up to the local communities participating in NFIP to agree to adopt and enforce floodplain management ordinances to reduce future flood damage. Tennessee’s NPDES permitting rules requires that any discharge permit impose limits to ensure the treatment process is meeting minimum technology-based treatment standards as well as any more stringent limits necessary to protect water quality.

Q20. What regulations govern wastewater treatment facilities in one county and their ability to use resources in another, since in this case it's a populated county seeking to use a rural county for their wastewater services?

A20.

TDEC does not regulate utility service areas. However, the Antidegradation Statement requires that more than *de minimis* degradation of water quality be justified by important economic or social development in the area of the discharge.

Q21. How much water is pulled from Lick Creek, from how many locations, for what uses, and how frequently?

A21.

Per the TDEC's active permit files, there are no withdrawals permitted (ARAP permits) on Lick Creek. Withdrawals for agricultural uses and most withdrawals installed prior to July 25, 2000, are exempted from water quality permitting.

Q22. What are the potential impacts to the hydrology and geomorphology?

A22.

Because this permit is being denied, there will be no impacts to hydrology or geomorphology.

Q23. Which agency makes decisions on stream use classification, such as trout?

A23.

The Board of Water Quality, Oil, and Gas adopts stream classifications by rule. See Rule Chapter 0400-40-04.

Post Hearing Comments

Q24. How will the new water reclamation plant contribute to the preservation and protection of Lick Creek's exceptional biodiversity?

A24.

If a permit had been issued, it would have included water quality-based effluent limitations sufficient to protect fish and aquatic life (and other applicable designated uses) in Lick Creek.

Q25. Did WADC consider various alternatives, including inaction and discharging to the Cumberland River, to ensure the most sustainable approach?

A25.

WADC did consider alternatives to its proposed Lick Creek discharge. In the alternatives analysis submitted in the December 2021 Preliminary Engineering Report (PER), WADC evaluated the following alternatives:

- No action,
- Increase or optimize capacity of existing treatment facilities,
- Land application,
- Water reuse,
- Decentralized systems, and
- New EHWRF.

WADC's 2021 PER concludes that the new EHWRF would be the best alternative to enable growth and industrial development in the service area. WADC's 2021 PER rejects the no action alternative, citing growth projections for the area.

At TDEC's request, WADC submitted a revised PER in December 2022, which evaluated alternative discharge locations. WADC conducted preliminary screening to identify all relatively close streams in Dickson, Williamson, and Hickman Counties with a ten-year, seven-day low flow (7Q10) of at least 12 cubic feet per second. Based on flow, WADC eliminated all streams in Williamson County, and included three in Dickson County (Harpeth River, Turnbull Creek, Cumberland River) and nine in Hickman County for further consideration. WADC then eliminated discharge locations upstream of public water intakes (Turnbull Creek, Big Swan Creek). WADC asserted that due to increased cost of construction, the remaining alternative discharge locations, including to the Cumberland River, were not practicable. WADC's

alternatives analysis and TDEC's evaluation is discussed more fully on pages R-6 to R-8 of the Rationale.

Q26. In what ways has the planning process for the EHWRP considered the social and economic benefits for Hickman County?

A26.

Tennessee's Antidegradation Statement required that no degradation of water quality above the level of *de minimis* will be allowed unless the applicant demonstrates that there are no practicable alternatives to prevent or lessen degradation associated with the proposed activity, the degradation is necessary to accommodate important economic or social development in the area of the discharge, and the discharge will not violate the water quality criteria for uses existing in the receiving waters. See Rule 0400-40-03-.06. WADC's economic analysis, and TDEC's evaluation, are discussed in detail on pages R-8 to R-13 of the Rationale.

Q27. Hickman County will bear all of the burdens and none of the benefits.

A27.

WADC's proposal would have included a new service area in Hickman County along Highway 100, so some of the benefits would have inured to Hickman County. In its economics report, WADC asserted that Hickman County would see 88 jobs, \$3,167,523 in wages, \$12,937,130 in business revenue and \$929,500 in state and local taxes by 2045 as a result of its proposal. WADC's economic analysis, and TDEC's evaluation, are discussed in detail on pages R-8 to R-13 of the Rationale.

Q28. If TDEC approved this permit, it would set dangerous precedent for future water treatment plants.

A28.

TDEC's approval or denial of permit applications is based on the facts of each situation. Review under the Antidegradation Statement is very fact-specific, and each application is reviewed individually based on its own merits.

Q29. How does WADC plan to engage with the Hickman County community to build understanding and support, in light of the survey conducted by B. Hart Knight that showed 79% disapproval rating from Hickman County residents?

A29.

Questions about WADC's future community engagement plans should be directed to WADC.

Q30. Hickman County should be paid and have a say in how things grow.

A30.

There is no legal requirement for a discharger to pay a community to discharge pollutants there. However, TDEC agrees that Hickman County should have a say in local economic development, and accordingly interviewed a number of local officials as part of its review of the economic or social necessity for WADC's proposal.

Q31. How is WADC promoting cooperative decision-making to ensure all counties involved have a say in the process? How does the EHWRP project contribute to equitable growth and development across all involved counties?

A31.

This comment is beyond the scope of TDEC's permit review, and would better be directed to WADC. The Division's oversight responsibility over construction and operation of public water and sewerage systems is consistent with separate state law that makes design of public infrastructure the jurisdiction of persons licensed to practice engineering in the State of Tennessee. The Division coordinates water quality permitting with demonstration that a public sewer system has been designed by licensed engineers in accordance with accepted engineering practices detailed in state design criteria for sewage works. Licensed engineers have the fiduciary responsibility to provide work product that protects public welfare and safety. Entities such as WADC otherwise direct the scope of work provided by their engineers.

Q32. How will the new plant ensure the protection of local well water sources from potential pollution?

A32.

The proposed surface water discharge would not be expected to pose a threat to groundwater resources.

Q33. Can you discuss how WADC plans to uphold and even enhance Hickman County's agriculture and ecotourism industry?

A33.

WADC is not responsible for upholding or enhancing agriculture or ecotourism in association with a water-quality permit action seeking to discharge treated wastewater to public waters. Rather, it is required to demonstrate that the proposed degradation of Lick Creek is necessary for important social or economic development in the area of the discharge. WADC did not specifically address agriculture or ecotourism in its economic analysis.

Q34. How does the installation of the EHWRF align with the existing growth trends in Hickman County's economy?

A34.

Similarly to Question and Answer 31, this consideration is between WADC and its design consultants. WADC's economic report asserts that construction of the facility itself would be expected to generate a direct impact of 938 new jobs with wages of \$41,911,614, business revenue of \$84,946,149, and state and local taxes of \$2,379,898. WADC further asserts that by 2045, the project would add 88 jobs, \$3,167,523 in wages, \$12,937,130 in business revenue, and \$929,500 in state and local taxes in Hickman County.

Q35. What makes Lick Creek the preferred choice over other options like the Cumberland River or the Tennessee River?

A35.

WADC explained its selection of Lick Creek as its preferred alternative in the 2022 PER. In sum, the Lick Creek discharge was the least expensive option that WADC concluded was feasible. TDEC does not agree with WADC's conclusion that the Lick Creek option is the least degrading practicable alternative. This issue is addressed in more detail on pages R-6 to R-8 of the Rationale.

Q36. How is WADC balancing the need for development with the preservation of Hickman County's rural character?

A36.

WADC was required to demonstrate that the proposed degradation of Lick Creek was necessary for important social or economic development in the area of the discharge. TDEC has concluded that WADC did not satisfy this requirement.

Q37. WADC's argument that Hickman needs the sewage plant to support economic growth is flawed because Hickman County has already experienced adequate economic growth without the plant, the cost for installing the plant will be placed on the residents of Hickman County and many will not have access to the sewer lines.

A37.

TDEC concludes that WADC has not demonstrated that its proposed degradation is necessary for important economic or social development in the area of the proposed discharge.

Q38. The problems Williamson and Dickson County are experiencing with overfilled sewage lines should not be the responsibility of Hickman County and WADC should look to expand and improve current operations.

A38.

TDEC concludes that WADC has not demonstrated that its proposed degradation is necessary for important economic or social development in the area of the proposed discharge.

Q39. How will the water reclamation plant ensure the protection of Lick Creek for various local uses, and how does it plan to manage potentially harmful substances, specifically industrial waste and pharmaceuticals?

A39.

If a permit had been issued, it would have included water quality-based effluent limitations sufficient to protect water quality for all classified uses.

Q40. Can you speak to how WADC is aiming for regional growth without causing undue burden on any single county?

A40.

WADC's economic analysis and TDEC's evaluation is set out on pages R-8 to R-13 of the Rationale. Additionally, it should be noted that WADC is a regional water and wastewater utility, and already discharges wastewater - including from Hickman County - in other counties.

Q41. Lick Creek is prone to flooding and adding more water will only heighten the problem.

A41.

NPDES permits regulate the discharge of pollutants, not flooding.

Q42. The proposed project has created a political controversy. Without the water reclamation facility, economic development will become stunted. TDEC's decision is based on political motivations, not the objective facts of what is the best balance economically and environmentally.

A42.

TDEC agrees that the proposed discharge to Lick Creek has been controversial; however, the existence of controversy does not preclude the TDEC from working through the regulatory review and public participation processes and making an objective, fact-based determination as to whether the applications meet the requirements of the Antidegradation Statement. TDEC's conclusion to deny the permit is based on its objective review of the facts and the law, not politics.

Q43. The existing water reclamation facilities are reaching or at capacity right now. There is no practicable alternative because there is no economically feasible alternative based on an economic study done by MTSU.

A43.

TDEC reviewed and considered WADC's submissions, including the referenced economic study, and does not agree that alternatives to the proposed degradation of Lick Creek are

not practicable. Just because less degrading alternatives are more expensive does not mean they are not technologically possible, able to be put into practice, and economically viable. WADC had the burden of proving that these alternatives are not practicable, and has not done so.

Q44. The EHWRP is required to support economic growth, development, and affordable housing. Without the treatment facility, developers from outside the county will turn elsewhere. The three counties should be viewed together as a region instead of three distinct parts. The approval of the EHWRP will benefit the entire region of Hickman, Williamson, and Dickson Counties both economically and environmentally.

A44.

TDEC appreciates this comment, and while it supports regional approaches to water and wastewater management, the Antidegradation Statement requires a demonstration that the degradation is necessary for important economic or social development in the area of the discharge. Here, the impact would have been in a small ETW receiving stream located in a rural area that would not have been served by the new sewer line or the treatment plant. Although the discharge would not have caused pollution, it would have caused more than de minimis, in other words measurable, degradation of an ETW. WADC's own economic analysis showed disproportionate economic benefit in Dickson and Williamson Counties as compared to Hickman County, which would have hosted both the new treatment plant and a new discharge to an ETW stream. Given the facts of this situation, taken as a whole, the proposed level of degradation of a small, high-quality, rural stream is not justified by regional economic development goals. Moreover, in this case, regional economic development can be achieved through a less degrading and more sustainable long-term alternative.

Q45. There is an interlocal agreement between WADC and Hickman County where WADC provides sewer lines to the schools and surrounding area in East Hickman County. This indicates a symbiotic relationship between the three counties where one county benefits, the other counties feel the residual effect.

A45.

The commenter is correct that there is an interlocal agreement that enables WADC to provide sewer service to a limited area of Hickman County. The agreement indicates that unlike the current WADC proposal, that agreement for a Dickson County-based utility resulted from a need identified by Hickman County, which also paid for sewer line construction.

Q46. The regulations imposed by TDEC on WADC, and WADC's current operations, are enough to maintain the environmental quality in Lick Creek.

A46.

If TDEC had issued a permit, it would have imposed limits sufficient to protect water quality in Lick Creek. Given WADC's proposal to build an advanced treatment facility, TDEC has no reason to believe WADC could not have complied with these limits. This satisfies one prong of the Antidegradation Statement, which is that the proposed degradation must maintain water quality sufficient to protect existing uses.

However, TDEC's determination in this matter is based on two additional prongs of the Antidegradation Statement, which are that WADC must demonstrate that less degrading alternatives are not practicable and that the degradation is necessary for important economic or social development in the area of the discharge.

Q47. In addition to seeing the coppercheek darter (*Etheostoma aquali*), Lick Creek is also home to the federally endangered freshwater mussel, the Pale Lilliput. With the only known populations in Northern Alabama and Lick Creek, it is even more important to finalize the denial of WADC's permit.

A47.

TDEC acknowledges that TWRA found the Pale Lilliput upstream of the proposed discharge location in 2022. However, this is not the basis for TDEC's permit denial, which is instead based on the Antidegradation Statement.

Q48. WADC has not met the requirements for receiving a permit. WADC has not shown that there is the requisite need to have the site at Lick Creek because there would be a greater than *de minimis* amount of degradation. By granting the permit, TDEC would be setting dangerous precedent because the agency would be allowing WADC to dump most of its sewage from Dickson and Williamson Counties to Hickman County.

A48.

TDEC agrees that WADC has not demonstrated that less degrading alternatives are not practicable or that the degradation is necessary for important economic or social development in the area of the discharge. Again, however, antidegradation review is very

fact-specific, involving a variety of factors. There are other situations in which TDEC has approved, and likely will approve in the future, the discharge of pollutants via a pipeline to a different county.

FINAL DETERMINATION

TDEC concludes, in consideration that Lick Creek at the proposed discharge location constitutes Exceptional Tennessee Waters and also waters with available parameters, that WADC's proposed discharge would result in greater than *de minimis* degradation of these waters. For the reasons summarized in the Rationale and in this response to comments, TDEC determines that WADC has not demonstrated that greater than *de minimis* degradation of Exceptional Tennessee Waters is necessary to accommodate important economic or social development in the area of the discharge. Further, TDEC determines that WADC has not demonstrated that less degrading alternatives to the proposed discharge are not practicable. Accordingly, TDEC hereby denies the permit.

APPLICANT'S APPEAL RIGHTS

The applicant, WADC, may appeal this determination as follows:

Within 30 days after receiving notice of the final decision to deny the permit, the applicant may seek review of the decision that the degradation is not necessary to accommodate important economic or social development in the area in a contested case before the Board in accordance with T.C.A. § 69-3-105(j). Within five business days after the Department receives an applicant's written request for a contested case hearing before the Board, the Department shall transmit the written request to the Administrative Procedures Division of the Secretary of State so the contested case may be docketed and an administrative law judge may be assigned to the case. In the contested case, the applicant shall have the burden of proof, and the Department's determination shall carry no presumption of correctness before the Board. The federal and state intergovernmental coordination agencies, and third persons who requested notification of the Department's degradation determination will be notified by the Department of the applicant's permit appeal. The intergovernmental coordination agencies and third persons may seek to intervene in the contested case in accordance with T.C.A. § 4-5-310.

Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(d)3.