UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

HARPETH RIVER WATERSHED ASSOCIATION,	)	
	)	Case No. 3:14-cv-1743
Plaintiff,	)	Judge Sharp
v.	)	Magistrate Judge Bryant
CITY OF FRANKLIN, TENNESSEE,	)	Jury Demand
Defendant.	)	

FIRST AMENDED COMPLAINT

WHEREFORE, pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff hereby files this First Amended Complaint.

I. INTRODUCTION

1. This is a civil action brought pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("the Clean Water Act") and its citizen's suit provision. Section 505(a)(1), as amended 33 U.S.C. §1365(a)(1), to prevent the owner and operator of a sewage treatment plant from continuing to pollute the Harpeth River and its tributaries in violation of the Clean Water Act.

2. Plaintiff Harpeth River Watershed Association ("Watershed Association") seeks a declaratory judgment, injunctive relief, civil penalties, and any other relief this Court deems appropriate to correct the recurring, unpermitted discharges of pollutants and permit non-compliance in violation of the Clean Water Act by Defendant City of Franklin, Tennessee ("Defendant"), which owns and operates the Franklin Sewage Treatment Plant ("Sewage Treatment Plant").

3. Since at least 2009, Defendant has been and continues to be responsible for the unauthorized discharge into the Harpeth River and its tributaries of pollutants, including untreated sewage, ammonia, and wastewater with toxic characteristics.

4. Since 2010, Defendant has not complied and continues not to comply with the terms of its current Clean Water Act discharge permit issued by the State of Tennessee, which requires accurate flow measurements to determine pollutant loads, the development and implementation of a plan to reduce nutrients discharged into the Harpeth River, and continuous instream monitoring.

5. Defendant's past and continuing unpermitted discharges and permit violations have a significant impact on water quality, aquatic life, and human health, and have harmed and will continue to harm the Harpeth River and the interests of the Watershed Association.

II. JURISDICTION AND VENUE

6. The Watershed Association brings this enforcement action under the citizen suit provision of the Clean Water Act, 33 U.S.C. § 1365. This Court has subject matter jurisdiction over this action pursuant to 33 U.S.C. § 1365 and 28 U.S.C. §§ 1331, 2201 and 1355, and it has personal jurisdiction over the parties.

7. The Watershed Association has complied with the statutory notice requirements under § 505 of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), and the corresponding regulations at 40 C.F.R. §§ 135.2 and 135.3. On January 13, 2014, Plaintiff provided Defendant with notice of the violations specified in this Complaint and of Plaintiff's intent to file suit after sixty days should those violations continue. This notice was effectuated by sending a letter ("60-day Notice") via email and certified mail to:

The Honorable Dr. Ken Moore
Mayor, City of Franklin, Tennessee
City Hall
109 3rd Avenue South
Franklin, TN 37064

Eric S. Stuckey
City Administrator
City of Franklin, Tennessee
109 3rd Avenue South
Franklin, TN 37064

Mark S. Hilty
Director
Water Management Department
City of Franklin, Tennessee
405 Hillsboro Road
Franklin, TN 37064

Shauna Billingsley
City Attorney
City of Franklin, Tennessee
109 3rd Avenue South
Franklin, TN 37065

True and correct copies of the 60-day notice letter and return receipts are attached and incorporated in their entirety by reference as **EXHIBIT 1**.

8. The Watershed Association also sent a copy of the 60-day Notice to the Administrator of the United States Environmental Protection Agency ("EPA"), the Acting Regional Administrator of EPA Region 4, and the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC").

9. More than sixty days have passed since the letter was served on Defendant, as well as on state and federal agencies.

10. Upon information and belief, neither EPA nor the State of Tennessee has commenced or is diligently prosecuting any court action or administrative proceeding to redress the violations described in the 60-day Notice and alleged in this Complaint.

11. The violations identified in the 60-day Notice that are the subject of this action are continuing at this time and are reasonably likely to continue in the future.

12. Venue is proper in this Court pursuant to 33 U.S.C. § 1365(c)(1) because the source of the violations is located within this judicial district. The Franklin Sewage Treatment Plant is located at 135 Claude Yates Drive in the City of Franklin, Williamson County, Tennessee, which is within this judicial district. The National Pollutant Elimination System

("NPDES") permit at issue in this case, NPDES Permit No. TN0028827 (the "Permit"), authorizes the discharge of wastewater from the Franklin Sewage Treatment Plant's Outfall 001 into the Harpeth River at river mile 85.2, which is within this judicial district. The sewage treatment plant and Outfall 001 at river mile 85.2 are where a majority of the violations identified in the 60-Day Notice and this Complaint have occurred. Violations also occurred at overflow sites (*i.e.*, where sewage was released from any portion of the wastewater collection, transmission, or treatment system other than through permitted outfalls), as more specifically described *infra*, also within this judicial district.

13. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is a municipality in Williamson County, Tennessee, within this judicial district, and, pursuant to 28 U.S.C. § 1391(b)(2), because the events and omissions giving rise to the claims alleged in this complaint—that is, the Clean Water Act violations—occurred in and around the Harpeth River, within this judicial district.

III. PARTIES

14. Plaintiff Harpeth River Watershed Association is a "citizen" as defined in the Clean Water Act, capable of bringing a citizen suit under the citizen suit provisions of the Clean Water Act, 33 U.S.C. § 1365.

15. The Watershed Association is a § 501(c)(3) non-profit public interest organization with its headquarters in Brentwood, Tennessee. The Watershed Association's mission is to restore and preserve the Harpeth River Watershed through education, research, discussion, and advocacy, and to encourage the public, including industry and government, to comply with existing laws and regulations relating to water quality. The Watershed Association and its members are concerned about contamination of the Harpeth River and about threats to wildlife

and wildlife habitat posed by the pollutants in Defendant's discharge. They live, work, fish, swim, boat, view wildlife, engage in nature study and scientific study, and participate in other forms of recreation in and around the Harpeth River. Defendant's discharges into the Harpeth River in the vicinity of these uses, impairs them. Plaintiff is further harmed by the operational deficits at the facility, including overflows in the collection system and inaccurate monitoring. Overflows of untreated sewage into the community where Plaintiff's live, work, and recreate cause harm within the watershed and to Plaintiff's interests. Because part of Plaintiff's mission is dedicated to education, research, and advocacy, Defendant's monitoring and reporting violations—including the inaccurate flow monitor, failure to institute a Nutrient Management Plan, and failure to conduct continuous instream monitoring—also affected Plaintiff's efforts to study the river and take other steps to improve water quality; to research Defendant's compliance status and to report the results of that research to its members, the community, and the regulatory agency; to propose legislation; and to bring litigation to prevent violation of the discharge limitations in the permit and thereby protect the waters affected by the facility's discharge. *See* Declarations attached as collective **EXHIBIT 2.**

16. Defendant City of Franklin is a municipality in Williamson County, Tennessee and is a "person" subject to suit under the Clean Water Act. 33 U.S.C. § 1362(5). *See also* 33 U.S.C. § 1362(4).

17. Defendant owns and operates the Franklin Sewage Treatment Plant and is a Publically Owned Treatment Works ("POTW"). Defendant's facility receives domestic sewage, industrial sewage, and infiltration and/or inflow from within the City of Franklin. This facility and its sewer collection system constitute the source of the violations described below.

18. The term POTW "includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect discharges to and the Discharges from such a treatment works." 40 C.F.R. § 403.3(q). *See also* 40 C.F.R. § 122.2; Tenn. Comp. R. & Regs. 0400-40-11-.01(2)(a).

19. Defendant's Sewage Treatment Plant serves approximately 62,000 people and has a design flow of 12 million gallons per day ("MGD"). Defendant's Sewage Treatment Plant is the largest point source discharge in the approximately 870-square-mile Harpeth River Watershed.

20. Stream flow or discharge is often measured in terms of either cubic feet per second ("cfs") or millions of gallons per day ("MGD"). One cfs is equivalent to 0.646272 MGD; for frame of reference, a discharge of 12 MGD like that from Defendant's facility equates to approximately 18 cfs.

IV. BACKGROUND

A. The Harpeth River

21. The Harpeth River flows in a generally southeast-to-northwest direction for 125 miles through middle Tennessee and is partially designated as a State Scenic River. Tenn. Code Ann. §§ 11-13-101(b); 11-13-104. The Harpeth River is a seasonably variable stream and experiences extremely low flow conditions of less than 1 cubic foot per second during average summer months.

22. The stretch of the Harpeth River that receives Defendant's discharge is identified by TDEC and EPA using the code TN05130204016_1000. It is 6.8 miles long and begins downstream from downtown Franklin, Tennessee. This segment appears on Tennessee's list of waterways that do not meet water quality standards under the Clean Water Act. 33 U.S.C. § 1313; 40 C.F.R. § 130.10 ("the § 303(d) list"). It has appeared on the § 303(d) list since 1998. This segment is currently classified for the following uses: Industrial Water Supply, Fish and Aquatic Life, Recreation, Livestock Watering and Wildlife, and Irrigation. Tenn. Comp. R. & Regs. 0400-40-04-.12 (2014). A portion of the river upstream from Defendant's discharge is also classified for Domestic Water.

23. Segment TN05130204016_1000 of the Harpeth River is listed as impaired for its classified uses because of "low dissolved oxygen," "phosphorus," and "loss of biological integrity due to siltation." The sources of these impairments are identified as "Municipal Point Source" and "Discharges from MS4 [Municipal Separate Storm Sewer System] area." *TDEC Proposed Final Version Year 2014 303(d) List*, p. 38 (Oct. 2014).

B. Water Quality Standards and Total Maximum Daily Load

24. The objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Among other specific duties, states must establish minimum "water quality standards" sufficient to carry out the overall purpose of the Clean Water Act. 33 U.S.C. §1313; 40 C.F.R. § 131.2.

25. Section 301(b)(1)(C) of the Clean Water Act and its implementing regulations require that all permits to discharge into the Nation's waters issued after 1977 include any "more stringent . . . limitation necessary to meet water quality standards . . . ." 33 U.S.C. §1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1).

26. When setting water-quality based permit limits, a state considers whether a given point source discharge "causes, has the reasonable potential to cause, or contributes to" an exceedance of the narrative or numeric criteria for various pollutants set forth in state water quality standards. 40 C.F.R. § 122.44(d)(1)(ii).

27. EPA regulations require permitting authorities to include conditions in NPDES permits that "control all pollutants or pollutant parameters . . . [that] are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." 40 C.F.R. § 122.44(d)(1)(i).

28. Further, the federal "antidegradation policy" requires that standards must be "sufficient to maintain existing beneficial uses of navigable waters, preventing their further degradation." *PUD No. 1 of Jefferson Cnty. v. Washington Dep't of Ecology*, 511 U.S. 700, 705 (1994).[1] Water quantity may be regulated under antidegradation regulations.

29. Water quality standards are established for various use classifications, consistent with the purpose of the Water Quality Control Act, "to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters." Tenn. Code Ann. § 69-3-102. *See also* Tenn. Code Ann. § 69-3-105(a). These standards are then used to set NPDES permit limits and determine whether a stream is impaired, such that a TMDL is needed.

[1] Tennessee's Antidegradation Statement contains a *de minimis* exception inconsistent with the federal antidegradation policy. *See* 40 C.F.R. § 131.12(a).

30. When a waterbody like the Harpeth River is impaired, the state or federal agency responsible for enforcing the Clean Water Act must develop a Total Maximum Daily Load ("TMDL") for each pollutant that prevents the waterbody from attaining water quality standards. A TMDL is a plan that helps identify sources of impairment, "quantifies the amount of a pollutant that can be assimilated in a waterbody," and allocates the allowable wasteload among existing or future pollutant sources so that appropriate control actions and reductions can be made. *See* 40 C.F.R. § 130.2(h) (2002). *See also* 40 C.F.R. § 130.2(i) (2014). "Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." 33 U.S.C. § 1313(d)(1)(C) (2014).

31. A TMDL for "Organic Enrichment/Low Dissolved Oxygen" for the Harpeth River was finalized a decade ago, in 2004. Despite the Clean Water Act's mandate, neither EPA nor TDEC established TMDLs in Tennessee until environmental groups sued to compel them to identify environmentally impaired waters in Tennessee and establish plans designed to bring those waters into compliance with applicable water quality standards. *Tenn. Envtl. Council et al. v. EPA*, Case No. 3:01-CV-00032 [Doc. 1] (M.D. Tenn. Jan. 1, 2001). Developing a Harpeth River TMDL was one of the terms of settlement of that litigation.

32. When the "Organic Enrichment/Low Dissolved Oxygen" TMDL was finalized in 2004 for the Harpeth River, it set annual loads for nitrogen and dissolved oxygen in both the headwaters and the lower Harpeth River. However, it did not establish a wasteload allocation for phosphorus in the lower Harpeth River.

33. No wasteload allocation was established for Total Phosphorus in the 2004 Harpeth River "Organic Enrichment/Low Dissolved Oxygen" TMDL for Defendant.

34. Nutrients like nitrogen and phosphorus are pollutants because, although they "are necessary to support aquatic life . . . excess nutrients [in a waterbody] create conditions leading to eutrophication and hypoxia, in which over-enrichment causes oxygen concentrations to fall below the level necessary to sustain most within and near-bed animal life." *Definition of "Waters of the United States" Under the Clean Water Act*, 79 Fed. Reg. 22,188, 22,224 (proposed Apr. 21, 2014).

35. The Harpeth River has excessive levels of nutrients, which causes problems at the watershed level, but the need to control local nutrient input has regional and national implications because their aggregate impact can be devastating for commercial and recreational fisheries. *See* 79 Fed. Reg. 22,228 (Apr. 21, 2014).

36. Excess nitrogen has a different effect on water quality than excess phosphorus. A pound of phosphorus can stimulate the growth of more than 106 pounds of algae whereas one pound of nitrogen will stimulate the growth of 16 pounds. Algae take sunlight and inorganic nutrients and produce organic matter, which can be measured as Chemical Oxygen Demand ("COD"). One pound of algal biomass equals 1.24 pounds of COD. Therefore, one pound of phosphorus will support the growth of approximately 131 pounds of COD as algae, whereas one pound of nitrogen can support the growth of only approximately 19.8 pounds of COD as algae.

37. Tennessee's water quality standard for nutrients (*e.g.*, nitrogen and phosphorus) mandates: "The waters shall not contain nutrients in concentrations that stimulate aquatic plant and/or algae growth to the extent that aquatic habitat is substantially reduced and/or the biological integrity fails to meet regional goals. Additionally, the quality of downstream waters

shall not be detrimentally affected." Tenn. Comp. R. & Regs. 0400-40-03-.03(k). "Interpretation of this provision may be made using the document *Development of Regionally-based Interpretations of Tennessee's Narrative Nutrient Criterion* and/or other scientifically defensible methods." *Id.*

38. Since 2001, the *Development of Regionally-based Interpretations of Tennessee's Narrative Nutrient Criterion* has recommended numeric interpretations of the narrative water quality standard for nutrients for each of Tennessee's "ecoregions" (*i.e.*, areas with similar ecosystems and types, qualities, and quantities of environmental resources). Defendant's Sewage Treatment Plant is located in an area designated Level IV Ecoregion 71h, in which the recommended numeric interpretation of the narrative criterion for Total Phosphorus is 0.18 milligrams per liter ("mg/l"). Tennessee's water quality standards also allow for "scientifically defensible methods" to interpret the narrative standard for nutrients, and ten years ago, EPA's scientifically defensible method for the appropriate numeric interpretation of Tennessee's narrative criteria for Total Phosphorus in Ecoregion 71h was 0.060 mg/l. *Harpeth TMDL*, p. 20.

39. More recently, Tennessee's draft nutrient reduction strategy establishes a tiered approach and provides that sewage treatment plants with a high impact may only discharge 0.3 mg/l of phosphorus into phosphorus-impaired waters.

40. Tennessee's water quality standard for dissolved oxygen provides, "There shall be sufficient dissolved oxygen present to prevent odors of decomposition and other offensive conditions" and "dissolved oxygen shall not be less than 5.0 mg/l." Tenn. Comp. R. & Regs. 0400-40-03-.03(2)(a), (3)(a).

41. Tennessee's water quality standard for biological integrity provides, "The waters shall not be modified through the addition of pollutants or through physical alteration to the

extent that the diversity and/or productivity of aquatic biota within the receiving waters are substantially decreased or, in the case of wadeable streams, substantially different from conditions in reference streams in the same ecoregion." Tenn. Comp. R. & Regs. 0400-40-03-.03(m).

C. Defendant's Uses of the Harpeth River and its NPDES Permit

42. Upstream from Defendant's sewage treatment plant, Defendant withdraws up to 20% of the Harpeth River's flow to provide a portion of its drinking water supply. Defendant's drinking water plant is not allowed to operate when the instream flow in the Harpeth River is below 10 cfs (approximately 6.5 MGD). While Defendant's currently-operating drinking water plant has a 2 MGD capacity, Defendant has explored plans to expand this plant's capacity to 2.6 or 4 MGD.

43. When Defendant's drinking water plant is operating, Defendant's upstream withdrawal lessens the capacity of the Harpeth River to assimilate Defendant's discharge from its Sewage Treatment Plant downstream.

44. The state of Tennessee has been delegated the authority to implement the permitting programs of the Clean Water Act by the EPA, including the NPDES program, pursuant to 33 U.S.C. § 1342(b). TDEC is the water pollution control agency for purposes of the Act, and has drafted regulations pursuant to the authority implementing the Act's permitting programs within the State of Tennessee. *See* Tenn. Code Ann. § 69-3-105(h)(1).

45. A violation of an NPDES permit issued by TDEC is a violation of the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. §§ 69-3-101, *et seq.*, TDEC rules, including Chapter 0400-40-05, and the Clean Water Act.

46. A citizen's suit, pursuant to 33 U.S.C. § 1365(a)(1), may be brought for violations of the terms and conditions of NPDES permits. 33 U.S.C. § 1365(f).

47. Under authority of the Tennessee Water Quality Control Act and the authority delegated to the State of Tennessee from EPA, TDEC has issued and renewed a National Pollutant Discharge Elimination System ("NPDES") permit to Defendant for its Sewage Treatment Plant, NPDES permit number TN0028827 ("the Permit").

48. The Permit authorizes the discharge of wastewater from Outfall 001 into the Harpeth River at approximately river mile 85.2. *State of Tennessee NPDES Permit No. TN0028827* (Issued Sept. 30, 2010, Modified Feb. 2, 2011) (hereafter "*Permit*") (a true and accurate copy of this permit is attached as **EXHIBIT 3**).

49. The current version of the Permit became effective on November 1, 2010, and expired on November 30, 2011. It has been administratively extended by TDEC pending the issuance of a new permit for which Defendant has applied.

50. The Permit was issued pursuant to the permitting requirements of the Clean Water Act, 33 U.S.C. § 1342.

51. Effluent limitations in the Permit that relate to nutrient enrichment and oxygen demand include $CBOD_5$ (five day carbonaceous biochemical oxygen demand), phosphorus, nitrogen, and ammonia.

52. The Permit provides that Defendant can discharge up to 5.0 mg/l of Total Phosphorus (monthly average concentration) in the summer (May through October). There is no limit on how much phosphorus Defendant may discharge during the winter (November through April). Defendant has no daily limits on its phosphorus discharge.

53. In 2009, TDEC issued a draft permit that reduced Defendant's Total Phosphorus effluent limit to 3.0 mg/l (monthly average concentration). (EXHIBIT 3, p. 55)

54. Defendant "propose[d] that the limit should be raised to 5.0 mg/l" and "would propose that one of the targeted goals to be included in the [plant-specific] Nutrient Management Plan and the [Defendant's city-specific] IWMP ["Integrated Water Management Plan"] is to achieve a total phosphorus concentration limit of not more than 3 mg/l." (EXHIBIT 3, p. 55).

55. In the final permit, TDEC raised the limit to 5.0 mg/l but stated that "the final permit also includes the permittee's proposed targeting goal of 3.0 mg/l total phosphorus (summer months) to be addressed a part of its Nutrient Management Plan/IWMP." (EXHIBIT 3, p. 56).

56. In 2013, TDEC again proposed limiting Defendant to discharging no more than 3.0 mg/l of phosphorus (monthly average concentration).

57. In November 2013, Defendant submitted comments to TDEC, including a request "that the requirement for 3.0 mg/l total phosphorus be dropped from the [proposed] permit" because, in part, "there is no phosphorus wasteload allocation established in the TMDL."

58. Defendant requested that the permit's Nutrient Management Plan requirement, which requires Defendant to maximize nutrient removal of its discharge, be "dropped completely from the [new version of the NPDES] permit."

59. As of December 2014, TDEC has not issued a new NPDES permit to Defendant to operate the Franklin STP and its facilities.

D. The Notice and Defendant's Post-Notice Activities

60. The NPDES permitting program relies on self-reporting by permittees to determine compliance. As such, Defendant is required to record and submit Discharge

Monitoring Reports ("DMRs") and Monthly Operating Reports ("MORs") to show it is in compliance with the permit and, accordingly, state and federal laws. *Permit* §§ 1.3.1, 1.3.4, 2.3.1 (2010).

61. Prior to filing this lawsuit, the Watershed Association notified Defendant that Defendant's pollutant discharges and permit non-compliance violate the Clean Water Act and interfere with the Watershed Association's rights.

62. One of the primary purposes of providing defendants with notice of intent to sue is to provide an opportunity to come into compliance without the need for litigation.

63. In January 2014, the Watershed Association summarized the violations alleged in the Notice as follows: "First, the City has failed to ensure that all discharges 'shall be limited and monitored by the permittee as specified' in Section 1.1, which contains a table detailing effluent limitations by pollutant and monitoring parameter. Second, the City has submitted incomplete or inconsistent reports. Third, the City has sometimes failed to report its noncompliance on the [Discharge Monitoring Reports] 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.'" (Notice, p. 4).

64. In March 2014, Defendant resubmitted the following Discharge Monitoring Reports ("DMRs") and Monthly Operating Reports ("MORs") to TDEC: May 2009 (DMR & Monthly Bypass & Overflow); September 2009 (DMR & MOR); November 2009 (MOR); January – December 2009 (MORs); January 2010 (DMR & Monthly Bypass & Overflow); February 2010 (DMR & Monthly Bypass & Overflow); September 2010 (DMR & MOR); November 2010 (DMR & MOR); December 2010 (DMR & MOR); 2009 (MORs for 2010); January 2011 (DMR & MOR); February 2011 (DMR & MOR); March 2011 (DMR & MOR);

April 2011 (DMR & MOR); May 2011 (DMR & MOR); June 2011 (DMR & MOR); July 2011 (DMR & MOR); August 2011 (DMR & MOR); September 2011 (DMR & MOR); October 2011 (DMR & MOR); November 2011 (DMR & MOR); December 2011 (DMR & MOR); January 2012 (DMR & MOR); February 2012 (DMR & MOR); March 2012 (DMR & MOR); April 2012 (DMR & MOR); May 2012 (DMR & MOR); June 2012 (DMR & MOR); July 2012 (DMR & MOR); August 2012 (DMR & MOR); September 2012 (DMR & MOR); October 2012 (DMR & MOR); November 2012 (DMR & MOR); December 2012 (DMR, MOR & Analytical Report for Samples); January 2013 (DMR & MOR); February 2013 (DMR & MOR); March 2013 (DMR & MOR); April 2013 (DMR & MOR); May 2013 (DMR & MOR); June 2013 (DMR, MOR & Analytical Report for Samples); July 2013 (DMR & MOR); August 2013 (DMR & MOR); September 2013 (DMR & MOR); October 2013 (DMR & MOR); November 2013 (DMR & MOR); December 2013 (DMR & MOR).

65. DMRs and MORs are reports about Defendant's operations, including the amounts of pollutants it discharges into the Harpeth River. These reports must be submitted to TDEC each month, signed and certified under penalty of perjury. In total, Defendant re-submitted approximately 339 pages of records to TDEC as a result of the Notice. The new DMRs and MORs show that Defendant amended some entries and added others, including using what it called the "rule of rounding" to round down certain entries from levels at which it was in violation to levels at which it was not.

66. Defendant informed Plaintiff and TDEC that, following the Notice, it developed and instituted a standard operating procedure to perform quality control checks on the DMRs and MORs prior to submittal to assure that information is correct and mistakes are not unwittingly reported.

67. Defendant has since submitted DMRs and MORs with reporting errors.

68. In June 2014 and July 2014, Defendant reported the same daily data for rainfall, influent flow, effluent flow, and reuse flow for the 1st through the 30th day of both months. *See* June 2014 MOR; July 2014 (true and correct copies incorporated and attached as **EXHIBIT 4**). The July 2014 reports had different averages because of the additional data point for the 31st day of that month.

69. Inaccurate flow measurements affected Defendant's ability to accurately calculate and report mass loading rates. *See Permit* (Rationale) R7.1 (Page R-5 of R-37) ("Flow is monitored and used to calculate contaminant mass loading rates.").

70. After the Notice, the Watershed Association requested copies of any new or amended standard operating procedures for the STP and its related operations, including the overflow reporting protocols which Defendant represented that it had instituted.

71. Defendant responded, "Responsive documents are provided," and provided a 3-page document labeled "Monthly DMR/MOR Submittal Procedures." *See April 14, 2014 Letter re: Tennessee Open Records Act Inspection and Records Request*, p. 4 (a true and correct copy of which is incorporated and attached as **EXHIBIT 5**).

CLAIMS FOR RELIEF: VIOLATIONS OF DEFENDANT'S NPDES PERMIT, THE CLEAN WATER ACT, TENNESSEE WATER QUALITY CONTROL ACT AND IMPLEMENTING REGULATIONS

ALLEGATIONS COMMON TO ALL CLAIMS

72. Paragraphs 1-71 are hereby incorporated by reference as if rewritten in their entirety.

73. As owner and operator of the Franklin Sewage Treatment Plant, Defendant is responsible for the violations of the Clean Water Act alleged herein.

74. As discussed more fully below, Defendant failed to correct all of the violations cited by the Watershed Association in the Notice. As a result, Plaintiff and its members continue to suffer irreparable injury as a result of the discharges of Defendant's pollutants into the Harpeth River and Defendant's permit non-compliance.

75. At all times relevant hereto, Defendant was and is responsible for complying with all applicable requirements of the Rules of TDEC, the Tennessee Water Quality Control Act, the Clean Water Act, and its NPDES Permit concerning the discharge of pollutants into the Harpeth River and its tributaries. 33 U.S.C. § 1317(a); *Permit*, § 3.10 (2010).

76. The Harpeth River and its tributaries are waters of the United States or have a significant nexus to waters of the United States and thus are navigable waters as defined by the Clean Water Act and controlling authority. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

77. To accomplish the objective of the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" Congress set the national goal that "the discharge of pollutants into the navigable waters be eliminated . . . ." 33 U.S.C. § 1251(a).

78. One way in which this goal was to be accomplished required states to establish water quality standards. The purpose of a water quality standard, as defined in the Clean Water Act, is to ensure that, wherever attainable, water quality will be suitable for public water supplies, propagation of fish and wildlife, and recreational purposes, among other uses. 33 U.S.C. §§ 1313(c)(2)(A), 1251(a)(2). Tennessee water quality standards provide that, "Waters have many uses which in the public interest are reasonable and necessary. Such uses include: sources of water supply for domestic and industrial purposes; propagation and maintenance of fish and other aquatic life; recreation in and on the waters including the safe consumption of fish

and shellfish; livestock watering and irrigation; navigation; generation of power; propagation and maintenance of wildlife; and the enjoyment of scenic and aesthetic qualities of waters." Tenn. Comp. R. & Regs. 0400-40-03.02(2) (2014).

79. Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source to waters of the United States, except for discharges in compliance with an NPDES permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

80. The Clean Water Act gives regulators the authority to require permit holders to undertake tasks to further the Act's objectives, "including but not limited to . . . developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter . . . ." 33 U.S.C. § 1318. *See also* 40 C.F.R §§ 123.25, 122.41, 122.44.

81. Because an NPDES permit provides a limited exception to the prohibition on discharging pollutants, a permit holder must strictly comply with the terms of its permit.

82. The issuance of an NPDES permit "does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations." *Permit* § 2.1.6 (2010).

83. Each violation of an NPDES permit—and each "discharge of any pollutant" that is not authorized by a 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"); 33 U.S.C. §§ 1311(a), 1342(a), 1365(f). *See also* 40 C.F.R. § 122.41(a). *Accord* Tenn. Comp. R. & Regs. 1200-04-05-.07(2)(a).

84. The term "discharge of any pollutant" means "any addition of any pollutant to navigable waters from any point source . . . ." 33 U.S.C. § 1362(12). The term "discharge" when used without qualification "includes a discharge of a pollutant, and a discharge of pollutants." 33 U.S.C. § 1362(16). The term "pollutant" includes sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). The term "point source" includes "any discernible, confined and discrete conveyance" from which pollutants may be discharged, including "any pipe, ditch, channel, tunnel, conduit, well [and] discrete fissure." *Id.* § 1362(14). The term "effluent limitation" means "any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." 33 U.S.C. § 1362(11).

85. "Nothing in this part [State Program Requirements] precludes a State from adopting or enforcing requirements which are more stringent or more extensive than those required under this part." 40 C.F.R. § 123.1(i)(1).

86. Defendant's NPDES permit contains water quality-based effluent limitations, monitoring requirements, and reporting requirements.

87. Defendant did not appeal any of the terms of the Permit.

88. Water quality-based effluent limitations are incorporated into NPDES permits if technology-based limitations alone are not sufficient to ensure compliance with applicable water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1312(a), 1313(e)(3)(A); 40 C.F.R. § 122.44(d). Each NPDES permit must include requirements necessary to achieve water quality standards

under the Clean Water Act, including state narrative criteria for water quality. 40 C.F.R. § 122.44(d)(1).

89. Defendant's NPDES permit provides, "The wastewater discharge shall not contain pollutants in quantities that will be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream." *Permit* § 1.1 (2010). It also informs that, "notwithstanding this Permit, it shall be the responsibility of the permittee to conduct its wastewater treatment and/or discharge activities in a manner such that public or private nuisances of health hazards will not be created." *Permit* § 2.4.1 (2010).

90. Defendant's NPDES permit incorporates Tennessee's "Antidegradation Statement" into Defendant's obligations for permit compliance. *Permit* § 3.10 (2010). *See* 40 C.F.R. § 131.12 (2014). *See* Tenn. Comp. R. & Regs. 0400-40-03-.06 (2014). The antidegradation statement is designed to maintain and protect water quality.

91. Defendant's NPDES permit provides, "The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit." *Permit* § 2.1.4 (2010).

92. Defendant's NPDES permit provides, "Any 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." *Permit* § 2.3.1 (2010).

93. Defendant's NPDES permit provides, "The filing of a request by the permittee for a modification, revocation, reissuance, termination, or notification of planned changes or anticipated noncompliance does not halt any permit condition." *Permit* § 2.2.2(d) (2010).

94. "In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment," the permittee must notify TDEC within twenty-four hours of becoming aware of the circumstances. *Permit* § 2.3.2(a) (2010). *See also id.* § 2.3.6 (2010) (report unanticipated bypass within 24-hours).

95. The NPDES permitting program relies on self-reporting by permittees to determine compliance. As such, Defendant is required to record and submit Discharge Monitoring Reports ("DMRs") and Monthly Operating Reports ("MORs") to show it is in compliance with the permit. *Permit* §§ 1.3.1, 1.3.4 (2010).

96. Defendant's NPDES permit further provides that Defendant's DMRs and MORs must be signed and certified. *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).

97. Defendant's NPDES permit further provides that Defendant must report any permit non-compliance on its DMRs. *Permit* § 2.3.2 (2010).

98. The Clean Water Act allows enforcement of a state's water quality provisions. *See* 33 U.S.C. §§ 1365(a)(1), 1365(f), 1342(b).

99. Section 505 of the Clean Water Act authorizes any citizen to commence a civil action "against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation . . . ." 33 U.S.C. § 1365(a)(1).

100. Such enforcement action under Clean Water Act § 505, 33 U.S.C. § 1365, includes an action seeking remedies for violation of "a permit or condition thereof issued under section 1342 of this title," that is, under section 402 of the Clean Water Act. 33 U.S.C. § 1365(f).

101. Section 505(a) of the Clean Water Act authorizes an action for injunctive relief. 33 U.S.C. § 1365(a).

102. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to $37,500 per day per violation for all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505(a) of the Clean Water Act. 33 U.S.C. § 1319(d) (Availability of Civil Monetary Penalties); 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

103. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing or substantially prevailing parties to recover litigation costs, including attorney fees and expert witness fees.

104. Based on Defendant's own public reports to TDEC, Defendant has a long-standing and continuing history of unauthorized discharges from the Sewage Treatment Plant and its sewage collection system into the Harpeth River and other waters of the United States, such as unpermitted discharge of untreated sewage, discharges of excess pollutants, wet and dry weather overflows, and bypasses. Based on Defendant's own public reports to TDEC, Defendant has a long-standing and continuing history of non-compliance with its NPDES permit, including failure to develop or implement a nutrient management plan, failure to perform continuous instream monitoring, failure to operate its plant in accordance with its permit, and failure to accurately measure its influent. It is therefore reasonably likely that Defendant's illegal

discharges and permit non-compliance will continue to occur in the absence of a remedy provided by this Court.

105. Defendant's violations are exacerbated by Defendant's withdrawal of water upstream from its discharge outfall, lessening the Harpeth River's assimilative capacity.

106. Continuing commission of the acts and omissions alleged herein irreparably harms the identified waters, as well as Harpeth River Watershed Association and its members, for which they have no adequate remedy at law

107. These identified types of continued violations have a significant impact on water quality, aquatic life, and human health.

COUNT 1: DEFENDANT'S SEWAGE OVERFLOWS AND TREATMENT PLANT BYPASSES VIOLATE TERMS OF DEFENDANT'S NPDES PERMIT AND THE CLEAN WATER ACT

108. Paragraphs 1-107 are hereby incorporated by reference as if rewritten in their entirety.

109. As set forth in the Notice and detailed below, from at least January 2009 and continuing, Defendant discharged into the Harpeth River and/or its tributaries, untreated sewage from point sources within the collection system that were not and are not authorized by its Permit or the Clean Water Act. 33 U.S.C. §§ 1311(a), 1342, as well as Tennessee statutes and rules implementing the Clean Water Act, due to prohibited overflows in violation of the NPDES permit.

110. As set forth in the Notice and detailed below, from at least January 2009 and continuing, Defendant failed to comply with its permit and the statutes and rules implementing the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, such as Tenn. Code Ann. § 69-3-108(g) (2014) and Tenn. Comp. R. & Regs. 0400-40-05-.07, which are incorporated by reference as a standard

permit condition in Part 2.1.4 of the NPDES permit issued by TDEC to Defendant, by failing to properly operate and maintain its treatment works to achieve compliance with the conditions of the NPDES permits, as evidenced, in part, by the discharges and spills referenced in the following charts in this Count.

111. Defendant's wastewater collection and transmission system is supposed to convey domestic, commercial, and industrial wastewater, plus limited amounts of infiltrated ground water and stormwater, to its sewage plant for treatment.

112. Defendant's NPDES permit provides that "any release of sewage from any portion of the collection, transmission, or treatment system other than through permitted outfalls" is an "overflow." Overflows are prohibited. *Permit*, § 2.3.3(a), (b) (2010).

113. The Permit provides that Defendant "shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit." *Permit*, § 2.1.4 (2010).

114. Defendant's permit explains, "For the purposes of demonstrating proper operation of the collection, transmission, and treatment system, the permit defines overflow as any release of sewage other than through permitted outfalls. This definition includes, but is not necessarily limited to, sanitary sewer overflows and dry weather overflows. For example, a collection system blockage or hydraulic overload that causes backup and release of sewage into a building during a wet weather event may not clearly fit either the definition of a sanitary sewer overflow or a dry weather overflow. However, any unpermitted release potentially warrants permittee mitigation of human health and/or water quality impacts via direct or indirect contact and demonstrates a

hydraulic problem in the system that needs permittee consideration as part of proper operation and maintenance of the system." *Permit (Rationale), R7.13* (p. R-12 of R-37).

115. The prior version of Defendant's permit was effective beginning in June 2004, expired in November 2006, and was administratively extended for four years until November 2010. *Franklin NPDES Permit No. TN0028827* (2004) (hereafter "*2004 Permit*"). It defined "overflow" as "the discharge of wastes from any portion of the collection, transmission, or treatment system other than through the permitted outfalls."*2004 Permit* II.C.3(a).

116. Microbial pathogens, toxics, and other pollutants present in overflows can cause or contribute to water quality impairment, contamination of drinking water supplies, and other environmental and human health problems.

117. Defendant's permit also prohibits bypasses, except under limited and specified circumstances. A "bypass" is the intentional diversion of waste streams from any portion of a treatment facility. *Permit*, § 2.3.6(a), (b) (2010).

118. Defendant's permit provides, "A summary report of known or suspected instances of overflows in the collection system or bypass of wastewater treatment facilities shall accompany the Discharge Monitoring Report." *Permit* § 1.3.5.1 (2010).

119. Defendant's permit provides, "The [overflow] report must contain the date and duration of the instances of overflow and/or bypassing and the estimated quantity of wastewater released and/or bypassed." *Permit* § 1.3.5.1 (2010).

120. Defendant's records submitted under oath to TDEC and EPA show that Defendant violated its NPDES permit's prohibition on overflows and reporting requirements for overflows, which include the duty to properly operate and maintain the collection, transmission, and treatment system.

121. After Plaintiff sent Defendant the Notice, Defendant represented that, of the 39 relevant overflows cited in the Notice, "20 overflows did not enter receiving waters (*e.g.*, were contained to the ground surface) . . . ."

122. Plaintiff subsequently requested a list of the overflows that Defendant asserted did not enter receiving waters. *See* EXHIBIT 5**.** In response to Plaintiff's public record request, Defendant provided a one-page document with 14 addresses under the heading "Overflows That Did Not Reach Receiving Waters," a true and correct copy of which is attached as **EXHIBIT 6**.

123. Summary maps based on Defendant's records that show the location of overflows included on Defendant's list of "Overflows That Did Not Reach Receiving Waters" are attached as collective **EXHIBIT 7.**

124. On numerous occasions since January 2009, Defendant has allowed spills of untreated sewage to occur from various points within its system that may not have reached waters of the United States.

125. Defendant notified TDEC of the following 7 overflows within the 5-year period preceding Plaintiff's Notice. These overflows were prohibited under Defendant's 2004 Permit:

	Date of Violation(s)	**Permit Parameter Violated**	**Location**	**Volume**[2]
a	2009-02-26	Dry Weather Overflow	Ivy Glen Pump Station	"unknown"
b	2009-03-20	Dry Weather Overflow	Ladd Park Subdivision	"unknown"
c	2009-05-13	Dry Weather Overflow	3453 Carothers Parkway	"unknown"
d	2010-02-28	Dry Weather Overflow	624 Westminster Drive	"unknown"
e	2010-03-04	Weather Overflow	Carlisle Ln. and Old Charlotte Pike	unknown
f	2010-06-04	Dry Weather Overflow	Lewisburg Pike & Sullivan Farms Subdivision / Donelson Creek	"unknown"

[2] When quoted, the description of overflow volume comes from Defendant's reports.

	Date of Violation(s)	Permit Parameter Violated	Location	Volume[2]
g	2010-09-08	Overflow	1343 Carnton Lane	"unknown"

126. True and correct copies of the records Defendant submitted to TDEC regarding the above-listed overflows, including re-submitted reports, are attached and incorporated in their entirety by reference as **EXHIBIT 8.**

127. The overflows in paragraph 125, above, were (a) included in Plaintiff's Notice and (b) *not* included on the list of overflows Defendant contends did not reach receiving waters.

128. Defendant notified TDEC of the following overflows pursuant to its currently-active 2010 permit:

	Date of Violation(s)	Permit Parameter Violated	Location	Volume[3]
a	2010-12-18	Dry Weather Overflow	720 West Main Street	unknown
b	2011-02-15	Dry Weather Overflow	720 West Main Street	"n/a"
c	2011-04-25 Or 04-26]	Dry Weather Overflow	4040 Murfreesboro Road / Watson Branch	"n/a"
d	2011-06-14 [or 06-15	Dry Weather Overflow	713 Murfreesboro Road / North Ewingville Creek	"unknown"
e	2011-10-07 [or 10-10]	Dry Weather Overflow	112 Tamara Circle	"unknown"
f	2012-01-20	Dry Weather Overflow	1014 Columbia Avenue / Sharp Branch	"unknown"
g	2012-08-07	Dry Weather Overflow	1137 West Main Street / Quarry Branch	"unknown"
h	2013-01-14	Wet Weather Overflow	325 4th Avenue North	"N/A"
i	2013-04-28	Wet Weather Overflow	Alicia Drive / Quarry Branch	"N/A"
j	2013-04-28	Wet Weather Overflow	4th Avenue North / Sharp Branch	"N/A"

[3] When quoted, the description of overflow volume comes from Defendant's reports; when not quoted, the description indicates an absence of information in Defendant's reports.

k	2013-04-28	Wet Weather Overflow	712 West Main Street / Sharp Branch	"N/A"
l	2013-04-28	Wet Weather Overflow	Mount Hope Street / Sharp Branch	"N/A"
m	2013-04-28	Wet Weather Overflow	5th Avenue South / Sharp Branch	"N/A"
n	2013-04-29	Wet Weather Overflow	Franklin Road / Harpeth River	"N/A"
o	2013-05-02	Wet Weather Overflow	410 Luna Court / Watson Branch	"N/A"
p	2013-05-06	Dry Weather Overflow	407 Church Street / Sharp Branch	"N/A"
q	2013-06-13	Dry Weather Overflow	515 Cairnview Drive	Est. 200 gallons
r	2013-08-26	Dry Weather Overflow	McEwen Drive & Resource Parkway / South Prong Spencer Creek	Est. 1,000 gallons
s	2013-10-19	Dry Weather Overflow	2040 Fieldstone Parkway / Stramble Creek	Est. 200 gallons
t	2013-10-28	Dry Weather Overflow	821 Murfreesboro Road (HWY 96) / North Ewingville Creek	"N/A"

129. True and correct copies of the records Defendant submitted to TDEC regarding the above-listed overflows, including re-submitted reports, are attached and incorporated in their entirety by reference as **EXHIBIT 9**.

130. The overflows in paragraph 128, above, were (a) included in Plaintiff's Notice and (b) *not* included on Defendant's list of overflows that it contends did not reach receiving waters

131. Defendant notified TDEC of the following overflows pursuant to its currently-active permit:

	Date of Violation(s)	**Permit Parameter Violated**	**Location**	**Volume**
a	2011-02-21	Dry Weather Overflow	198 Edmond Court / Harpeth River	"n/a"

b	2011-12-14	Dry Weather Overflow	401 Sugartree Lane / Watson Branch	"unknown"
c	2011-12-18	Dry Weather Overflow	528 Hopewood Court / Robinson Lake	"unknown"
d	2011-12-29	Dry Weather Overflow	700 West Main Street / Sharp Branch	"unknown"
e	2012-02-13	Dry Weather Overflow	2000 Mallory Lane / Spencer Creek	"unknown"
f	2012-04-24	Dry Weather Overflow	707 Hillsboro Road / Harpeth River	"unknown"
g	2012-05-07	Dry Weather Overflow	Jordan Road / North Ewingville Creek	"unknown"
h	2012-08-08	Dry Weather Overflow	363 Stonegate Drive / Donelson Creek	"N/A"
i	2012-11-17	Dry Weather Overflow	510 New Highway 96 D-1	"unknown"
j	2012-12-03	Dry Weather Overflow	605 Chickasaw Place / Sharp Branch	"unknown"
k	2013-01-08	Dry Weather Overflow	910 Brentwood Pointe / North Prong Spencer Creek	"unknown"
l	2013-03-03	Dry Weather Overflow	1247 West Main Street / West Main Branch	"unknown"
m	2013-07-23	Dry Weather Overflow	624 Westminster Drive / Watson Branch	"N/A"
n	2013-11-08	Dry Weather Overflow	South Royal Oaks Blvd. & Creekstone Blvd. / Watson Branch	"N/A"

132. True and correct copies of the records Defendant submitted to TDEC regarding the above-listed overflows, including re-submitted reports, are attached and incorporated in their entirety by reference as **EXHIBIT 10.**

133. The overflows in paragraph 131, above, were (a) included in Plaintiff's Notice and (b) included on the list of overflows which Defendant contends did not reach receiving waters. These fourteen overflows are represented in summary maps. *See* EXHIBIT 7.

134. In October 2012, EPA sent Defendant an "Information Request Letter" pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, requesting Defendant provide certain information about the Franklin STP and its associated sanitary sewer collection system.

Defendant provided information in a "§ 308 Response" and "Attachment A-2" to the response. Thereafter, EPA conducted a Compliance Evaluation Inspection in June 2013. In December 2013, EPA sent Defendant a report detailing the results of EPA's Compliance Evaluation Inspection of Defendant's wastewater collection and transmission system ("§ 308 Report").

135. The EPA report was not made a part of TDEC's public file until January 2014.

136. EPA's December 2013 letter to Defendant is the source of information about some of the unreported overflow events that were not reported to TDEC or EPA. EPA's information appears to have been limited to overflow events occurring before August 2013.

137. The latest information available to Plaintiff about overflows on "private property" that were not reported to TDEC is limited to overflows before December 2012, because Defendant provided this information to EPA in its December 2012 response to EPA's October 2012 § 308 letter. No similar information is available for 2013 and 2014, as of the filing of this Amended Complaint.

138. The following overflows occurring during the five-year period preceding the Notice were not included in the Notice:

	Date of Violation(s)	Location	Volume[4]	Notes
a	2009-01-22	301 Avondale Drive	unknown	§ 308 Report (p. 6): Unreported overflow event in customer call database
b	2009-05-07	209 Walnut Drive	unknown	§ 308 Report (p. 6): Unreported overflow event in customer call database
c	2009-09-09	317 Main Street	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – grease buildup"
d	2009-12-28	207 Davidson Drive	unknown	EPA § 308 Report (p. 6): Unreported overflow event in customer call database

[4] When quoted, the description of overflow volume comes from Defendant's reports; when not quoted, the description indicates an absence of information in Defendant's reports.

	Date of Violation(s)	Location	Volume[4]	Notes
e	2010-01-16	707 Hillsboro Road	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – run sewer main (grease, grit)"
f	2010-01-17 [or 01-19]	1302 Chickering Drive/Sharp Branch	"N/A"	Noted on Re-submitted January 2010 DMR; EPA § 308 Report (p. 6): Unreported overflow event in customer call database
g	2010-02-05	130 9th Avenue South / Sharp Branch	"N/A"	Noted on Re-submitted February 2010 DMR EPA § 308 Report (p. 6): Unreported overflow event in customer call database
h	2010-02-25	443 Cool Springs Blvd Suite 105	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – grease buildup"
i	2010-04-06	314 Bel Aire Drive	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – blockage in sewer main"
j	2010-04-28	209 Cherry Drive	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – blockage of grease and rags"
k	2010-05-16	717 Riverview Drive	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – main line blocked due to roots"
l	2010-07-16	300 Saddlebridge Lane	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – blockage between home and main sewer line"
m	2010-11-16	320 Main Street	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – issue w/ City sewer lines"
n	2010-12-15	313 11th Avenue South	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – blockage at "T" where line meets City line"

	Date of Violation(s)	Location	Volume[4]	Notes
o	2011-03-30	332 Natchez Street	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – flushing lines"
p	2011-04-12	151 Acton Street	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – cleaning sewer main, raw sewage backflowed"
q	2011-04-12	1558 or 155B Acton Street	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – cleaning sewer main, raw sewage backflowed"
r	2011-06-23	203 Avondale Drive	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – cleaning sewer main, raw sewage backflowed"
s	2011-12-14	1010 Murfreesboro	unknown	EPA § 308 Report (p. 6): Unreported overflow event in customer call database
t	2012-01-03	720 W. Main Street	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – west main street"
u	2012-03-13	112 Seaboard Lane	unknown	EPA § 308 Report (p. 6): Unreported overflow event in customer call database
v	2012-06-29	Unknown	unknown	EPA § 308 Report (p. 6): Unreported overflow event in customer call database
w	2012-07-25	502 N. Petway	unknown	§ 308 Response, Attachment A-2(b) ["SSOs on private property"] "sewer back up – grease buildup"

139. True and correct copies of the records Defendant submitted to TDEC regarding the above-listed overflows, including re-submitted reports, are attached and incorporated in their entirety by reference as **EXHIBIT 11.**

140. The overflows in paragraph 138, above, were either only included on re-submitted DMRs and MORs in March 2014 or included as an attachment to EPA's December 2013 Report that was not made a part of the public record until January 2014.

141. As evidence of the continuing nature of Defendant's violations, Defendant has notified TDEC of the following overflows since Plaintiff sent Defendant the Notice on January 13, 2014:

	Date of Violation(s)	Permit Parameter Violated	Location	Volume
a	2013-12-12	Dry Weather Overflow	707 Hillsboro Road	Est. 700 gallons
b	2013-12-18	Dry Weather Overflow	508 Tywater Crossing Boulevard	Est. 40 gallons
c	2014-01-10	Dry Weather Overflow	1770 Galleria Boulevard	Est. 1,000 gallons
d	2014-01-13	Wet Weather Overflow	121 Holiday Court	Est. 100 gallons
e	2014-02-01	Dry Weather Overflow	302 Stable Rd.	Est. 200 gallons
f	2014-02-06	Wet Weather Overflow	135 Claude Yates Drive	Est. 300,000 gallons
g	2014-02-06	Wet Bypass Overflow	135 Claude Yates Drive	Est. 348,000 gallons
h	2014-02-25	Dry Weather Overflow	2000 Shadow Green Dr.	Est. 875 gallons
i	2014-04-04	Overflow	1010 Murfreesboro Road	Est. 325 gallons
j	2014-04-05	Overflow	McKay's Mill 1 Pump Station, 4121 Clovercroft Rd.	Est. 375 gallons
k	2014-04-16	Overflow	526 Franklin Road	Est. 3,100 gallons
l	2014-04-23	Overflow	105 Ornesby Place	Est. 240 gallons
m	2014-04-24	Overflow [disputed]	424 Old Peytonsville Road	Est. 2,500 gallons
n	2014-04-29	Wet Weather Overflow	109 South Margin Street	Est. 65,250 gallons
o	2014-05-06	Overflow	936 Riverview Drive/Harpeth River	Est. 390 gallons
p	2014-05-25	Overflow	102 Stable Road / Lynnwood Branch	Est. 250 gallons
q	2014-07-02	Overflow	108 East Fowlkes Street	Est. 30 gallons

	Date of Violation(s)	Permit Parameter Violated	Location	Volume
r	2014-07-03	Overflow	4108 Murfreesboro Road	Est. 485 gallons
s	2014-07-26	Overflow	1800 Galleria Blvd.	Est. 500 gallons
t	2014-08-26	Overflow	Saw Mill Creek	Est. 860 gallons
u	2014-09-29	Overflow	1166 West Main Street	Est. 2 gallons
v	2014-10-23	Overflow	209 Century Ct.	Est. 20 gallons

142. True and correct copies of the records Defendant submitted to TDEC regarding the above-listed overflows, including re-submitted reports, are attached and incorporated in their entirety by reference as **EXHIBIT 12.**

143. Each overflow and bypass listed above constitutes a violation of Defendant's NPDES permit and the Clean Water Act.

144. Each failure to report the volume of overflows listed above is a violation of the NPDES permit and the Clean Water Act. In addition, the failure to report the volume of such overflows prevents and/or limits the ability to know whether the overflows directly or indirectly reached jurisdictional waters.

145. It is not known whether reports of these overflows were made within twenty-four hours, but letters from Defendant to TDEC are sometimes dated more than twenty-four hours after the overflow and often marked as received more than twenty-four hours after the overflow. *Permit* § 2.3.2(a) (2010). Failure to report within twenty-four hours in a violation of the NPDES permit

146. The primary trigger for Defendant's awareness of overflow events in its sanitary sewer collection system is reports from members of the community to Defendant.

147. According to EPA, Defendant has failed to report all overflows to TDEC or EPA.

148. The seasonally-variable and low-flow nature of the Harpeth River is a factor when determining the effect of the overflows and harm caused thereby.

149. In December 2013, EPA sent Defendant a "Compliance Evaluation Inspection Report" detailing the results of its evaluation of Defendant's wastewater collection and transmission system. EPA's report stated, in part: "[Defendant's] neglect in reporting any volume estimates for SSOs [sanitary sewer overflows] and building back-ups is consistent with a lack of proper guidance. An examination of [Defendant's] SORP [Sewer Overflow Response Plan] shows that this document is severely inadequate to guide proper recording and reporting procedures."

150. In the same report, EPA recommended Defendant undertake improvements, including: Mapping; Grease Control, Capacity Assurance; Preventive Maintenance and Inspection Programs; Gravity Line Preventive Maintenance Program; Continuing Sewer System Assessment Program; Infrastructure Rehabilitation Program; Pump Station Operations and Preventive Maintenance Program; and a comprehensive Sewer Overflow Response Plan ("SORP").

151. Due to Defendant's failure to accurately report and monitor overflows within its system, it is not presently possible to determine with complete accuracy whether it violated the overflow and bypass prohibitions on dates in addition to those listed in the table.

152. Each and every one of the foregoing unpermitted discharges, overflows, and bypasses constitutes a separate and distinct violation of the permit and Section 301(a), 33 U.S.C. §1311(a), and Section 402, 33 U.S.C. § 1342, of the Clean Water Act, and each and every failure to report such unpermitted discharges, overflows, and bypasses in compliance with Defendant's permit violated Defendant's permit and the Clean Water Act..

153. Each day of failure by Defendant to comply with the operation and maintenance provisions of the NPDES permits issued to it as set forth in the charts above constitute a separate violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

154. Unless restrained by an order of the Court, Defendant will continue to violate Sections 301 and 402 of the Act, 33 U.S.C. § 1311 and 1342, by failing to comply with Part 2.1.4 of its NPDES Permit.

155. As of the filing of this Complaint, Defendant's efforts have been inadequate to prevent recurrent illegal discharges. These discharges are therefore likely to continue.

156. Plaintiff and its members have suffered irreparable damage and continue to suffer damage as a result of Defendant's actions and/or omissions described in this count. These actual and potential injuries have been, are being, and will continue to be caused by the illegal discharges from Defendant's Sewage Treatment Plant and sewage collection system into waters of the United States. The relief sought herein will redress the harms to the Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to stop the illegal discharges of pollutants and to comply with such other relief as this Court deems necessary.

COUNT 2: FAILURE TO DEVELOP OR IMPLEMENT A NUTRIENT MANAGEMENT PLAN VIOLATE DEFENDANT'S NPDES PERMIT AND THE CLEAN WATER ACT

157. Paragraphs 1-156 are hereby incorporated by reference as if rewritten in their entirety.

158. As set forth in the Notice and detailed below, Defendant has violated its Permit and the Clean Water Act, as well as Tennessee statutes and rules implementing the Clean Water

Act, when Defendant has failed to develop or implement a plan to decrease the total nitrogen and phosphorus in its treated wastewater through operational changes, without major capital upgrades ("Nutrient Management Plan"). *Permit* § 3.8 & Attachment 2.

159. Prior to issuing Defendant's current NPDES permit to discharge wastewater into the Harpeth River, TDEC noted that the Harpeth River's designated use for fish and aquatic life was not being fully supported and that Defendant's discharge contained contaminants that contribute to the impairment. More specifically, the Harpeth River is impaired for dissolved oxygen and phosphorus and Defendant's discharge contains pollutants associated with decreased receiving stream dissolved oxygen and increased phosphorus.

160. Accordingly, TDEC included permit terms requiring Defendant to develop a Nutrient Management Plan and requiring "investigational/increased wastewater control provisions to improve the instream water quality" because "it needs to get additional treatment plant effluent characterization data/instream information, and correspondingly have the permittee investigate/implement wastewater treatment plant operational performance enhancements." *Permit (Rationale)*, Page R-2, § R4(e)); Page R-13, § R7.21 (2010).

161. Prior to issuance of the current permit, Defendant objected to the requirement to prepare a Nutrient Management Plan, and asked that the requirement be deferred, suggesting that it "will incorporate some of the provisions included in the Division's Attachment 2 [Nutrient Management Plan] into our IWMP." *See* Addendum to Rationale, Page AD-8 (2010).

162. TDEC reviewed the IWMP "Scope of Work, Work Flow, and Schedule" provided by Defendant and did not remove the requirement for a Nutrient Management Plan. *See* Addendum to Rationale, Page AD-7, AD-8 (2010).

163. Section 3.8 of Defendant's permit provides: "Pursuant to the requirements delineated in Attachment 2, the permittee shall develop/implement a Nutrient Management Plan (NMP) with appropriate reporting for its wastewater treatment plant. The Permittee can request proposed changes to the Attachment 2 provisions within three months from the permit's effective date. If the division agrees in writing with the proposed changes, no permit modification will be necessary."

164. Defendant's permit describes the Nutrient Management Plan, in part, as follows: "The NMP shall be oriented toward identifying the use of its existing facilities (without major capital expenditures) such that changing operations/usages may result in decreases in the discharged treated wastewater total nitrogen and phosphorus." *Permit*, Attachment 2 (2010). Further, Defendant has been required to address seven elements to maximize removal of nitrogen and phosphorus.

165. Defendant's Nutrient Management Plan was required to have been submitted within nine months of the permit's effective date. Defendant has also been required to update the report each year by February 15.

166. Defendant did not appeal Permit § 3.8 or Attachment 2 after the permit was issued in 2010.

167. In July 2011, Defendant "submit[ted] [to TDEC] that the Integrated Water Resources Plan is inclusive of the requirements of the Nutrient Management Plan," which was to be implemented "in the coming years."

168. The "Scope of Work, Schedule, and Cost Proposal" for Defendant's IWRP framed its purpose as screening "alternatives for capital improvements and resource management opportunities ['such as water conservation, water recycling, *etc.*'] across the spectrum of water-

related utilities [*e.g.* 'stormwater, water supply, wastewater, and water reuse'],'' and described its goal as "present[ing] a long-term program to meet water resource needs for the next 20 years by identifying the alternatives, their recommended timing, effects, and estimated costs . . . ."

169. TDEC never agreed in writing to proposed changes to Defendant's Permit § 3.8 or Attachment 2.

170. Defendant's permit was never amended or modified to remove the duty to develop and implement a Nutrient Management Plan according to Permit § 3.8 and Attachment 2.

171. Defendant did not prepare or implement a Nutrient Management Plan pursuant to Permit § 3.8 and Attachment 2, nor did it submit reports related to the Nutrient Management Plan to TDEC in February 2012, February 2013, or February 2014.

172. Defendant's subsequently-developed IWRP alternatives (that is, potential project options for Defendant's wastewater system) show increased discharge of nutrients like Total Nitrogen, as well as BOD and Ammonia, into the Harpeth River.

173. Defendant has not implemented IWRP alternatives related to plant optimization or nutrient control of the STP's discharge.

174. Each day Defendant has operated without a Nutrient Management Plan is a separate violation of the permit and of the Clean Water Act, and each failure to report on its Nutrient Management Plan to TDEC is a separate violation of the Clean Water Act.

175. This violation is likely to continue. Since 2010, Defendant has submitted no plan to TDEC oriented toward identifying the use of its existing facilities (without major capital expenditures) such that changing operations/usages may result in decreases in total nitrogen and phosphorus discharged in Defendant's treated wastewater.

176. In 2013, Defendant requested that the Nutrient Management Plan requirement be "dropped completely from the [new version of the NPDES] permit," because Defendant "sees no rationale for a NMP."

177. In July 2014, Defendant again requested that TDEC accept the IWRP as meeting the NMP requirements and revise the draft NPDES permit to "remove any additional NMP requirement."

178. Plaintiff and its members have suffered irreparable damage and continue to suffer damage as a result of Defendant's failure to develop and implement a plan to reduce nutrients in Defendant's discharge. These actual and potential injuries have been, are being, and will continue to be caused by discharges from the Defendant's Sewage Treatment Plant into nutrient-impaired waters without having developed or implemented a plan to reduce the nutrient loading. The relief sought herein will redress the harms to the Harpeth River Watershed Association and its members caused by Defendant's discharges and permit non-compliance. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to develop and implement a plan to reduce the nutrients discharged into the Harpeth River and to comply with such other relief as this Court deems necessary.

COUNT 3: FAILURE TO CONDUCT CONTINUOUS INSTREAM MONITORING AND RECEIVING STREAM INVESTIGATIONS VIOLATES DEFENDANT'S NPDES PERMIT AND THE CLEAN WATER ACT

179. Paragraphs 1-178 are hereby incorporated by reference as if rewritten in their entirety.

180. As set forth in the Notice and detailed below, Defendant has violated its Permit and the Clean Water Act, as well as Tennessee statutes and rules implementing the Clean Water Act, by not complying with Section 3.7 and Attachment 1 of Defendant's permit contain

receiving stream monitoring and reporting requirements, which Defendant continues to violate. *Permit* § 3.7, Attachment 1 (2010).

181. Prior to 2013, Defendant also failed to take appropriate grab samples, as required by § 3.7 and Attachment 1.

182. TDEC explained that Defendant's 2010 permit term was less than five years because TDEC explained that "it needs additional treatment plant effluent characterization data/instream information." *Permit (Rationale) R.4.a* (Page R-2 of R-37).

183. During the draft permit stage, Defendant requested that the receiving stream monitoring and reporting provisions contained in Attachment 1 ("particularly those related to the diurnal investigations and the implementation of advanced methods for improving receiving stream water quality") be deleted. *See Addendum to Rationale,* Page AD-7 (2010).

184. TDEC denied this request and issued Defendant's permit with the following provision: "[A]s defined in Attachment 1, the permittee shall complete supplemental instream monitoring – diurnal investigations and identify enhancements for improving its receiving stream water quality."

185. Attachment 1 to Defendant's permit states: "[T]he permittee must expand its receiving stream evaluations/reporting to include instream diurnal monitoring stations (one upstream and two downstream of the Outfall 001 discharge) . . . ."

186. Within three months from the permit's effective date, Defendant could "request proposed changes to the Attachment 1 requirements." *Permit* § 3.7 (2010).

187. Defendant's permit indicates that, "Following written approval from the division, the permittee shall proceed with the diurnal testing," and informed that, "[s]hould the division agree in writing with the request, no permit modification will be required." *Id.*

188. Defendant never appealed the permit requirements contained in Section 3.7 and Attachment 1 of its NPDES permit.

189. In December 2010, Defendant requested changes to Attachment 1. Rather than one upstream and two downstream monitoring sites, Defendant proposed monitoring water quality in cooperation with the U.S. Geological Survey at one site three miles upstream from its discharge point and at one site 0.9 miles downstream of its discharge point.

190. TDEC never provided written approval of Defendant's proposal. Nor has TDEC modified this permit provision or otherwise relieved Defendant of § 3.7's requirement.

191. To date, Defendant has not conducted continuous instream monitoring required by the 2010 permit and approved by TDEC.

192. In July 2014, Defendant informed TDEC that it has "installed several permanent monitors in the Harpeth River and its tributaries," but no additional information is available about the location and nature of these monitors and the data collected. Whatever monitors have been installed are not being operated in cooperation with the U.S. Geological Survey, as proposed by Defendant in 2010. To date, Defendant has not conducted the modified instream monitoring it proposed in 2010. Plaintiff has no knowledge that TDEC approved a permit modification in 2014.

193. Each day that Defendant has operated without conducting the instream monitoring is a violation of its permit and the Clean Water Act.

194. Defendant is likely to continue to violate this provision because, three years after Defendant was supposed to conduct instream monitoring, Defendant again "request[ed] that the Division drop this requirement" in its future NPDES permit.

195. Defendant also continues to violate § 3.7 and Attachment 1 because it has not submitted annual reports to TDEC about its options for improving receiving stream quality in February 2012, February 2013, or February 2014.

196. Plaintiff and its members have suffered irreparable damage and continue to suffer damage as a result of Defendant's failure to conduct timely and appropriate instream monitoring investigations in order to aid TDEC set appropriate effluent limitations in Defendant's future NPDES permit and improve Harpeth River water quality. These actual and potential injuries have been, are being, and will continue to be caused by Defendant's failure to comply with its NPDES permit and the illegal discharges from the Defendant's Sewage Treatment Plant operating out of compliance with Section 3.7 and Attachment 1. The relief sought herein will redress the harms to the Harpeth River Watershed Association and its members caused by Defendant's operation and the failure to investigate its impact on the Harpeth River. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to establish a comprehensive monitoring system to determine the impact of years of its discharge on the Harpeth River and to comply with such other relief as this Court deems necessary.

COUNT 4: DEFENDANT'S FAILED WHOLE EFFLUENT TOXICITY TESTING VIOLATES VIOLATE DEFENDANT'S NPDES PERMIT AND THE CLEAN WATER ACT

197. Paragraphs 1-196 are hereby incorporated by reference as if rewritten in their entirety.

198. As set forth in the Notice and detailed below, Defendant has violated its Permit and the Clean Water Act, as well as Tennessee statutes and rules implementing the Clean Water Act; specifically, Defendant has violated and is likely to continue to violate Section 1.1

("Numeric and Narrative Effluent Limitations") and Section 3.4 ("Biomonitoring Requirements, Chronic") of its Permit, which set limits and requirements for testing endpoint toxicity. These permit sections relate to the concentration of Defendant's wastewater that inhibits test organisms ("IC_{25}"), according to whole effluent toxicity ("WET") testing. *Permit* §§ 1.1; 3.4 (2010).

199. To determine the chronic toxicity of Defendant's treated wastewater, organisms are exposed to composite samples of effluent from Defendant's sewage treatment plant. Toxic conditions can be caused by either particular pollutants or by aggregate and synergistic toxic effects when the mixture of pollutants enters receiving waters like the Harpeth River.

200. Toxicity is demonstrated if the IC_{25} value is less than 100%. "IC_{25}" refers to the inhibition concentration causing 25% reduction in survival, reproduction, and growth of test organisms (*i.e.*, water fleas and flathead minnows) when exposed to treated wastewater.

201. Defendant must only conduct this test four times a year, once per quarter.

202. Defendant's permit provides that, "In the event of a test failure, the permittee must start a follow-up test within 2 weeks and submit results from a follow-up test within 30 days from obtaining initial WET testing results," and that "the follow-up test will not negate an initial failed test." *Permit* § 3.4 (2010).

203. The Permit further provides that, "in the event of 2 consecutive test failures or 3 test failures within a 12-month period for the same outfall, the permittee must initiate a Toxicity Identification Evaluation/Toxicity Reduction Evaluation (TIE/TRE) study within 30 days and so notify the division by letter." *Permit* § 3.4 (2010). The TIE/TRE study may be terminated at any time upon the completion and submission of 2 consecutive tests (for the same outfall) demonstrating compliance." *Permit* § 3.4 (2010).

204. Defendant's first failed whole effluent toxicity test in 2013 occurred in January 2013 (water flea: 18.14%). This failed test for effluent toxicity was for the first quarter of 2013: January 1 to March 30, 2014. This test was conducted by Empirical Laboratories, LLC. A successful follow-up test was conducted in March 2013, more than two weeks after Defendant learned of the test failure. The second test was conducted by a second laboratory, ESC Lab Sciences.

205. Defendant's second failed whole effluent toxicity test occurred in September 2013 (water flea: 44.5%). This failed test for effluent toxicity was for the third quarter of 2013: July 1 to September 30, 2013. This test was performed by ESC Lab Sciences. ESC Lab Sciences conducted a follow-up test for Defendant in October 2013, which was successful.

206. Defendant's third failed toxicity test occurred in early December 2013 and was excused due to a testing error or insufficient data due to lab error.

207. Defendant's fourth failed toxicity test occurred in mid-December 2013 (water flea: 2.02%). This failed test for effluent toxicity was for the fourth quarter of 2013: October 1 to December 31, 2013. The test was conducted by ESC Lab Sciences.

208. Neither of Defendant's December 2013 toxicity tests were a part of TDEC's public record until sometime after January 15, 2014. Violations that were not included in the Notice are evidence of the continuing nature of this violation.

209. In March 2014, Defendant admitted only "two toxicity test failures" and asserted that the TIE/TRE has "never been triggered."

210. Defendant's fifth failed toxicity test occurred in April 2014 (water flea: 46.2%). This failed test for effluent toxicity was for the second quarter of 2014: April 1 through June 30, 2014, which was part of Defendant's TIE/TRE. The test was conducted by ESC Lab Sciences.

211. On May 2, 2014, TDEC responded to Defendant's May 1st letter requesting release from the Toxicity Identification Evaluation/Toxicity Reduction Evaluation investigation based on test results from a third laboratory, TEC Environmental Laboratories, Inc., and ordered the TIE/TRE to continue through an additional monitoring period.

212. Upon information and belief, Defendant has not identified the source of its biomonitoring, whole effluent toxicity test (IC_{25}) violations.

213. Without having identified the source of the whole effluent toxicity, Defendant cannot prevent future effluent toxicity violations, and thus these violations are likely to continue.

214. Defendant's failures to conduct each follow-up test within two weeks are also violations of its permit and of the Clean Water Act.

215. Each day of the quarterly period during which Defendant failed a toxicity test is a violation of its permit and of the Clean Water Act.

216. Plaintiff and its members have suffered irreparable damage and continue to suffer damage as a result of Defendant's discharge of wastewater that fails toxicity tests. These actual and potential injuries have been, are being, and will continue to be caused by the illegal discharges from the Defendant's Sewage Treatment Plant into waters of the United States. The relief sought herein will redress the harms to the Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to more fully investigate and stop the illegal discharges of effluent with toxic characteristics into the Harpeth River and to comply with such other relief as this Court deems necessary.

COUNT 5: DEFENDANTS DISCHARGES OF EXCESS AMMONIA (AS NITROGEN) VIOLATE THE VIOLATE DEFENDANT'S PERMIT PROVISIONS AND THE CLEAN WATER ACT

217. Paragraphs 1-216 are hereby incorporated by reference as if rewritten in their entirety.

218. As set forth in the Notice and detailed below, Defendant has violated its Permit and the Clean Water Act, as well as Tennessee statutes and rules implementing the Clean Water Act, when it has discharged excess ammonia into the Harpeth River.

219. Section 1.1 of Defendant's permit contains a water quality-based effluent limitation which sets numeric effluent limitations for discharge of Ammonia as Nitrogen ("NH_3-N" or "Ammonia") into the Harpeth River.

220. "Ammonia is a constituent of nitrogen. Unlike other forms of nitrogen, which can cause eutrophication of a water body at elevated concentrations, the primary concern with ammonia is its direct toxic effects on aquatic life, which are exacerbated by elevated pH and temperature." *Final Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater 2013*, 78 Fed. Reg. 52,192 (Aug. 22, 2013).

221. According to EPA, "When ammonia is present in water at high enough levels, it is difficult for aquatic organisms to sufficiently excrete the toxicant, leading to toxic buildup in internal tissues and blood, and potentially death." *Fact Sheet on Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater (Aug. 2013).*

222. Defendant's DMRs and MORs submitted under oath to TDEC reveal the following:

	Date of Violation(s)	**Permit Parameter Violated**	**Permit Limit**	**Reported on DMR (or MOR)**
a	June 22, 2010	Daily Ammonia as Nitrogen mg/L max.	0.8	(1.9)
b	June 23, 2010	Daily Ammonia as Nitrogen mg/L max.	0.8	(1.5)
c	June 24, 2010	Daily Ammonia as Nitrogen mg/L max.	0.8	(1.5)
d	June 25, 2010	Daily Ammonia as Nitrogen mg/L max.	0.8	(2.0)

	Date of Violation(s)	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)
e	June 26, 2010	Daily Ammonia as Nitrogen mg/L max.	0.8	2.2
f	June 27, 2010	Daily Ammonia as Nitrogen mg/L max.	0.8	(0.95)
g	June 20 – June 26, 2010	Weekly Ammonia as Nitrogen mg/L avg.	0.6	1.41
h	June 1 – June 30, 2010	Monthly Ammonia as Nitrogen mg/L avg.	0.4	0.41
i	January 8, 2012	Daily Ammonia as Nitrogen mg/L max	3.0	4.8
j	January 9, 2012	Daily Ammonia as Nitrogen mg/L max.	3.0	4.0
k	October 14 - October 20, 2012	Weekly Ammonia as Nitrogen mg/L avg.	0.60	0.63[5]
l	June 12, 2013	Daily Ammonia as Nitrogen mg/L max.	0.80	(0.90)
m	June 13, 2013	Daily Ammonia as Nitrogen mg/L max.	0.80	7.10
n	June 14, 2013	Daily Ammonia as Nitrogen mg/L max.	0.80	(7.00)
o	June 15, 2013	Daily Ammonia as Nitrogen mg/L max.	0.80	(6.90)
p	June 9 – June 15, 2013	Weekly Ammonia as Nitrogen mg/L avg.	0.60	3.26
q	June 9 – June 15, 2013	Weekly Ammonia as Nitrogen lb/day avg.	60	183.0
r	June 16, 2013	Daily Ammonia as Nitrogen mg/L max.	0.80	(5.10)
s	June 17, 2013	Daily Ammonia as Nitrogen mg/L max.	0.80	(1.30)
t	June 16 – June 2,2 2013	Weekly Ammonia as Nitrogen mg/L avg.	0.60	(1.20)
u	June 16 – June 22, 2013	Weekly Ammonia as Nitrogen lb/day avg.	60	(66.0)
v	June 1 – June 30, 2013	Monthly Ammonia as Nitrogen lb/day avg.	40	60.3
w	June 1 – June 30, 2013	Monthly Ammonia as Nitrogen mg/L avg.	0.4	1.08

223. True and correct copies of the records submitted by Defendant to TDEC about the above-listed ammonia violations are incorporated and attached as **EXHIBIT 13.**

[5] After receiving the Notice from the Watershed Association, in 2014, Defendant re-submitted its October 2012 DMR to TDEC changing this entry from "0.63" to "0.6" based on its position that it should have rounded down the results.

224. Each day of the period (daily, weekly, or monthly) of violations for excess ammonia constitutes a separate violation of the permit and of the Clean Water Act.

225. After the Notice, Defendant represented that the June 2010 exceedances were due to excessive grease in the system, and Plaintiff requested copies of records establishing this. *See* EXHIBIT 5, p. 3. A true and correct copy of the memorandum detailing Defendant's investigation is included in EXHIBIT 13. According to this document, Defendant's investigation into the June 2013 ammonia violations is complete, but Defendant did not discover the cause of the violations. The intermittent and periodic nature of the violations of ammonia and Defendant's inability to determine the cause of the most recent violations indicates that these violations are likely to continue.

226. Plaintiff and its members have suffered irreparable damage and continue to suffer damage as a result of Defendant's recurrent discharges of ammonia in excess of its permit limits. These actual and potential injuries have been, are being, and will continue to be caused by the illegal discharges from the Defendant's Sewage Treatment Plant into waters of the United States. The relief sought herein will redress the harms to the Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to investigate and stop the illegal discharges of ammonia into the Harpeth River and to comply with such other relief as this Court deems necessary.

COUNT 6: DEFENDANT'S INACCURATE FLOW MEASUREMENT AND MONITORING VIOLATE DEFENDANT'S PERMIT PROVISIONS AND THE CLEAN WATER ACT

227. Paragraphs 1-226 are hereby incorporated by reference as if rewritten in their entirety.

228. As set forth in the Notice and detailed below, Defendant has violated its Permit and the Clean Water Act, as well as Tennessee statutes and rules implementing the Clean Water Act, because it has been operating since at least 2012 without an accurate flow monitor.

229. Defendant must accurately monitor its influent raw wastewater and treated effluent flows, and it must do so continuously seven days per week. *Permit* § 1.1 (2010). *See also Rationale* § R7.1 (Flow).

230. Flow is monitored and used to calculate contaminant mass loading rates. *Rationale* § R7.1 (Flow).

231. Mass loading rates provide distinct effluent limitations than concentration-based limits; some pollutants have both limitations.

232. Discharge flow is a quantifiable effluent characteristic. 40 C.F.R. § 122.44.

233. Discharge flow is used to calculate compliance with pollutant effluent limitations and ensure that dilution is not a substitute for the treatment and removal of pollutants. 40 C.F.R. § 122.45.

234. Defendant's permit states, "Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than plus or minus 10% from the true discharge rates throughout the range of expected discharge volumes." *Permit* § 1.2.1 (2010).

235. Defendant's permit states, "[t]he permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which

are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory and process controls and appropriate quality assurance procedures." *Permit* § 2.1.4(a) (2010). *Accord* Tenn. R. & Regs. 400-40-05-.07(2)(c) (2014); *Permit* § 1.3.6 (2010).

236. According to a July 2013 letter from TDEC to Defendant, inaccurate flow measurements and/or un-representative influent sampling affects plant hydraulic loading data, pounds per day loading and percent removal calculation, and influent parameter sample concentrations. *See* July 9, 2013 TDEC Compliance Evaluation Inspection Letter (a true and correct copy of which is incorporated and attached as part of collective **EXHIBIT 14**).

237. Since at least 2012, Defendant's daily influent sampling data have been inaccurate. *See* August 22, 2012 TDEC Compliance Biomonitoring Inspection Letter (a true and correct copy of which is incorporated and attached as part of EXHIBIT 14).

238. In March 2014, Defendant informed Plaintiff and others that it "recognizes the current flow monitoring scheme has certain deficiencies" which it plans to address when the potential expansion of the facility occurs rather than "waste[]" "capital monies." In April 2014, Defendant responded that "no such document exists" when asked for a cost estimate for replacing the flow meter. In July 2014, Defendant requested guidance from TDEC about methodology being considered during expansion and upgrades.

239. Due to Defendant's inaccurate flow measuring capacity, it is not presently possible to accurately determine the amounts of pollutants discharged into the Harpeth River by Defendant, nor has it been possible to do so for years.

240. Each day that Defendant operates its plant without an accurate flow measurement mechanism is a separate violation of NPDES Permit § 1.1 and of the Clean Water Act. Such violations are likely to continue.

241. Each day that Defendant operates its plant without an accurate flow measurement mechanism is a separate violation of NPDES Permit § 1.2.1 and of the Clean Water Act. Such violations are likely to continue.

242. Each day that Defendant operates its plant without an accurate flow measurement mechanism is a separate violation of NPDES Permit § 2.1.4(a) and of the Clean Water. Such violations are likely to continue.

243. Plaintiff and its members have suffered irreparable damage and continue to suffer damage as a result of Defendant's failure to operate its plant with an accurate flow meter and thereby accurately self-report data to TDEC and the public concerning plant hydraulic loading data, pounds per day loading and percent removal calculation, and influent parameter sample concentrations. These actual and potential injuries have been, are being, and will continue to be caused by the potentially illegal discharges from the Defendant's Sewage Treatment Plant into waters of the United States. The relief sought herein will redress the harms to the Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to ensure accurate calculation of pollutant discharges and to comply with such other relief as this Court deems necessary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

244. Issue service of process as authorized by law;

245. Issue a declaratory judgment stating that Defendant has violated and is continuing to violate the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342, with its recurring illegal discharges into the Harpeth River and non-compliance with the terms and conditions of its NPDES Permit;

246. Order defendant to immediately comply with all terms and conditions of coverage under its NPDES Permit;

247. Order injunctive relief that temporarily and permanently enjoins Defendant from committing any further violations of the Clean Water Act or other applicable laws, requires Defendant to remove or otherwise remedy the discharges and damage to waters of the United States, and ensures that Defendant will come into compliance and remain in compliance with applicable laws and regulations;

248. Assess civil penalties against Defendant of up to $37,500 per violation per day pursuant to 33 U.S.C. §§ 1319(d), 1365(a), and 40 C.F.R. § 19.4, as the Court deems necessary;

249. Order an award of litigation costs, including reasonable attorneys' fees and expert witness fees, to Plaintiff pursuant to 33 U.S.C. § 1365(d); and

250. Order such other and further relief as this Court deems just and equitable.

Respectfully submitted this 26th day of November 2014,

/s Delta Anne Davis
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this filing has been via the Court's electronic filing system to:

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On this 26th day of November 2014.

/s Anne E. Passino
ANNE E. PASSINO