

**BEFORE THE TENNESSEE DEPARTMENT OF  
ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER RESOURCES**

IN RE: Draft NPDES Permit No. TN0027278  
Limestone Water Utility Operating Company, LLC

**COMPREHENSIVE PUBLIC COMMENT OPPOSING PERMIT MODIFICATION**

**Submitted by: [Your Name] and Concerned Citizens**

Date: [Submission Date]

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## I. EXECUTIVE SUMMARY

TDEC proposes to expand Limestone's wastewater treatment capacity from 0.25 to 0.45 MGD (80% increase) discharging into the Harpeth River, which has been impaired for phosphorus for 21 years.

**This permit should be denied or, at minimum, subjected to conditions comparable to those imposed on the City of Franklin's 2017 expansion. Key issues:**

**1. Antidegradation Policy Interpretation:** Tennessee policy states impaired waters cannot receive "additional loadings." TDEC interprets this to allow volume increases if concentration improves. This interpretation contradicts policy language, conflicts with the Franklin precedent (where stricter standards were required), and undermines the regulatory framework.

**2. Confirmed De Minimis Failure:** TDEC admits (page MOD-5) mercury exceeds the 10% threshold. Imposing limits to manufacture compliance inverts proper procedure.

**3. Ten-Year TMDL Failure:** TMDL announced 2015, not implemented. Clean Water Act violation.

**4. Unacceptable Compliance:** 68 violations (2018), \$100K+ fines, 257,000 gallons sewage spills (2025)

**5. Arbitrary Treatment:** Franklin (33% expansion, excellent record) faced stricter requirements than Limestone (80% expansion, terrible record)

**6. Collection System Failures:** I&I problems and chronic SSOs trigger permit's line extension ban provisions

## II. THE ANTIDEGRADATION POLICY LEGAL DISPUTE

### A. Regulatory Text

Tennessee's antidegradation framework (Rule 0400-40-03-.06) distinguishes:

**Tier 2 - Waters with available parameters:** De minimis degradation (<5% single, <10% cumulative) allowed

**Tier 3 - Impaired waters:** Tennessee guidance states: "If waters proposed for degradation are impaired, then no additional degradation may be allowed"

TDEC Division of Water Resources policy: "If a stream is impaired, the Division cannot authorize additional loadings of the same pollutant(s). It may mean that dischargers will not be allowed to expand or locate on 303(d) listed streams until sources of pollution have been controlled."

### B. The Interpretation Conflict

**TDEC's current position:** 80% volume increase acceptable because improved treatment concentration yields no net increase in mass loading versus poorly-performing existing facility.

**Stakeholder position:** Policy prohibits "additional loadings" using absolute language ("cannot authorize"). Volume increase = loading capacity increase, enabling more total sewage generation regardless of per-gallon efficiency.

**The Franklin precedent supports the stakeholder interpretation:** Franklin was required to commit to zero net increase despite having capacity to improve concentration through optimization. If improved concentration justified volume increases, Franklin's commitment would have been unnecessary.

### III. CONFIRMED FACTUAL VIOLATIONS

#### A. Mercury Exceeds De Minimis - TDEC's Admission

From Permit Modification Rationale, page MOD-5:

"All the projected load increases except for mercury are below the 10% load..."

This is an explicit admission the expansion exceeds de minimis degradation standards. TDEC's solution—imposing a mercury limit of 0.0001376 mg/L—manufactures compliance rather than requiring the applicant demonstrate compliance before approval.

**Proper procedure: Applicant demonstrates de minimis compliance → Permit approved.**  
**TDEC's procedure: Expansion exceeds de minimis → Impose limits → Call it compliant.**  
**This inverts regulatory logic.**

#### B. TMDL Implementation Failure (Clean Water Act Violation)

##### 1. Ten-Year Timeline

**2015:** TDEC announced new TMDL for Harpeth phosphorus

**2018:** Still lacks "critical initial elements such as a work plan" (3 years)

**2019:** "Work and sampling plans remain undone" (4 years)

**2022:** "TMDL is nowhere near complete, and there is no plan or schedule" (7 years)

**2025:** No TMDL progress mentioned in permit rationale (10 years)

*Sources: Harpeth Conservancy, "Harpeth River Impaired According to State of Tennessee" (April 2020); "Action Alert: Franklin Sewer Permit" (August 2022)*

##### 2. What Implementation Requires

###### A TMDL must:

- Establish numeric targets for impairing pollutant
- Calculate total loading capacity
- Allocate Waste Load Allocations (WLAs) to point sources
- Allocate Load Allocations (LAs) to non-point sources
- Modify NPDES permits to reflect WLAs
- Create implementation schedule
- Monitor progress toward delisting

**TDEC has completed NONE of these steps in 10 years. This violates Clean Water Act Section 303(d).**

##### 3. Legal Implications

40 CFR § 122.4(i) states: "No permit may be issued for a discharge which does not conform to an applicable TMDL." When no TMDL implementation exists after 10 years, TDEC cannot authorize capacity expansions that increase total sewage generation in the impaired watershed. The TMDL's purpose is pollution reduction and restoration—capacity expansion enabling growth contradicts this fundamental purpose.

## **C. Limestone's Compliance Record**

### **Violations and fines:**

- 2018: 68 violations in single year
- 2014-2024: Over \$100,000 in TDEC fines
- 2022: 29 violations

### **2025 sewage spills (post-CSWR acquisition):**

- March 2025: ~200,000 gallons raw sewage to Cartwright Creek/Harpeth River
- April 2025: ~57,000 gallons additional spill
- July 2025: Multiple overflow events, emergency response, public health warnings

*Sources: NewsChannel 5, "Decade of problems revealed" (July 31, 2025); "Troubled Tennessee water plant finally submits upgrade plans" (October 3, 2025); Williamson Herald (August 1, 2025)*

### **CSWR acquisition timeline:**

- **December 21, 2021:** CSWR acquired facility, promised compliance improvements
- **2025 (3.25 years later):** Worst sewage spills in facility history (257,000+ gallons)

**Performance declined under CSWR ownership. No credible basis exists to trust expanded capacity will be operated reliably when existing capacity cannot be maintained in compliance.**

## D. Arbitrary and Capricious Action - The Franklin Standard

When Franklin sought 33% expansion in 2017:

- Harpeth Conservancy filed appeal
- Franklin committed: "loading we put in river is not more than it is today even though adding treatment capacity"
- Franklin demonstrated 58% phosphorus reduction (126 to 53 lb/day)
- Franklin had "strong history of consistently outperforming permit limits"
- Appeal withdrawn only after commitments and optimization demonstrated

Factor	Franklin 2017	Limestone 2025
% Increase	33% (12→16 MGD)	80% (0.25→0.45 MGD)
Compliance Record	Excellent - consistently outperforms limits	68 violations, \$100K fines, 257K gal spills
Zero Net Increase	REQUIRED - binding commitment	NOT REQUIRED
Optimization Demo	REQUIRED - 58% P reduction shown	NOT REQUIRED

**Conclusion: TDEC imposed stricter standards on a better performer seeking smaller expansion. Limestone, a worse performer seeking larger expansion, faces no comparable conditions. This differential treatment lacks rational basis and constitutes arbitrary and capricious agency action.**



## **E. Collection System Failures and Line Extension Ban**

### **1. Acknowledged I&I Problems**

Permit Modification Rationale, page MOD-2:

"The facility experiences operational problems due to... a large volume of extraneous water that enters the treatment plant via the municipal collection system (inflow and infiltration)."

Inflow and Infiltration (I&I) = rainwater and groundwater entering sewer pipes through cracks, deteriorated joints, and illegal connections. This wastes treatment capacity on clean water instead of sewage and causes overflows during wet weather.

### **2. Line Extension Ban Requirements**

Draft Permit Section 2.3.2(d), page 25:

"No new or additional flows shall be added upstream of any point in the collection system that experiences greater than 5 sanitary sewer overflows and/or releases per year or would otherwise overload any portion of the system."

#### **Documented SSO events (2025):**

- March: ~200,000 gallons
- April: ~57,000 gallons
- July: Multiple events
- River Rest HOA: "Recurring wastewater treatment failures, blockages, leaks, overflow events"

**The permit's own terms require a line extension ban for facilities experiencing chronic overflows. TDEC cannot simultaneously prohibit new flows per permit requirements and authorize 80% capacity expansion designed to enable new flows.**

### **3. I&I Requirements Before Expansion**

Section 2.3.2(d) requires that new capacity be offset by documented I&I removal:

"...flows potentially added from new connections are less than or proportional to the amount of inflow and infiltration removal documented upstream from that point."

**No I&I study, remediation plan, or documented removal is mentioned in the permit rationale. This violates the permit's own requirements.**

## V. RELIEF REQUESTED

### PRIMARY REQUEST: DENY THE PERMIT

We request denial based on:

- 1. Antidegradation Policy:** TDEC's interpretation contradicts policy language and Franklin precedent
- 2. TMDL Failure:** Ten years without implementation violates CWA Section 303(d)
- 3. De Minimis Failure:** Mercury exceeds standards; manufacturing compliance improper
- 4. Compliance Record:** No demonstrated capability for reliable operation
- 5. Arbitrary Action:** Inconsistent with Franklin standard without rational basis
- 6. Line Extension Ban:** Chronic SSOs and I&I trigger prohibition on new flows

### ALTERNATIVE: CONDITIONS MATCHING FRANKLIN STANDARD

If TDEC proceeds, require conditions at least as strict as Franklin:

- A. 24 months perfect compliance** - Zero violations, zero SSOs, full monitoring compliance with third-party verification
- B. Binding zero net increase commitment** - Total pollutant loading will not exceed current levels despite capacity expansion
- C. Demonstrated optimization** - Prove capability to achieve commitment through optimization period before expansion authorized
- D. TMDL completion** - Waste load allocations established before expansion; expansion consistent with final WLA
- E. I&I remediation** - Comprehensive study, remediation plan, documented removal equal to/exceeding new capacity (0.2 MGD)
- F. Independent review** - Third-party technical review of antidegradation analysis and ongoing performance monitoring

## **VI. CONCLUSION**

Twenty-one years of phosphorus impairment. Ten years of TMDL failure. Nearly four years of CSWR ownership with declining performance.

### **The legal disputes:**

- Does "no additional loadings" prohibit volume increases into impaired waters?
- Can improved concentration justify capacity expansion that enables more total sewage generation?

**The Franklin precedent suggests TDEC historically answered NO to both questions, imposing strict zero net increase requirements on excellent performers.**

### **The undisputed facts:**

- Mercury exceeds de minimis (TDEC admits)
- TMDL not implemented (10 years)
- Terrible compliance record
- Worse performer gets weaker treatment than Franklin
- I&I and SSO problems trigger line extension ban

**We urge TDEC to deny this permit or impose conditions matching those required of Franklin. Anything less violates the law and regulatory fairness.**

Respectfully submitted,

[Your Name]

[Contact Information]

Tennessee Department of Environment and Conservation  
Division of Water Resources  
Water.Permits@tn.gov

## **APPENDIX: KEY TIMELINE**

**1996:** Harpeth listed impaired for nutrients

**2004:** Reclassified impaired for phosphorus and low dissolved oxygen

**2015:** TDEC announces new TMDL process

**2017:** Franklin expansion (33%); Conservancy appeals; strict conditions required

**2018:** Limestone 68 violations; TMDL lacks work plan (3 years)

**2019:** Franklin optimization demonstrated; appeal withdrawn; TMDL incomplete (4 years)

**December 2021:** CSWR acquires Limestone

**2022:** TMDL not complete (7 years); Limestone 29 violations

**July 2024:** CSWR files \$9.5M rate increase

**March-April 2025:** 257,000 gallons sewage spills

**September 2025:** TDEC proposes 80% expansion

**2025:** TMDL still not implemented (10 years)

**### END OF SUBMISSION ###**