

**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
Public Notice Date: September 30, 2025

COMPREHENSIVE PUBLIC COMMENT

OPPOSING PERMIT MODIFICATION

Submitted by:
[Your Name] and Concerned Citizens

Date: [Submission Date]

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	4
II. STANDING AND INTEREST	5
III. THE ANTIDEGRADATION POLICY INTERPRETATION DISPUTE	6
A. The Policy Language	6
B. The Interpretation Dispute	6
C. The Franklin Precedent Contradicts TDEC's Current Interpretation	6
IV. CONFIRMED FACTUAL VIOLATIONS	8
A. Mercury Exceeds De Minimis Standards	8
B. Ten-Year TMDL Implementation Failure	8
C. Limestone's Compliance Record	8
D. Arbitrary and Capricious Action - The Franklin Standard	10
E. Collection System Failures	11
V. WHAT WE REQUEST	12
VI. CONCLUSION	13

I. EXECUTIVE SUMMARY

TDEC proposes to modify NPDES Permit No. TN0027278 to authorize Limestone Water Utility Operating Company, LLC to expand wastewater treatment capacity from 0.25 million gallons per day (MGD) to 0.45 MGD—an 80% increase—discharging into the Harpeth River at River Mile 68.8.

The Harpeth has been impaired for phosphorus since 2004 (21 years) and for nutrients since 1996 (29 years). The facility will discharge phosphorus and oxygen-depleting pollutants—the exact pollutants causing the impairment.

This permit should be denied based on:

- 1. Antidegradation Policy Dispute:** Tennessee policy prohibits "additional loadings" to impaired waters. TDEC interprets this to allow volume increases if concentration improves. This interpretation conflicts with policy language, contradicts the Franklin precedent (where stricter standards were applied), and undermines the distinction between impaired and non-impaired waters.
- 2. Confirmed De Minimis Failure:** TDEC's antidegradation analysis (page MOD-5) admits mercury exceeds the 10% de minimis threshold. TDEC's solution—imposing limits to manufacture compliance—inverts proper regulatory procedure.
- 3. Ten-Year TMDL Failure:** TDEC announced a TMDL in 2015. Ten years later, basic work plans remain incomplete. Clean Water Act Section 303(d) requires implementation, not acknowledgment.
- 4. Unacceptable Compliance Record:** 68 violations (2018), \$100,000+ fines (2014-2024), and 257,000 gallons of sewage spills (March-April 2025)—four years after CSWR acquisition.
- 5. Arbitrary and Capricious Action:** Franklin (excellent performer, 33% expansion) faced requirements for zero net increase commitment and demonstrated optimization. Limestone (poor performer, 80% expansion) faces no comparable conditions.
- 6. Line Extension Ban Triggered:** Multiple 2025 SSOs and acknowledged I&I problems trigger permit's prohibition (Section 2.3.2(d)) on new flows to overflowing collection points.

II. STANDING AND INTEREST

We submit these comments as residents directly impacted by facility operations (River Rest neighborhood, 185 homes), downstream Harpeth River users, ratepayers bearing expansion costs, and environmental stakeholders with interests protected under Tennessee and federal law.

We request formal public hearing and that this submission be made part of the administrative record.

III. THE ANTIDEGRADATION POLICY INTERPRETATION DISPUTE

A. The Policy Language

Tennessee's antidegradation policy distinguishes between:

- **Waters with available parameters:** De minimis degradation (<5% single discharge, <10% cumulative) permitted
- **Impaired waters:** "No additional degradation may be allowed" per Rule 0400-40-03-.06

TDEC Division of Water Resources policy (as cited by Harpeth Conservancy):

"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 Dispute

TDEC's Position: An 80% volume increase is acceptable because improved treatment concentration per gallon will result in no net increase (or decrease) in total mass loading compared to the poorly-performing existing facility.

Stakeholder Position: The policy prohibits "additional loadings" and uses absolute language ("cannot authorize"). An 80% capacity increase enables 80% more sewage generation in the watershed. Regardless of per-gallon treatment efficiency, expanding capacity that enables more total sewage generation constitutes "additional loadings."

The policy language is absolute: "cannot authorize additional loadings." It does not say "cannot authorize if concentration increases" or "cannot authorize if mass loading increases." The plain language prohibits additional loading capacity to impaired waters.

C. The Franklin Precedent Contradicts TDEC's Current Interpretation

If TDEC believed its current interpretation (volume OK if concentration improves) was correct, why were strict conditions imposed on Franklin in 2017?

Franklin's 2017 Expansion (33% increase):

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

Source: Williamson Herald, "Harpeth Conservancy to dismiss appeal of permit for Franklin sewage treatment plant," March 28, 2019

If TDEC's current interpretation were correct, Franklin's zero net increase commitment would have been unnecessary. The fact that TDEC imposed it on an excellent performer suggests TDEC historically read the antidegradation policy to prohibit capacity expansions into impaired waters absent extraordinary commitments and proof of capability.

IV. CONFIRMED FACTUAL VIOLATIONS

A. Mercury Exceeds De Minimis Standards

TDEC's Permit Modification Rationale (page MOD-5) states:

"All the projected load increases except for mercury are below the 10% load... The reported mercury value in the metals scans is likely a function of the applicant using a test method with a minimum detection level that is not low enough to demonstrate compliance with de minimis in this scenario... Until the applicant/permittee demonstrates de minimis levels of mercury, de minimis can be maintained via a permit limit."

Analysis:

1. TDEC admits the expansion exceeds de minimis degradation standards for mercury
2. TDEC's solution is to impose a new mercury limit (0.0001376 mg/L monthly average) that doesn't currently exist
3. This inverts proper regulatory procedure: applicant should demonstrate compliance BEFORE approval, not have compliance manufactured through new limits AFTER exceeding standards

The mercury exceedance proves this expansion degrades water quality beyond minimal levels. Imposing limits to create compliance after the fact is regulatory bootstrapping.

B. Ten-Year TMDL Implementation Failure

Documented Timeline:

2015: TDEC announced new TMDL for Harpeth phosphorus/nutrients

2018: Harpeth Conservancy: "TMDL still lacks critical initial elements such as a work plan" (3 years)

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

2022: "Seven years later, the TMDL is nowhere near complete, and there is no plan or schedule for its completion"

2025: No mention of TMDL progress in current permit rationale (10 years)

Sources: Harpeth Conservancy documentation (2019-2022); TDEC Harpeth River TMDL Development webpage

A TMDL's purpose is pollution REDUCTION and restoration. TDEC cannot fail for a decade to implement mandated pollution reductions while simultaneously authorizing capacity expansions that enable more sewage generation in the impaired watershed.

C. Limestone's Compliance Record

Documented violations:

- 2018: 68 violations

- 2014-2024: Over \$100,000 in TDEC fines
- 2022: 29 violations
- March 2025: ~200,000 gallons raw sewage spill
- April 2025: ~57,000 gallons additional spill
- July 2025: Multiple overflow events, public health warnings

Source: NewsChannel 5, "Decade of problems revealed at sewage plant that leaked into Harpeth River" (July 31, 2025); "Troubled Tennessee water plant finally submits upgrade plans" (October 3, 2025)

CSWR acquired this facility December 21, 2021. Nearly four years later, the facility experienced its worst sewage spills in history (257,000+ gallons in two months). There is no credible basis to trust expanded capacity will be operated reliably when existing capacity cannot be maintained in compliance.

D. Arbitrary and Capricious Action - The Franklin Standard

Administrative law prohibits inconsistent application of standards without rational basis.

Factor	Franklin (2017)	Limestone (2025)
Capacity Increase	12 to 16 MGD (33%)	0.25 to 0.45 MGD (80%)
Compliance History	"Strong history of consistently outperforming limits"	68 violations (2018), \$100K+ fines, 257K gal spills (2025)
Zero Net Increase Commitment	YES - explicit binding commitment	NO - no such commitment required
Optimization Demonstrated	YES - 58% P reduction before expansion	NO - no optimization period required
River Mile Location	RM 85.2 (upstream)	RM 68.8 (downstream = cumulative)

TDEC imposed stricter standards on a better performer seeking a smaller expansion. Limestone, a worse performer seeking a larger expansion, faces no comparable requirements. This differential treatment lacks rational basis.

E. Collection System Failures

The Permit Modification Rationale (page MOD-2) acknowledges:

"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) means rainwater and groundwater are getting into the sewer pipes through cracks, deteriorated joints, and illegal connections. This wastes treatment capacity on clean water instead of sewage.

The Draft Permit (Section 2.3.2(d), page 25) prohibits new flows to collection points experiencing greater than 5 sanitary sewer overflows per year.

Documented 2025 events:

- March: 200,000 gallons
- April: 57,000 gallons
- July: Multiple events requiring emergency response

TDEC cannot acknowledge I&I problems, prohibit new connections per permit terms, and authorize 80% expansion simultaneously. This is internally contradictory.

V. WHAT WE REQUEST

PRIMARY REQUEST: DENY THE PERMIT

- 1. Antidegradation violation:** TDEC's interpretation contradicts policy language and Franklin precedent
- 2. TMDL failure:** Ten years without implementation violates Clean Water Act
- 3. De minimis failure:** Mercury exceeds standards; manufacturing compliance is improper
- 4. Compliance record:** No demonstrated capability for reliable operation
- 5. Arbitrary treatment:** Weaker standards than Franklin without rational basis
- 6. Line extension ban:** Chronic overflows trigger prohibition on new flows

ALTERNATIVE: If approving despite violations, require conditions matching Franklin:

- 24 months perfect compliance before expansion
- Binding zero net increase commitment
- Demonstrated optimization before expansion
- TMDL completion with waste load allocations
- Documented I&I removal equal to new capacity
- Independent third-party verification

VI. CONCLUSION

Twenty-one years of phosphorus impairment. Ten years of TMDL failure. Four years of CSWR ownership with declining performance culminating in 257,000 gallons of sewage spills in 2025.

The core legal dispute: Can TDEC interpret "no additional loadings" to permit volume increases if concentration improves? The Franklin precedent - where strict conditions were required of an excellent performer - suggests TDEC historically read this policy more strictly. Applying a weaker interpretation to a worse performer is arbitrary and capricious.

The undisputed facts:

- Mercury exceeds de minimis (TDEC admits this)
- TMDL not implemented after 10 years
- Terrible compliance record with worsening performance
- Franklin got stricter treatment for smaller expansion
- I&I problems and chronic overflows documented

Deny this permit or impose conditions at least as strict as Franklin received. Anything less violates the law and betrays the public trust.

Respectfully submitted,

[Your Name]

[Contact Information]

Submitted to:
TDEC Division of Water Resources
Water.Permits@tn.gov

END