

BEFORE THE TENNESSEE WATER QUALITY CONTROL BOARD

**SIERRA CLUB, SAVE OUR
CUMBERLAND MOUNTAINS, and
TENNESSEE CLEAN WATER NETWORK,**

Petitioners,

v.

**CASE NO.
DOCKET NO.**

**TENNESSEE DEPARTMENT OF
ENVIRONMENT AND CONSERVATION,**

Respondent.

**In the Matter of:
NPDES PERMIT NO. TN0076376**

**PETITION FOR STATUTORY AND ADMINISTRATIVE APPEAL OF NPDES
PERMIT NO. TN0076376**

Pursuant to Tenn. Code Ann. § 69-3-105(i) and Tenn. Comp. R. & Regs. 1200-4-1-.02(1)(b) Petitioners appeal the issuance of National Pollutant Discharge Elimination System (NPDES) Permit No. TN0076376 (the Permit):

INTRODUCTION

1. This is a permit appeal pursuant to Tenn. Code Ann. § 69-3-105(i) and Tenn. Comp. R. & Regs. 1200-4-1-.02(1)(b). Issuance of the Permit is unlawful and the Permit is deficient in seven important respects:

A.) The Permit allows the Permittee to conduct selenium analysis using a method with a minimum detectable limit (MDL) as high as 5 ug/l and allows monitoring to occur during high flows where dilution is likely;

B.) The Permit sets Water Quality Based Effluent Limitations (WQBELS) for selenium at the selenium criteria themselves;

C.) The Permit fails to explicitly require that selenium sampling be done directly at the permitted outfalls;

D.) The Permit fails to explicitly require that any modifications to the Permit relating to the results of any reasonable potential analysis will constitute a major modification of the Permit;

E.) The Permit improperly classifies waters below the outfalls as wet weather conveyances;

F.) The Agency decision is arbitrary and capricious because it allows the permit to be modified in the future based only on data collected after permit issuance without considering all available data, including historical data. A valid reasonable potential analysis must consider all available and/or relevant data and follow EPA's technical support documents or another approved, transparent and established method.

Because of those failures, the permit modification could lead to impermissible backsliding pursuant to 33 U.S.C. 1342(o).

G.) Although Petitioners submitted detailed comments on the draft permit, TDEC failed to provide Petitioners – or the public at large - with notice of the issuance of the final Permit;

Petitioners seek declaratory and injunctive relief and a remand of the Permit to the agency for action consistent therewith.

JURISDICTION

2. The Board has jurisdiction over this appeal pursuant to Tenn. Code Ann. § 69-3-105(i) and Tenn. Comp. R. & Regs. 1200-4-1-.02(1)(b).

3. This appeal is timely filed within thirty days after issuance of the Permit on

February 24, 2011.

4. Petitioners submitted comments on the draft permit to the Tennessee Department of Environment and Conservation (TDEC) on July 30, 2010. Additionally, the final Permit contains material changes that were not made available to the public for comment in the draft permit;

PARTIES

5. Respondent is the TDEC Division of Water Pollution Control, which is the agency responsible for administering the NPDES program in the State of Tennessee.

6. Petitioner Sierra Club is a nonprofit corporation incorporated in California, with more than 1.3 million members and supporters nationwide and approximately 6,000 members who reside in Tennessee and belong to its Tennessee Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass the exploration, enjoyment and protection of surface waters in Tennessee.

7. Petitioner State Wide Organizing for Community EMpowerment (SOCM) is a thirty-six year-old grassroots citizens' organization with more than two thousand members in Tennessee working for environmental, social, and economic justice. SOCM grew out of the coalfields in East Tennessee and is dedicated to giving its members a voice in the quality of life in their communities. Many of SOCM's members live, work, and recreate in the Elk Valley community and the areas surrounding Zeb Mountain.

8. Petitioner Tennessee Clean Water Network (TCWN) is a Tennessee non-profit corporation headquartered in Knox County. TCWN is a membership organization that organizes Tennesseans to claim their right to clean water and healthy communities by fostering civic engagement, building coalitions and advancing water policy for a sustainable future. TCWN's vision is for all Tennesseans to have access to and benefit from clean, free-flowing water; an unstoppable upwelling of Tennesseans exercising their right to protect clean water; Tennessee water quality policy to be a model for the nation, with standards that exceed federal minimums and a commitment to improve those standards for the benefit of all Tennesseans; and protection of the unique beauty of Tennessee's rivers, lakes and open spaces.

9. Petitioners' members suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of discharges of selenium and will suffer such injuries in regard to the defects in the Permit at issue in this appeal. Petitioners' members enjoy hiking, bird watching, and wildlife viewing in and around the areas impacted by the Permittee's discharges, including Elk Fork Creek, Little Elk Creek, Lick Fork, Dan Branch, and Capuchin Creek, and are harmed by the high levels of selenium that Permittee is discharging. Petitioners' members are concerned for the health of their neighbors and other members of the community whose wells are located downstream of the Zeb Mountain mine. Petitioners' members are aware of the damage to wildlife that can occur as a result of selenium exposure, and are concerned that the discharges of selenium from the Zeb Mountain mine will have a negative impact on their wildlife viewing experiences. Petitioners' members have reduced the time that they spend in and around Elk Fork Creek, Little Elk Creek, Lick Fork, Dan Branch, and Capuchin Creek in

order to minimize their exposure to the selenium discharged from the Zeb Mountain mine. If the defects in the Permit were properly addressed, the harm to the interests of Petitioners' members would be redressed. Injunctions and declaratory relief and a remand to the agency for action consistent therewith would redress Petitioners' members' injuries by preventing and/or deterring future harmful discharges of selenium.

10. At all relevant times, Petitioners were and are "persons" as that term is defined by Tenn. Code Ann. § 69-3-103(25).

STATUTORY AND REGULATORY FRAMEWORK

11. The federal Clean Water Act (CWA) is intended to protect the waters of the United States, including headwater streams. The primary objective of the CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

12. One of the six national goals identified by Congress as necessary to achieve this objective is the attainment of "water quality which provides for the protection and propagation of fish, shellfish, wildlife and for recreation in and on the water." 33 U.S.C. § 1251(a)(2).

13. In furtherance of that goal, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" into waters of the United States except in compliance with the terms of a permit, such as a National Pollution Discharge Elimination System ("NPDES") permit issued by the United States Environmental Protection Agency ("EPA") or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

14. At all times relevant to this petition, the TDEC has been authorized by EPA to

administer the NPDES program for regulating the discharges of pollutants into the waters of Tennessee.

15. TDEC may not issue an NPDES permit “when the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA.” 40 C.F.R. §§ 122.4(a) and 123.25 (listing specific federal regulations applicable to the states); Tenn. Code Ann. § 69-3-108(g)(1); Tenn. Comp. R. & Regs. 1200-4-5-.04(1)(f).

16. In issuing NPDES permits TDEC must evaluate whether a discharge of pollutants has the reasonable potential to cause or contribute to exceedances of in-stream water quality standards. 40 C.F.R. §§ 122.44(d)(1)(i) & (ii) and 123.25; Tenn. Comp. R. & Regs. 1200-4-5-.04(1)(f). If the reasonable potential exists, then the NPDES permit must include water quality-based effluent limits sufficiently stringent to prevent water quality violations. 33 U.S.C. §§ 1342(b)(1)(A) and 1312(a); 40 C.F.R. §§ 122.44(d)(1)(vii)(A) and 123.25; Tenn. Code Ann. 69-3-108(g)(1); Tenn. Comp. R. & Regs. 1200-4-5-.04(1)(f).

17. With the exception of minor modifications, TDEC may only modify an NPDES permit when it has prepared a draft permit containing the proposed modifications and submitted the permit for public review and comment. 40 C.F.R. §§ 124.5 and 124.10; Tenn. Comp. R. & Regs. 1200-4-5-.06. Minor permit modifications are limited to correction of typographical errors, imposing *more* frequent monitoring or reporting, changing an interim compliance date, or allowing a change in ownership. Tenn. Comp. R. & Regs. 1200-4-5-.06(5)(b).

18. Tennessee adopted the Water Quality Control Act (TWQCA) in 1977 recognizing

that waters of the state “are held in public trust for the use of the people of the state” and “the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters.” Tenn. Code Ann. § 69-3-102(a). The TWQCA requires a permit for the “alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state” and for the “discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;” Tenn. Code Ann. § 69-3-108(a) & (b)(6);

19. The TWQCA prohibits the issuance of a permit “for an activity that would cause a condition of pollution either by itself or in combination with others.” Tenn. Code Ann. § 69-3-108(g);

20. A permit issued pursuant to the TWQCA “shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board” and must include “[t]he most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards, necessary to comply with an areawide waste treatment plan, or necessary to comply with other state or federal laws or regulations.” Tenn. Code Ann. § 69-3-108(g)(1).

FACTS

21. EPA and TDEC recognize selenium as a toxic water pollutant. 40 C.F.R. § 401.15; Tenn. Comp. R. & Regs. 1200-4-3-.03(3)(g).

22. Tennessee Water Quality Standards set the limits for selenium at a criterion maximum concentration (CMC) of 20 micrograms per liter (ug/L) and a criterion

continuous concentration (CCC) of 5 ug/L. Tenn. Comp. R. & Regs. 1200-4-3-.03(3)(g).

23. In 2003, TDEC issued NPDES Permit Number TN0076376 to Permittee's predecessor in interest, Robert Clear Coal Corporation (RCCC), to regulate water pollution from Permittee's Zeb Mountain mine and the discharge of pollutants into receiving waters including Lick Fork, Little Elk Creek, Jeffers Hollow, Capuchin Creek, Dan Branch and/ or their tributaries in the Upper Cumberland River Watershed in Campbell and Scott Counties, Tennessee.

24. Permittee subsequently purchased the Zeb Mountain mine from RCCC and TDEC transferred the Permit to Permittee.

25. On April 29, 2008, as part of a visit to the Zeb Mountain mine conducted pursuant to the Surface Mining Control and Reclamation Act, Petitioners obtained a water sample from the discharge of Outfall JH-4B. Petitioners had this water sample tested by Microbac Laboratory in Maryville, Tennessee. The results of the test showed a selenium concentration of 47 ug/L, or .047 milligrams per liter (mg/L).

26. On June 30, 2008, Petitioners obtained from TDEC copies of three water monitoring reports performed by Permittee at the site of the Zeb Mountain Mine. These monitoring reports show that on December 19, 2007, Permittee discharged 20.3 ug/L (.0203 mg/L) of selenium from Outfall LEC-5A.

27. On July 8, 2008, Petitioners obtained from TDEC results of samples Permittee took at the site of the Zeb Mountain Mine on June 12, 2008. These samples show that on June 12, 2008, Permittee discharged 5 ug/L (.005 mg/L) of selenium from Outfall LFT-2-2.

28. After mailing their notice of intent to sue to Permittee for unlawful discharges of

selenium pursuant to the Clean Water Act on July 8, 2008, Petitioners subsequently received final reports of sampling TDEC conducted on the site of the Zeb Mountain mine on June 27, 2008 and July 18, 2008. These samples show that on June 27, 2008, Permittee discharged 7.8 ug/L of selenium from Outfall LEC-5A.

29. These samples further show that on July 18, 2008, Permittee discharged the following amounts of selenium at the following outfalls:

8.7 ug/L of selenium from Outfall LEC 5A

6.1 ug/L of selenium from Outfall LFT 2-2

30. On July 18, 2008, TDEC, the Office of Surface Mining Reclamation and Enforcement (OSM) and Permittee jointly sampled the Zeb Mountain mine site for selenium. The samples show that on July 18, 2008, Permittee discharged the following amounts of selenium at the following Outfalls:

LFT 2-2 .0061 mg/L, 6.1 ug/L of selenium (TDEC)
 .006 mg/L, 6.0 ug/L of selenium (NCC)
 .00604 mg/L, 6.04 ug/L of selenium (OSM – total se)
 .006 mg/L, 6.0 ug/L of selenium (OSM – dissolved se)

LEC 5A .0087 mg/L, 8.7 ug/L of selenium (TDEC)
 .009 mg/L, 9.0 ug/L of selenium (NCC)
 .00844 mg/L, 8.44 ug/L of selenium (OSM – total se)
 .00855 mg/L, 8.55 ug/L of selenium (OSM – dissolved se)

31. On October 6, 2008, Petitioners filed a citizen enforcement suit under the Clean Water Act in federal court alleging unpermitted discharges of selenium from the Zeb

Mountain mine.

32. Subsequent sampling for selenium at the Zeb Mountain mine showed continued discharges of selenium at high levels from the mine site. On the basis of these samples, TDEC concluded that selenium at the mine had the reasonable potential to result in discharges of selenium at or above the water quality standard for selenium and that a WQBEL for selenium was necessary.

33. On August 27, 2010, Petitioners and Permittee lodged a Consent Decree with the U.S. District Court for the Eastern District of Tennessee resolving the federal litigation. As part of this Consent Decree, Permittee was to required to monitor for selenium and report the results to Petitioners. Petitioners to date have not received any such reports from Permittee;

34. On February 24, 2011, TDEC issued final NPDES Permit Renewal TN0076376 to Permittee but did not notify Petitioners of this action. The Permit imposes selenium limits on the Zeb Mountain mine for the first time. The selenium limits are WQBELs set at the criteria established at Tenn. Comp. R. & Regs. 1200-4-3-.03(3)(g). The Permit states that the “discharge limitation” is an “in-stream WQS” of 5.0 ug/l and a “maximum for any 1 Day” of 20.0 ug./l. Although it appears from the permit that compliance is required at the outfall, the permit is not clear on that point. Permit at 3. The Permit includes a header that refers to “In-Stream Water Quality Monitoring Sites for In-stream Compliance *Numeric* Standards,” but refers in the text only to “*narrative* water quality standards.” Permit at 6 (emphasis added). The Permit “will implement total selenium as interim limitation [sic] until there are sufficient analysis data to conduct reasonable potential analysis at each outfall,” provides for a reasonable potential analysis to be done

“to determine the necessity for the continuation of selenium limitation [sic] at each outfall” based on new sampling results, and states that TDEC will “notify permittee of a suspension of monitoring at that specific outfall(s) [sic].” Permit at 3-4.

CLAIMS FOR RELIEF

35. Petitioners incorporate by reference all allegations contained in paragraphs 1 through 34 above.

36. Permittee’s wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the CWA, 33 U.S.C. § 1311.

37. Permittee’s discharges are also alterations “of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state and discharges “of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters” within the meaning of Tenn. Code Ann. § 69-3-108(b)(1) and (6);

38. Part 1.A.1 of the Permit requires only that the analysis of selenium in the Permittee’s effluents “shall be performed using a sufficiently sensitive test method to determine concentrations of selenium at 5.0 µg/l or less.” Thus, the permit allows a testing method with a minimum detectable limit (MDL) of 5 ug/l. Moreover, because the Permit would allow a reasonable potential analysis (RPA) to be performed based on a minimum of six consecutive samples, an RPA could be conducted based only on high flows during the spring when dilution of selenium in the effluent is likely. Such an RPA would not be based on representative sampling of the Permittee’s effluent. Accordingly, the MDL and RPA provisions violate the Clean Water Act and TWQCA and their

implementing regulations for reasons including but not limited to the following:

A.) The Permit requires a minimum of six samples for selenium at each outfall over a three month period. If none of these samples show detectable amounts of selenium, the selenium limits and monitoring requirements will be removed for that outfall regardless of other available data or the validity of the six samples.

B.) Allowing the MDL for selenium to be set at the chronic effluent limit of 5 ug/l will result in a condition of selenium pollution and cannot ensure compliance with water quality standards because any discharge of selenium approaching but below 5 ug/l will go undetected and be discounted by TDEC, a likelihood that is increased if the samples are taken during high flow periods where dilution is likely. Due to variability of the amount of selenium in the effluent, it is important that levels of selenium lower than the WQS be detectable when using standard procedures to develop protective WQBELs. The Permit calls for TDEC to perform a reasonable potential analysis based on the sampling results. Under applicable guidelines for conducting such a reasonable potential analysis, a reasonable potential may be found even if all of the samples fell below the effluent limit. If the MDL is set at the effluent limit, such samples would be disregarded and a false finding of no reasonable potential may be reached. In other words, the Permittee could discharge levels of selenium that in the aggregate violate the water quality standard, but these levels could register as non-detects or be discounted by the agency with the result that the monitoring requirements and effluent limits for selenium at that outfall would be unlawfully removed from the permit;

C.) Allowing the MDL for selenium to be set at the chronic effluent limit is further arbitrary and capricious and not in accordance with law because selenium is a

bioaccumulative pollutant and levels of selenium smaller than 5 ug/l could still result in both an incursion above the chronic standard and in a condition of selenium pollution. Under the permit, however, these levels could go undetected resulting in the outfall being removed from regulation under the permit, thus failing to impose the most stringent effluent limitations required to implement state water quality standards in violation of Tenn. Code Ann. § 69-3-108(g)(1);

D.) Allowing the MDL for selenium to be set at the chronic effluent limit is further arbitrary and capricious and not in accordance with law because lower detectible limits for selenium are available and are commonly used and indeed were used by both TDEC and the Permittee in the sampling that occurred prior to issuance of the Permit;

39. Setting the WQBELS at the selenium criteria violates the Clean Water Act and TWQCA and their implementing regulations for reasons including but not limited to the following:

A.) The EPA Technical Support Document for the development of WQBELS strongly discourages setting limits at the water quality standard because such an approach does not account for variability in the selenium concentration in the effluent and therefore will not protect aquatic life;

B.) The WQBELS are therefore not the “most stringent effluent limitations” necessary to comply with the water quality standard and will result in a condition of selenium pollution in violation of Tenn. Code Ann. § 69-3-108(g);

C.) The record further demonstrates that the site discharges and has the potential to discharge high levels of selenium. There is no record support for setting the WQBELS at the water quality standard and the decision to do so is therefore arbitrary and capricious

and not in accordance with law;

D.) Setting the daily maximum selenium limitation at 20 µg/l does not protect the receiving streams from violations of the chronic selenium water quality standard because the Permittee is required to monitor twice a month only, and daily discharges of more than 5 µg/l, but less than 20 µg/l, could occur in between sampling events. As a result, the daily maximum selenium limitation must be set at a lower concentration in order to protect the chronic selenium standard. TDEC's failure to do so is arbitrary, capricious, and otherwise not in accordance with law.

40. The failure of the Permit to explicitly require that selenium sampling be done at the permitted outfalls violates the Clean Water Act and TWQCA and their implementing regulations because the ambiguity could render the Permit essentially unenforceable and enable the Permittee to evade its requirements by sampling downstream from the outfalls. Due to this ambiguity, the Permit fails to impose the most stringent effluent limitation necessary to comply with state water quality standards and will result in a condition of selenium pollution in violation of Tenn. Code Ann. § 69-3-108(g).

41. The failure of the Permit to explicitly require that any changes to the Permit resulting from the reasonable potential analysis be implemented through the major modification procedures prescribed by law violates the Clean Water Act and TWQCA and their implementing regulations for reasons including but not limited to the following:

A.) The Permit could be construed as “self modifying” and thus exclude Petitioners from the opportunity for notice and a hearing on substantive changes to the permit that affect their interests and could circumvent the requirements that major modifications of permits go through public notice and comment in violation of the CWA and the TWQCA

and Tenn. Comp. R. & Regs. 1200-4-5-.06. The permit must not allow modification in the future based only on data collected after permit issuance without considering all available data, including historical data. A valid reasonable potential analysis must consider all available and/or relevant data and follow EPA's technical support documents or another approved and established method. The permit must be modified to prohibit backsliding pursuant to 33 U.S.C. 1342(o). ;

B.) The Permit at page 4 specifically allows for TDEC to eliminate selenium monitoring at specific outfalls simply by "notify[ing] the permittee" in violation of Tenn. Comp. R. & Regs. 1200-4-5-.06;

C.) US EPA has the right to review major modifications to NPDES permits, including the removal of WQBELs. Unless the permit requires that changes resulting from RPAs be conducted as major modifications, US EPA will be deprived of its oversight authority;

42. Improper classification of the waters below the outfalls as wet weather conveyances violates the TWQCA and its implementing regulations and is arbitrary and capricious and not in accordance with law for reasons including but not limited to the following:

A.) The TWQCA defines "wet weather conveyances" as "man-made or natural watercourses, including natural watercourses that have been modified by channelization: (A) That flow only in direct response to precipitation runoff in their immediate locality; (B) Whose channels are at all times above the groundwater table; (C) That are not suitable for drinking water supplies; and (D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple

populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.” Tenn. Code Ann. § 69-3-103(43);

B.) By mischaracterizing streams as wet weather conveyances, the Permit fails to impose effluent limits sufficiently stringent to implement applicable water quality standards in protected waters of the state and will allow a condition of pollution in violation of Tenn. Code Ann. § 69-3-108(g);

43. The failure to comply with public notice requirements regarding issuance of the permit, and the failure to notify Petitioners of the issuance of the permit, violate the Clean Water Act, TWQCA, Uniform Administrative Procedures Act and their implementing regulations for reasons including but not limited to the following:

A. Tenn. Code Ann. § 69-3-105(i) specifically mandates that TDEC provide the public, including all interested parties, with adequate notice of issuance of the final Permit . TDEC’s regulations require that public notice be “given by way of distribution of the notice of determination to persons” who commented on the draft permit. Tenn. Comp. R. & Regs. 1200-4-5-.12(5). TDEC’s failure to do so violates Petitioners’ right to appeal the Permit under the TWQCA;

44. Petitioners reserve the right to amend this Petition or otherwise move to conform the pleadings to the proof in the event additional grounds for appeal are discovered during the appeal process.

RELIEF REQUESTED

WHEREFORE, Petitioners respectfully request that the Board:

(1) Take jurisdiction over this appeal as a contested case pursuant to Tenn. Code Ann. § 4-5-301 et seq.;

- (2) Provide public notice of the contested case by publication in the Tennessee Administrative Register as has been the Board's practice in declaratory ruling cases, the method previously used for public contests of permit issuances;
- (3) Direct TDEC to file a response to this Petition no later than 30 days following the publication of notice in the Tennessee Administrative Register;
- (4) Direct that a hearing be conducted in this matter;
- (5) Promptly request the assignment of an Administrative Law Judge by the Office of Administrative Procedures and that a single judge be designated for all purposes prior to the hearing and to conduct the hearing of this matter;
- (6) Declare that TDEC failed to comply with the requirements of the CWA, TWQCA and UAPA when it issued the Permit;
- (7) Remand the permit to TDEC and direct or enjoin the agency to modify the Permit to:
 - A.) Set the MDL for selenium analysis at no higher than 2 ug/l;
 - B.) Calculate the WQBELs for selenium based on EPA's technical support document and at a level sufficient to protect aquatic life;
 - C.) Clarify that compliance with selenium WQBELs must be achieved at the outfalls;
 - D.) Require that any post-issuance modification of the permit not constitute backsliding and include a reasonable potential analysis that follows EPA's or technical support document other approved methods and that considers all available data, including historical data in that analysis.
 - E.) Require that major modifications of the Permit, including any decrease in

monitoring requirements or changes in effluent limits based on the results of the reasonable potential analysis, must be submitted to the public for notice and comment;

F.) Remove the classification of the waters below the outfalls as “wet weather conveyances” and properly classify these as streams subject Tennessee’s water quality standards;

(8) Enjoin TDEC to provide the public with adequate public notice of all final NPDES permits and modifications;

(9) Grant other such relief as the Board deems just and proper.

Respectfully submitted,

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