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**BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS**

**WATER AUTHORITY OF DICKSON COUNTY, )**

**Petitioner, )**

**v. )**

**No. \_\_\_\_\_**

**TENNESSEE DEPARTMENT OF )  
ENVIRONMENT AND CONSERVATION, )**

**Respondent. )**

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**WATER AUTHORITY OF DICKSON COUNTY'S  
PETITION FOR STATUTORY APPEAL**

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The Water Authority of Dickson County (hereinafter "WADC") respectfully submits this Petition for Statutory Appeal of the denial of its application for a National Pollutant Discharge Elimination System ("NPDES") Permit, in accordance with Tennessee Code Annotated § 69-3-105(i) and Tennessee Comp. Rules and Regulations 0400-40-07-.04(9). WADC submits this Petition for good cause, as shown by the following:

1. This petition for statutory appeal concerns WADC's NPDES permit application, in which WADC requested an increase in discharge of treated wastewater and proposed building a new facility, the East Hickman Water Reclamation Facility ("EHWRF").

**JURISDICTION**

2. WADC appeals the Tennessee Department of Environmental Conservation's ("TDEC") denial of its NPDES permit, pursuant to Tennessee Code Annotated § 69-3-105(i) which gives the Tennessee Water Quality Control Board (the "Board") the duty and authority to

“review the commissioner’s permit decision and [] reverse or modify the decision upon finding that it does not comply with any provisions of [the Tennessee Water Quality Control Act].”

3. Under Tennessee’s Water Quality Control Act, a petition for permit appeal may be filed by any person who participated in the public comment period or by any person who appeals material changes included in a final permit that were not made available for public comment on the draft. *Id.* WADC submitted a written comment during the public comment period on the draft permit, and therefore has satisfied the preconditions for filing the instant appeal.

4. Pursuant to Tenn. Code Ann. § 69-3-105(i), a permit appeal must be filed within thirty (30) days after public notice of the Commissioner’s decision to issue or deny the permit. TDEC denied WADC’s NPDES Permit on December 21, 2023. This petition for permit appeal is filed 30 days from permit issuance, and is therefore timely.

### **PARTIES**

5. Petitioner, WADC, is a non-profit regional authority created by Private Act, funded by its customers, who pay for water and sewer services. For purposes of this action, service may be accomplished upon the undersigned counsel.

6. The Commissioner of TDEC, through its Division of Water Resources (“DWR”), is authorized under Tennessee Code Annotated § 69-3-108 to issue permits for development of natural resources that affect waters of the state. Service of Process is made on Jenny Howard at [tdec.appeals@tn.gov](mailto:tdec.appeals@tn.gov).

### **FACTUAL BACKGROUND AND RELEVANT RULES**

7. WADC is a regional provider of drinking water to customers in Dickson, Hickman, and Williamson Counties. It also provides wastewater services through the Jones Creek Water

Reclamation Facility, the Fairview Water Reclamation Facility, and the White Bluff Water Reclamations Facility.

8. WADC evaluated its wastewater needs over the next five years and determined that it did not have sufficient capacity to address anticipated growth in the regions served by WADC. Moreover, all the streams WADC's reclamation facilities discharge to are limited in both water quality and capacity for additional wastewater.

9. WADC relied on substantial discussion with DWR permit writers, who indicated that WADC's project concept was feasible. As early as June 3, 2021, WADC corresponded with TDEC personnel, sharing its proposed discharge plans, and these plans were accepted by TDEC. (See Email Correspondence, hereto attached as **Exhibit 1**.)

10. On or about December 3, 2021, WADC applied for a NPDES permit to allow it to discharge treated wastewater into Lick Creek in Hickman County, Tennessee, at Mile 10.6. (See Completed Application Form 2A, hereto attached as **Exhibit 2**.)

11. Since WADC's NPDES permit sought to increase discharge, WADC had to comply with the antidegradation statement under Tenn. Comp. R. & Regs. 0400-40-03-.06(1)(a), which in pertinent part states as follows:

Where the quality of Tennessee waters is better than the level necessary to support propagation of fish, shellfish, and wildlife, or recreation in and on the water, that quality will be maintained and protected unless the Department finds, after intergovernmental coordination and public participation, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located as established herein.

And Tenn. Comp. R. & Regs. 0400-40-03-.06(1)(b)(2) provides that:

If the proposed activity will cause degradation of any available parameter above a *de minimis* level, or if it is a new discharge of domestic wastewater, a complete application will:

- (i) Analyze a range of potentially practicable alternatives to prevent or lessen the degradation associated with the proposed activity,
- (ii) Demonstrate that the proposed degradation is necessary to accommodate important social or economic development in the area in which the waters are located; and
- (iii) Demonstrate that the proposed degradation will maintain water quality sufficient to protect existing uses in the receiving waters.

12. To make this showing, WADC contemporaneously submitted a Preliminary Engineering Report (“PER”), prepared by a licensed professional engineer. (*See* PER for WADC, hereto attached as **Exhibit 3**.) This PER included an alternatives analysis, reviewing the following: no action, increase or optimize capacity of existing treatment facilities, land application, water reuse, decentralized systems, and new EHWRP.

13. On December 29, 2021, DWR confirmed receipt of WADC’s NPDES permit application and accompanying PER and acknowledged it was complete. (*See* DWR’s Notice of Complete Application and Public Notice Requirements for NPDES, hereto attached as **Exhibit 4**.)

14. DWR also requested two clarifications, regarding the proposed design flow rate and industrial pretreatment program prior to developing and public noticing a draft permit. (*Id.*) Thus, on January 4, 2022, WADC submitted a revised application to clarify design flow and pretreatment programs. (*See* Revised Application Form 2A, dated January 4, hereto attached as **Exhibit 5**.)

15. On January 6, 2022, a DWR Manager of the Engineering Service Unit sent a letter to WADC showing that WADC’s antidegradation statement alternatives analysis was approved. (*See* Alternatives Analysis for East Hickman Water Reclamation Facility approval letter, dated January 6, hereto attached as **Exhibit 6**.) To be sure, the Dataviewer for TDEC reflects that WADC’s alternatives analysis was marked “approved” on January 12, 2022.

16. Upon receiving approval, WADC began the required public notification process, to notify the public of the proposed discharge, and allow for public comment and a public hearing, which was scheduled for January 18, 2022.

17. DWR received a letter from a resident of Lick Creek Farm, expressing concern that the public notice signs were illegible from the road, undated, and not placed near the proposed new facility. A DWR Manager for Water-Based Systems responded to explain that the signs had been posted near the discharge location, as the location of the treatment facility has not yet been identified. (See DWR's Letter in response to Hart, dated February 16, hereto attached as **Exhibit 7.**)

18. On or about February 15, 2022, WADC's engineer submitted a revised permit application that included the design of EHWRF. (See Revised Application Form 2A, dated February 15, hereto attached as **Exhibit 8.**)

19. TDEC decided to delay issuing a permit to WADC and did not schedule a public hearing, after reviewing a letters from the president of the Hickman County Industrial Development Board and the Butler Snow law firm, which represents multiple Hickman County citizens. (See Request Submitted by Hickman County Mayor Mark Bentley to Delay Permit Issuance, hereto attached as **Exhibit 9.**)

20. On March 23, 2022, WADC representatives met with TDEC officials to discuss permitting. At that meeting, DWR confirmed that it had erroneously overlooked that Lick Creek in relevant portions qualifies as Exceptional Tennessee Waters ("ETW").

21. The antidegradation requirements for ETW in pertinent part provide as follows:

In waters identified as Exceptional Tennessee Waters new or increased discharges that would cause degradation of any available parameter above the level of *de minimis* and new domestic wastewater discharges will only be authorized if the applicant has

demonstrated to the Department that there are no practicable alternatives to prevent or lessen degradation associated with the proposed activity, the degradation is necessary to accommodate important economic or social development in the area, and the discharge will not violate the water quality criteria for uses existing in the receiving waters.

Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(c)(1).

22. Even with this oversight, TDEC did not reject WADC's application; nor did TDEC request that WADC withdraw and resubmit its application. Rather, TDEC merely suggested that WADC supplement its NPDES permit application to address the requirements for ETW antidegradation. Specifically, TDEC requested an updated alternatives analysis and social and economic justification.

23. On or about December 9, 2022, WADC supplemented its NPDES permit application with another Preliminary Engineering Report. WADC also submitted a report prepared by expert economists at the Middle Tennessee State University ("MTSU") Business and Economic Research Center and entitled "Proposed East Hickman County Water Reclamation Facility: Direct and Indirect Fiscal Impact" (hereinafter referred to as "MTSU Report"). (*See* MTSU Report, hereto attached as **Exhibit 10**.)

24. The MTSU Report shows that there were no other practicable alternatives, pursuant to Tenn. Comp. R. & Regs. 0400-40-03-.06(1)(b)(3), and that the proposed degradation is necessary to accommodate important economic development in the area in which the waters are located, as required by Tenn. Admin. Comp. 0400-40-03-.06(1)(a). (*Id.*) The MTSU Report also illustrated several ways in which having sewer availability in the designated area was essential to *accommodate* business growth, generating jobs and new industry in the three-county area, including Hickman County. (*Id.* at pgs. 25-29.)

25. Based upon the additional information provided in WADC's supplementation, DWR deemed the application complete on January 9, 2023.<sup>1</sup> (*See* DWR's Notice of Complete Application for NPDES Permit Number TN 0082376, hereto attached as **Exhibit 11.**)

26. Notwithstanding WADC's thorough supplementation, DWR issued a "Rationale" as a preliminary determination to deny WADC's NPDES permit, on the grounds that WADC did not demonstrate that a greater than *de minimis* degradation of ETW is necessary to accommodate important economic or social development in the area of the discharge, and further, that WADC did not demonstrate that less-degrading alternatives are not practicable. (*See* DWR's Rationale, dated April 5, 2023, hereto attached as **Exhibit 12.**)

27. In considering alternatives, DWR proposed that WADC discharge to the Cumberland River, rather than Lick Creek, or expanding WADC's Jones Creek Water Reclamation Facility, rather than build a new facility. (*Id.* at pg. R-7-8.) In considering economic and social development, DWR argued that the industrial development offered by WADC in its supplementation was speculative, and further, took into account that Hickman County officials have provided differing opinions as to whether the forecasted industrial development is wanted in Hickman County. (*Id.* at pg. R-12.)

28. TDEC conducted a public hearing on May 23, 2023 at the Centerville High School in Hickman County. (*See* TDEC's Notice of Determination, hereto attached as **Exhibit 13.**) Written comments from the public were accepted through June 5, 2023. (*Id.*) TDEC also considered a comprehensive written response by WADC, dated June 5, 2023. (*Id.*; *See also* WADC's Written Response, hereto attached as **Exhibit 14.**)

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<sup>1</sup> Contrary to TDEC's representation in a January 9, 2023 letter, WADC never received any communication that the statement of completeness was rescinded or deemed incomplete. Indeed, no additional information was ever formally requested of WADC by DWR since the January 9 letter.

29. On December 21, 2023, TDEC – relying in part on DWR’s Rationale – issued a Notice of Determination (“NOD”) denying WADC’s NPDES permit application:

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

(See **Exhibit 13**.)

### **PETITIONER’S CONTENTIONS**

30. WADC’s contends that the determinations of both DWR and TDEC disregard multiple factors, concerning both alternatives and economic or social development, which WADC made in each of its applications and accompanying reports. These factors were also provided at different times in response to TDEC’s multiple requests for clarification.

31. WADC’s contends that alternatives such as no action, drip irrigation, reuse and different treatment, and conveyance locations were considered, and these considerations are reflected in both PERs. WADC further contends that the alternatives proposed by DWR are not practical, because transporting wastewater over long distances is expensive and impractical. For example, discharging to the Cumberland River would cost more than twice that of discharging to Lick Creek. Moreover, construction of a pipeline to the Cumberland River is not a practical alternative because the WADC simply does not have the resources to pay for that option.

32. WADC’s contends that arguments put forth by DWR and counsel for Hickman County residents on economic or social development inflates the language within the Tennessee



Rules. Tennessee law does not require, or speak to a requirement, that purported economic and social benefit must be concretely supported. Furthermore, the rules do not require “extraordinary” benefits or even that the benefits must outweigh the degradation. Indeed, the rules only require that the applicant identify the “important” economic or social benefits. *See* Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(c)(1). Unquestionably, providing sewer availability accommodates important economic or social development. Growth and development will occur with sewer services, and that growth will generate jobs for home builders and additional property tax for Hickman County.

33. The requirements for an ETW antidegradation also only require that “the degradation is necessary to *accommodate* important economic or social development in the area.” Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(c)(1) (emphasis added). Meaning that WADC’s proposed facility is not in and of itself creating or improving important economic or social development; it only has to *accommodate* it.

34. WADC contends that Tennessee law does not define the “area” where economic and social benefit must occur. Only the general antidegradation statement provides that the language “in the area in which the waters are located as established herein”; this language does not appear in the requirements for an ETW antidegradation statement.<sup>2</sup>

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<sup>2</sup> Another major difference between a general antidegradation statement, under Tenn. Comp. R. & Regs. 0400-40-03-.06(1)(a), and the antidegradation requirements for ETW, under Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(c)(1), is the review process for an ETW antidegradation. For an ETW, if TDEC intends to issue the permit, it must notify the public and affected intergovernmental entities of its intent. *Id.* at (d)(1). If TDEC issues the permit, such persons are provided the opportunity for a declaratory order contested case before the board pursuant to Tenn. Code Ann. § 4-5-223. Where TDEC plans to deny the permit, it must first make a tentative decision to deny the permit because degradation is not necessary, give notice to the applicant, the public, and intergovernmental agencies and conduct a public hearing. Tenn. Admin. Comp. 0400-40-03-.06(4)(d)(3). The applicant then has 30 days to appeal the decision under Tenn. Code Ann. § 68-3-105(i).

35. Of note, WADC merely seeks to provide needed wastewater collection and treatment services. Any concern of uncontrolled growth or pollution on behalf of Hickman County citizens would be addressed by Hickman County government, which controls growth through its use of land ordinances.

36. TDEC has not provided any guidance with regard to location of additional, feasible discharge locations, and has treated WADC's NPDES permit application in a manner that appears to yield to well-funded environmental and political interests, rather than to resolving WADC's capacity problem.

#### **PRAYER FOR RELIEF**

Petitioner requests that:

37. The Board find that WADC has met all requirements for complying with the antidegradation statement for Exceptional Tennessee Waters;

38. The Board direct that a hearing be conducted in this matter, pursuant to Tennessee Code Annotated § 69-3-110;

39. The Board find that TDEC's failure to provide WADC with an identification of what it considered to be deficiencies in the application, to wit, alternatives analysis and social or economic justification, was a violation of the Permittee's bill of rights, under Tenn. Code Ann. § 69-3-141 (pre-2024);

40. The Board 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;

41. The Board reverse the denial of WADC's NPDES Permit;

42. The Board provide an award of attorney's fees as permitted under Tennessee law;  
and

43. Provide any such other and general relief as necessary.

Respectfully submitted,

/s/William L. Penny

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