



Department of
**Environment &
Conservation**

Public Hearing
Water Quality, Oil and Gas Board
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, Nashville
and via WebEx
October 18, 2022– 10:00am

*If you wish to make Public Comment, please fill out a yellow comment card,
or if virtual please email Drake.Smarch@tn.gov or message the chat box.
Include what you want to comment on, and you will to be placed in line.

Welcome!

- Opening remarks from the Division of Water Resources
Deputy Director, Paula Mitchell
- Roll call of Board members present.

Board Minutes

- Presentation of minutes from April 2022
- **Vote** for approval of minutes.
- Minutes are available on the Board's website: <https://www.tn.gov/environment/about-tdec/boards-and-commissions/board-tennessee-board-of-water-quality--oil-and-gas.html>

General Public Comment

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TDEC OGC & Contested Case Updates

Board of Water Quality, Oil, and Gas October 18, 2022

Staffing Update

New Attorneys supporting the Division of Water Resources:

- Emily Vann
- Payton Bradford
- Samantha Buller-Young
- Jeff Zentner*

Orders and Appeals

From April 1, 2022 -September 30, 2022:

- DWR has issued 26 new enforcement orders.
 - 5 drinking water
 - 19 NPDES and/or ARAP
 - 2 Safe Dams
 - 7 orders have been appealed
 - 13 orders have become final.
- During this time there have been three new permittee appeals and one new third-party permit appeal.
- In addition, during this time, four Section 118(a) complaints were filed, and no Section 118(a) determinations were appealed.

Initial Orders

The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness.

Tenn. Code Ann. § 69-3-110(a)

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TDEC v. Billy Harper et. al, 04.30-190641J

- Appeal of Commissioner's Order alleging Respondents had unlawfully filled 8.09 acres of wetland without an ARAP and two of the Respondents cleared more than one acre of land for development without CGP coverage.
- Five-day contested case hearing held fall 2021.
- Initial Order against TDEC on the wetland claims, in favor of TDEC on CGP claims.
- TDEC has appealed to the Board. Seeking a date for the hearing.

Mark Clayton v. TDEC, 04.30-220109J

- Appeal of a Section 118(a) complaint.
- TDEC moved for summary judgment based on lack of standing because the Petitioner sold the affected property in April 2022.
- Administrative Judge entered an initial order of dismissal for lack of standing because the Board – which lacks the authority to award money damages to a third party - cannot redress the Petitioner’s alleged injury.
- The Initial Order was entered on 9-23-22. This is the first Board meeting following entry of the Initial Order.
- The Petition for Reconsideration was denied on 10-6-22. The Petitioner may still file an appeal to the Board.

Center for Biological Diversity v. TDEC, *04.30-220153J*

- The Center for Biological Diversity and the Sierra Club appealed a NPDES permit modification for the TVA Kingston Fossil Plant.
- TVA intervened. TDEC and TVA filed a motion to dismiss on the grounds that the appealed provisions were not the subject of the modification.
- Initial Order dismissing the appeal entered August 12, 2022. Not appealed by the conservation groups. This is the first board meeting.

Harpeth River Conservancy Petition for Declaratory Order

- The Harpeth River Conservancy has appealed several provisions of Rule Chapter 0400-40-10 regarding effluent limitations for post-construction stormwater in MS4 permits.
 - Allowance for stormwater control measures (SCMs) in buffers; and
 - Local government option to exclude uncontaminated roof runoff from the water quality treatment volume (WQTV).
- This Board adopted these standards in October 2021, and they became effective earlier this year. These standards are incorporated into the Phase II MS4 NPDES permit.

Harpeth River Conservancy Petition for Declaratory Order

Tenn. Code Ann. § 4-5-223

(a) Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:

(1) Convene a contested case hearing pursuant to this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or

(2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225...

Harpeth River Conservancy Petition for Declaratory Order

(b) A declaratory order shall be binding between the agency and parties on the state of facts alleged in the petition unless it is altered or set aside by the agency or a court in a proper proceeding.

(c) If an agency has not set a petition for a declaratory order for a contested case hearing within sixty (60) days after receipt of the petition, the agency shall be deemed to have denied the petition and to have refused to issue a declaratory order.

RETROSPECTIVE RULE REVIEW

By December 1, 2023, and every eight (8) years thereafter, a department with rules promulgated and published on the secretary of state's website ... shall submit a report of the department's chapters in effect as of July 1 of the year that the report is due to the chair of the government operations committee of the senate and the chair of the government operations committee of the house of representatives. The report includes:

- (1) A brief description of the department's operations that each chapter affects;
- (2) For each rule in a chapter, the rule's administrative history, including, but not limited to, the original date the rule was promulgated and the date the rule was last amended;
- (3) A determination of whether each rule in the chapter should:
 - (A) Be amended or repealed;
 - (B) Be reviewed further; or
 - (C) Continue in effect without amendment; and
- (4) A determination of whether each rule in the chapter adheres to current state and federal law, to court rulings, and to any other standards that affect the rule.

The Division of Water Resources has 28 rule chapters and 299 Rules.



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Rule Chapter 0400-40-14

Adam Bonomo – Division of Water Resources

NPDES Electronic Reporting Rule

- Signed September 24, 2015
- Requires regulated entities to report information electronically, instead of filing written paper reports
- Replaces most paper-based Clean Water Act (CWA) NPDES permitting and compliance monitoring reporting requirements with electronic reporting
- Data reported electronically will be made available to the public on the Enforcement and Compliance History Online (ECHO) website



CWA-NPDES
electronic reporting



Enforcement and
Compliance History Online

E-Reporting

- Phase 1: started December 21, 2016
 - netDMR
 - Biosolids (to EPA)
- Phase 2: EPA extended deadline from 12/21/20 to 12/21/25
 - Pretreatment semi-annual and annual reports (SARs)
- TDEC plans to implement Phase 2 prior to the EPA deadline



TN E-Reporting Update

- TDEC worked with an IT consultant to develop the electronic form for SARs/ARs
- Numerous training opportunities have been made available beginning in October 2021 up to now
- We have onboarded over half of the Control Authority base
- The purpose of this rulemaking is to revise the Pretreatment Requirements in Tennessee Rule 0400-40-14 to include requirements for electronic reporting in accordance with 40 CFR 127 and 403.



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Comprehensive Water Withdrawal Permitting in the Duck River Watershed

Duck River Pilot Concept

The pilot concept of a comprehensive regional water withdrawal permitting strategy aligns with opportunities identified in the 2018 Tennessee H2O Plan:

- *Facilitating collaboration and cooperation among water users dealing with water shortages, flood mitigation, and other challenges*
- *Approach for adaptive management of river flows and minimum flows that utilizes the best available science to protect ecological health and recreational uses of TN rivers and streams.*



Why start in the Duck River Watershed?

Duck River has unique water withdrawal challenges and opportunities:

- Number of public water system withdrawals
- Exceptional Tennessee Water (ETW) designation
- Public interest in the river, known as the most biologically diverse river in North America with 50 documented species of freshwater mussels and 151 species of fish. T&E species include globally significant populations and some species found nowhere else in the world
- **There is an existing regional planning organization** – the DRA as an established cooperative framework is an asset for this pilot project.
- Water systems' participation in DRA helps to set the framework for participate in the pilot study. TDEC will work with water systems in collaboration with DRA.

The Need for Comprehensive Regional Permitting

TDEC has met with eight water systems in the past year about new or expanded intakes

- Concerns about accommodating rapid growth in the area
- Questions about “grandfathering” immediate water availability and purchase options limiting growth potential
- TDEC has received multiple ARAP withdrawal permit applications for the same resource
- DWR believes we can authorize current withdrawals, allowing us to accommodate additional short-term (less than 5 year) needs
- Long-term needs (greater than 5 years) will require further analysis and cooperation to ensure an equitable water withdrawal permitting strategy

Pilot Project Vision and Mission

Vision

Initiate a cooperative, comprehensive regional approach to equitable permitting for all public water withdrawals in the Duck River watershed in 2022.

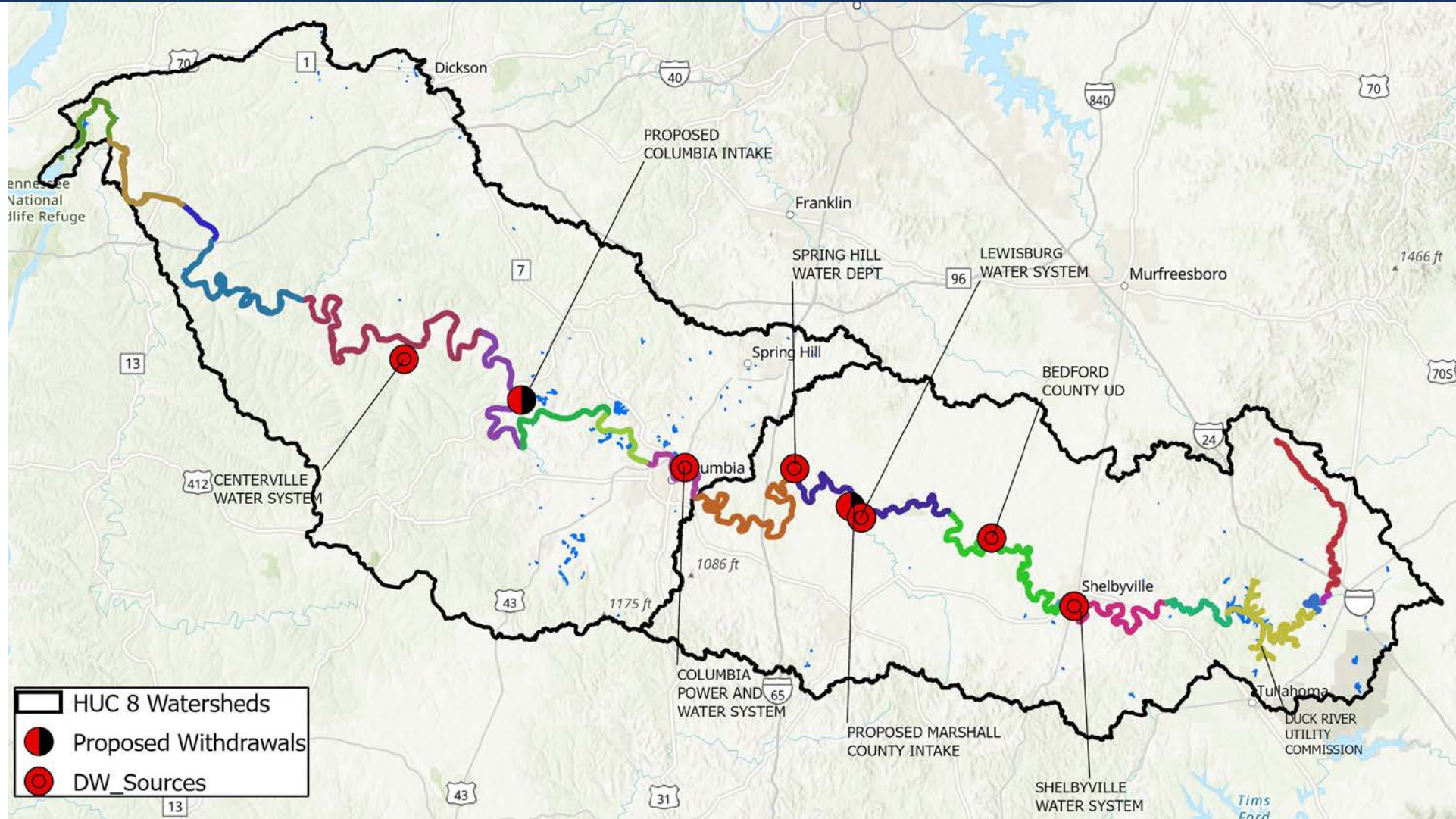
Mission

TDEC's role/goal in this effort is to facilitate a comprehensive regional analysis of the Duck River watershed that is consistent with the time-sensitive water supply needs and policy concerns stressed in TN H2O and focused on generating rational permitting decisions that account for the region's anticipated population, economic growth, and protection of water quality.

Overview

- 1. Create a baseline of permitted withdrawals**
2. Consider new intakes and expansions and identify:
 - **areas for regional growth planning/regional water need**
 - regional interconnection and infrastructure opportunities and projects
 - endangered species analysis and mitigation (will involved other agencies)
 - how to better understand other designated uses such as recreation, agriculture
 - how to utilize ARP, BIL, or other funds to develop and implement collaborative plans
3. Based on this info, TDEC will be able to consider and apply such information as the **basis for renewal of the ARAP withdrawal permits.**
- 4. Ongoing/iterative process** -continually go through steps 2 and 3 into the future as circumstances evolve in the watershed.

Duck River Watershed



Permitted Water Systems

Marshall County Board of Public Utilities

- Permit issued on August 6, 2021
- Includes a special permit condition that water withdrawal shall cease when flow at the Milltown USGS gage reaches a low of 175 cfs
- Appealed by MCBPU and DRA; cases consolidated
- TWF and TNC granted intervention
- Parties agreed to mediation; settlement reached in February 2022

Columbia Power and Water Systems

- Permit issued on June 24, 2019 for existing intake

Permits – Current Status

TDEC has received ARAP applications and anticipates draft permits this fall for:

Duck River Utility Commission

Shelbyville

Bedford County

Lewisburg

Spring Hill

TDEC has received an ARAP application for a new intake in Columbia to process during Step 2.

Stakeholders

- stakeholders listed at <https://duckriveragency.org/wrc.htm> (plus Centerville)
- Water systems (DRATAC members)
- DRA
- Agencies – TDEC, TWRA, TVA, USACE, USFWS, EPA
- NGOs – TNC, SELC, HRC, TWF, Sierra Club
- Individual stakeholders from 8 TDEC stakeholder meetings since June 2020

Questions?

Robby Baker, ARAP Permit Writer
Robert.D.Baker@tn.gov

April Grippo, Deputy Director, TDEC DWR
April.Grippo@tn.gov



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Triennial Review of Water Quality Standards

Things We Do Every Triennial Review:

- Consider any new national criteria recommendations from EPA.
(Not required to adopt, but must provide scientific basis for doing otherwise.)
- Ask TWRA & USFWS about new trout streams. Consider stream reclassification requests, such as adding domestic water supply uses.
- If appropriate, nominate potential new Outstanding National Resource Waters (ONRWs). Provide supporting rationale for nominations and hold on-site public hearings.
- Collect and consider public comments. Document and publish basis for either adopting or not adopting recommendations.

Proposed Changes in this Triennial Review:

- Updating the E. coli criteria
- Correct typo for Nitrosodiethylamine (c) = 12.3 µg/l for Recreational Use, Toxic substances, Organisms Only criteria from previous final draft.
- Correct typos for Methoxychlor and Mirex in the Fish and Aquatic Life Toxics table from previous final draft.
 - Methoxychlor CCC = 0.03 µg/l
 - Mirex CCC = 0.001 µg/l
- Proposed EPA Chloride criteria and correct draft typo in units for Chloride (should be CMC= 860,000 µg/l and CCC = 230,000 µg/l)

Proposed Changes in this Triennial Review:

- Update to De Minimis Degradation definition concerning water withdrawals
 - Subject to the limitation in part 3 of this subparagraph, a single water withdrawal will be considered de minimis if it removes less than five percent of the 7Q10 flow of the stream, unless the withdrawal may adversely affect waters designated as Exceptional Tennessee Waters pursuant to part (4)(a)3 of Rule 0400-40-03-.06.
- Update Antidegradation Statement to include new impoundments regardless of the level of degradation (i.e., new impoundments, like a new discharge of domestic wastewater, will always require full antidegradation review).
- General cleanup of language in document to provide better clarity.



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Division of Water Resources Updates

Paula Mitchell – Deputy Director – Division of Water Resources



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Nominations for New Chairperson

Tennessee Water Quality, Oil, and Gas Board

Any Old Business?

Thank you for joining us.
Any questions, please direct to
Drake.Smarch@tn.gov