

Before the Tennessee Board of Water Quality, Oil and Gas

RE: Addendum to Petition for Rulemaking ]  
Concerning Department of Environment and ]  
Conservation Notices to the Public Relating ]  
to Water Related Permits and Related ]  
Actions. ]

The Board acknowledged the receipt of this Petition at the April 18, 2023 meeting and deferred further consideration and action to the June 20, 2023 meeting.

The limited discussion at the April meeting suggested it would be useful to advise the Board and clarify some aspects of Petitioners' concerns.

I. THE EXISTING NOTICES POSTED BY THE DIVISION OF WATER RESOURCES ON THE INTERNET.

The core of public information on Water Resources (DWR) regulatory actions are the Dataviewers. (<https://dataviewers.tdec.tn.gov/dataviewers/f?p=2005:1:10492524920704:::>) which opens with statistics which show the range of DWR activities and the number of matters addressed. There is also a map viewer. (<https://tdeconline.tn.gov/dwrcgp/>)

The DWR Dataviewer provides information on both ARAPs and discharge permits (NPDES, SOPs and stormwater, etc.). The public needs to know how to access the DWR Dataviewer to understand what is happening or proposed to happen at a site near them (which may or may not have a sign or a newspaper notice as discussed in the original petition).

The DWR posts lists of some actions in including applications for Aquatic Resource Alteration Permits (ARAPs). A general search for information on ARAPs will tell the reader, inter alia,<sup>1</sup>

When the proposed activity does not qualify for coverage under a general permit, a regular or individual permit is required. If the application is not complete, the applicant is notified of any deficiencies and asked to respond. After submittal of all required items, a public notice is issued. The division must advertise the public notice on the TDEC web site and mail a copy to persons on our mailing list. The applicant must also place a division approved legal notice in a local newspaper and post a placard near the project site.

These bulletin board style notices are linked on the "Water Notices and Hearings - Public Participation Opportunities" page at:

<https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-water.html>

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<https://www.tn.gov/environment/permit-permits/water-permits1/aquatic-resource-alteration-permit--arap-.html>

Persons who sign up for water permit related emails will receive the “Weekly ARAP Public Notice Announcement [date of issuance]” from [Malaika.J.Newball@tn.gov](mailto:Malaika.J.Newball@tn.gov) or another TDEC staff person. These weekly notices remind the reader that “More detailed information on the proposed projects and copies of the draft ARAP permits may be found at the links below.”  
<https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-water.html>

The draft permit and rationale, and related comments are available for review at Water Resources Permits Dataviewer (Report on Permits (tn.gov):::): by entering the permit number listed in a Public Notice.”

There is a similar notice to those who subscribe to DWR emails “Weekly Permit Decisions - [date of decision in the week]” identifying individual ARAPs. Neither of these notices as posted or the email messages disclose Notices of Intent to use a General Permits or a Notice Coverage allowing conduct of one of the 19 activities which affect our states’ streams and riparian areas.

The Agency level TDEC public participation page<sup>2</sup> opens to a map rather than text. Because it is a map of the world one must zoom in to the Tennessee map. Because this map serves several TDEC programs the map shows a drop pin for TDEC Environmental Field Offices and the Fleming Training Center. Opening the link to “Water Notices and Hearings” only provides “Upcoming Public Hearings & Meetings” but not to a list or links to Individual Discharge (NPDES) draft permits for which comment periods are open.

Below the link to “Water Notices and Hearings” is another link marked “water” which, if explored, provides links to information about the legal framework and subdivisions of the DWR work. Again, none of these inform readers of NPDES or ARAP draft permits for which comment periods are open or where to find this information. The additional information does not explain the DWR Dataviewer or even a link.

The ARAP permit application related signs and local newspaper notices are the only notices which tie DWR notices to specific locations in which water courses or their riparian areas or wetlands will be affected. The quality and quantity of water at a specific location in the local wider human environment. Local knowledge of water uses, terrain, geology, soils, drinking water intakes, treated wastewater discharge points and surrounding land use, should be available from residents comments. Local information and observations obtained from comments may result in permit conditions addressing impacts allowed or forbidden.

Petitioners request that the public facing bulletin board notices and the related information provided concerning public participation opportunities be reviewed and revised to assure more completeness, connection, and simplified language to facilitate public understanding and informed participation.

II. NOTICES AND SIGN RULES NOW APPLIED TO ARAPS FOR GEOGRAPHICALLY LENGTHY INFRASTRUCTURE ARE INADEQUATE.

Omissions in existing provisions for DWR Draft ARAP Notices for linear infrastructure projects which affect large geographic areas recently become evident. An example are the required newspaper notices and signs for a natural gas pipeline described in footnote<sup>3</sup>. The pipeline will run 32 miles through three counties and affect many streams and wetlands. Only one newspaper notice in the classified “Legal Notices” section will be required in one newspaper in each county. Only three signs will be required, one in each county.

Petitioners request that for draft Individual ARAPs affecting multiple locations and multiple local jurisdictions newspaper notices that revised regulations will require additional newspaper notices to cover all areas of a county in which the ARAP is to be effective.

Petitioners also request that signs disclosing the ARAP and the local activity allowed by the draft Individual ARAP be located near the points of impact of the activity allowed by the draft Individual ARAP.

III. SUPPLEMENTING NEWSPAPER AND SIGNS WITH OTHER GEOGRAPHICALLY TARGETED NOTICES.

In the first discussion of the Petition a member of the Board noted reports of declines in readership and loss of newspapers. Studies have quantified these trends and sought explanations. One academic study is titled: “As newspapers close, struggling communities are hit hardest by the decline in local journalism”<sup>4</sup>

The key finding of the study was summarized:

“The United States continues to lose newspapers at a rate of two per week, further dividing the nation into wealthier, faster growing communities with access to local news, and struggling areas without.”

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<sup>3</sup> NRS22.192

Permit Type ARAP, Individual Permit, Status Complete

Permittee Name Tennessee Gas Pipeline Co., LLC

Project Name Cumberland Gas Pipeline Project

Activity Description

Tennessee Gas Pipeline Company, LLC proposes temporary impacts to 0.69 acres of wetland, permanent impacts to 0.03 acres of wetland, temporary impacts to approximately 5,400 feet of stream, temporary water withdrawals from eight streams and one reservoir, and permanent impacts 490 feet of stream associated with the construction of a 32-mile natural gas pipeline from Dickson to Cumberland City, passing through Dickson, Houston, and Stewart County.

There have been numerous studies, reports and analyses that need not be repeated here.<sup>5</sup> The conclusions are that various efforts need to be made to assure that the services provided by newspapers continue. Some suggestions have been to use tax exempt foundation grants or organization or individual donations or state or local government contributions.

The other path being explored use of an already expanding rural broadband access to provide local news and notice to the public about various decisions being debated and decided by state and local governments. One might call this a “digital” fix.

Notices on the internet can be geographical targeted to residents as is evident from the used of social media in the election campaigns of local public officials. DWR might explore using Facebook ads which can be geographically targeted and are inexpensive which is why newspaper advertising is declining.

There are many other locally targeted internet bulletin boards and social media sites. Counties and cities and their departments and agencies have pages which could reach local residents if DWR notices were added. County Commissions and Municipal governing bodies should be encouraged to post notices received from DWR as a service to their constituents.

There are many print publications that are free to readers such alternative newspapers and shopping guides which might accept plain language notices as public service announcements just as radio and TV stations do. Counsel has been advised that a working group may be forming to look at possible improvements in notices and public outreach. Petitioners support such an effort and would offer help if requested.

#### IV. SUMMARY

Petitioners respectfully assert that this Petition is an opportunity to address factors affecting the effectiveness of notice to improve public understanding and participation which are beyond TDEC and the Petitioners control to improve existing notices with revisions and expansions as a matter of practice that benefit the public and which TDEC can take pride in.

Petitioners suggest:

- That DWR review and revise the DWR existing system of notices which tend to require some time, determination and a bit of specialized

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<sup>5</sup> <https://www.nytimes.com/2019/11/20/us/local-news-disappear-pen-america.html>

PEN report: <https://pen.org/local-news/>

The Brookings Institution:

<https://www.brookings.edu/research/local-journalism-in-crisis-why-america-must-revive-its-local-newsrooms/>

University of Texas:

[https://moody.utexas.edu/sites/default/files/Strauss\\_Research\\_Newspaper\\_Decline\\_2019-11-Jennings.pdf](https://moody.utexas.edu/sites/default/files/Strauss_Research_Newspaper_Decline_2019-11-Jennings.pdf)

Nieman Foundation:

<https://nieman.harvard.edu/articles/the-decline-of-newspapers-the-local-story/>

- knowledge in order to be understood.
- That the existing notices are inadequate to give actual notice for ordinary actions and especially for infrastructure projects that cross multiple counties and municipalities and need to be expanded.
  - That the reliance on local newspapers as the sole location for published notice is less effective because of the decline in local newspapers in Tennessee. There needs to be some imagination on supplementing the regulation required newspaper notices with other notice dissemination paths to assure and improve the current level of notice.

Petitioners suggest that simplifying the DWR webpages and public interface, expanding the posting of notice for lengthy multi-county projects, and counterbalancing the loss of print media with imaginative solutions can meet the regulatory requirements and the goals and spirit of these regulations to keep the public effectively informed and involved with DWR regulated activities in their communities and waterways.

Respectfully Submitted,

Brian Paddock

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