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**RE: WATER AUTHORITY OF DICKSON COUNTY V. TENNESSEE DEPARTMENT
OF ENVIRONMENT AND CONSERVATION, APD Case No. 04.30-241947J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	CASE NUMBER WPC22-0027
)	
WATER AUTHORITY OF)	
DICKSON COUNTY,)	
<i>Petitioner,</i>)	
)	
v.)	
)	
DEPARTMENT OF ENVIRONMENT)	DOCKET NUMBER 04.30-241947J
AND CONSERVATION,)	
<i>Respondent,</i>)	
)	
and)	
)	
FRIENDS OF LICK CREEK,)	
<i>Intervenor.</i>)	

INITIAL ORDER

This matter comes for consideration on the parties’ competing Motions for Summary Judgment. This contested case is a Petition for Statutory Permit Appeal (Permit Appeal) filed by Petitioner, the Water Authority of Dickson County (WADC), pursuant to TENN. CODE ANN. § 69-3-105(i). WADC is contesting the Department of Environment and Conservation’s (Department) denial of its application for a National Pollutant Discharge Elimination System (NPDES) permit authorizing a new discharge of treated municipal wastewater into Lick Creek in Hickman County, Tennessee.¹

WADC filed the Permit Appeal on January 19, 2024. Pursuant to TENN. CODE ANN. §§ 69-3-110(a), 4-5-301(a)(2), and 4-5-314(b), a contested case was opened with the Tennessee Secretary of State’s Administrative Procedures Division (APD). The APD assigned Administrative Law

¹ As filed, WADC’s Permit Appeal states the application sought an increased discharge as part of its permit application. Notice of Hearing (NOH), Ex. B ¶¶ 1, 11. However, WADC admits its application actually sought authorization of a new discharge into Lick Creek. WADC Response to Department’s Statement of Material and Undisputed Facts (Pet’r’s Resp. State of Material Facts (SMF)) ¶ 7; NOH Ex. B, Ex. 2.

Judge Steve R. Darnell to sit alone for the Tennessee Board of Water Quality, Oil and Gas (Board). Attorney William Penny represents WADC. Attorneys Emily B. Vann and Samantha Buller-Young represent Respondent, the Department. Attorney Katherine Barnes Cohn represents Intervenor, Friends of Lick Creek (Friends).

ISSUES FOR DETERMINATION

1. On behalf of the Department, does the record in this matter, viewed in the light most favorable to WADC, demonstrate that there are no “genuine issues of material fact” that the Department properly denied WADC’s NPDES application due to WADC’s failure to comply with Tennessee’s Antidegradation Statement?²

2. On behalf of WADC, does the record in this matter, viewed in the light most favorable to the Department, demonstrate that the Department’s denial of WADC’s NPDES permit was arbitrary and capricious and in violation of the due process clauses of the 14th Amendment to the United States Constitution and Section 1, Article 8 of the Tennessee Constitution?

PROCEDURAL HISTORY

On August 14, 2025, the Department and WADC filed competing Motions for Summary Judgment in accordance with Rule 56 of the Tennessee Rules of Civil Procedure. The Department’s motion sought dismissal of this Permit Appeal, alleging WADC failed to comply with the Tennessee Antidegradation Statement. WADC’s motion alleges that the Department’s denial of its NPDES application was arbitrary and capricious and in violation of the due process clauses of the 14th Amendment to the United States Constitution and Section 1, Article 8 of the Tennessee Constitution.

² TENN. COMP. R. & REGS. 0400-40-03-.06(c)1.

On September 5, 2025, the Department and WADC filed responses in opposition, and Friends filed a response in support of the Department’s motion and in opposition to WADC’s motion. WADC then late-filed exhibits in support of its response on September 9, 2025. On September 12, 2025, the Department and Friends each filed replies in support of the Department’s motion, and the parties appeared before the administrative judge for oral argument on September 30, 2025. The transcript of the oral argument was filed with APD on October 14, 2025. The undersigned advised the parties of his decision on the competing motions via email on November 14, 2025, and requested that the Department submit a proposed initial order. The Department filed its proposed initial order on December 12, 2025, at which time the record closed.

SUMMARY OF DETERMINATION

Following a thorough review of the evidence, including the pleadings, arguments of the parties, and the record as a whole, it is **DETERMINED** that the Department’s Motion for Summary Judgment is well taken and should be **GRANTED**. On the contrary, for the reasons stated herein, WADC’s Motion for Summary Judgment is **DENIED**. This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Lick Creek is a water of the State of Tennessee and a stream classified for uses by the Board.³

³ Department’s Motion for Summary Judgment (Dep’t Mot. Summ. J.) Ex. A, Statement of Material and Undisputed Facts (Dep’t SMF) ¶ 6; Pet’r’s Resp. SMF ¶ 6. The parties agree that the segment of Lick Creek relevant to this matter is an Exceptional Tennessee Water (ETW); however, Lick Creek’s status as an ETW placed no additional requirements on WADC, and therefore, its listing is not material. *See* Dep’t Mot. Summ. J. Ex. B, Department’s Memorandum of Law in Support of its Motion for Summary Judgment (Dep’t Mem. in Supp.) 2, n.3.

2. WADC currently operates wastewater treatment facilities in Dickson and Williamson counties. WADC determined it did not have sufficient capacity at its existing facilities to address anticipated growth in its service area.⁴

3. On December 3, 2021, WADC submitted to the Department's Division of Water Resources ("Division") an initial application for a National Pollutant Discharge Elimination System (NPDES) permit to authorize a new discharge of treated municipal wastewater into Lick Creek in Hickman County, Tennessee, from a proposed new, to-be constructed wastewater treatment facility identified as the East Hickman Water Reclamation Facility.⁵

4. The permit application proposed greater than *de minimus* degradation of Lick Creek, and therefore Tennessee's Antidegradation Statement required WADC to, in part, demonstrate to the Department that there were no practicable alternatives to the degradation and that the degradation was necessary to accommodate important economic or social development in the area of the discharge.⁶ As proposed, the discharge to Lick Creek would be approximately 9 miles south of the facility at river mile 10.6.⁷

5. As part of the permit application, WADC submitted a Preliminary Engineering Report (PER).⁸

⁴ Dep't SMF ¶ 9; NOH Ex. B ¶¶ 7-8, Ex. 3 at 4.

⁵ Dep't SMF ¶ 7; Pet'r's Resp. SMF ¶ 7. During the time relevant to this matter, the record confirms WADC submitted at least two revised permit applications to the Department proposing the new wastewater treatment facility with a discharge into Lick Creek. NOH Ex. B ¶¶ 10, 18, 23.

⁶ TENN. COMP. R. & REGS. 400-40-03-.06(4)(c)1; TENN. COMP. R. & REGS. 400-40-03-.06(3)(a).

⁷ NOH Ex. B, Ex. 12 at R-2 – R-3.

⁸ NOH Ex. B, Ex 3.

6. The PER included analysis and charts reflecting significant projected growth rates for Dickson and Williamson counties over the next 75 years. However, the analysis recognized that, even with the proposed new facility, only a small portion of WADC's total projected population served would be from Hickman County during that same time period.⁹

7. Ms. Angela Jones, manager of the Division's Engineering Services Unit, reviewed the engineering alternatives analysis included as part of WADC's permit application, and on January 6, 2022, sent correspondence notifying WADC that the engineering alternatives analysis was complete.¹⁰

8. The engineering alternatives analysis is submitted as part of an NPDES permit application and is wholly separate from the antidegradation alternatives analysis required under the Antidegradation Statement. A review of the engineering alternatives analysis does not involve a review of or a determination of compliance with antidegradation regulatory requirements.¹¹

9. On March 23, 2022, the Department met with WADC to discuss the proposed project's antidegradation issues. WADC agreed to provide the Department with updated antidegradation alternatives analysis and socioeconomic justification.¹²

⁹ Dep't SMF ¶ 11. Under the section titled "Population Projection," the PER in included Figure 2, entitled "Projected Future Sewer Service Area – 75 Year Planning Period," which included the new proposed facility, and Tables 11 ("Projected Population Served by WADC 2020-2100") and 12 ("Projected Sewer Customers 2020-2100"), which each showed that, even with the proposed new facility, only a small portion of WADC's total projected population served would be from Hickman County.

¹⁰ Department's Reply in Support of its Motion for Summary Judgment (Dep't Reply) Ex. F, Affidavit of Angela Jones (Jones Aff.) ¶ 7-11; Dep't SMF ¶ 12.

¹¹ Dep't Mot. Summ. J. Ex D, Deposition of Angela Jones (Jones Dep.) 26:1-27:20, 48:24-49:23, 59:25-60:3; Dep't Reply Ex. F, Jones Aff. ¶¶ 5-11, Ex. 2 Jones Dep. 18:1-19:25, 23:1-16, 25:9-12, 26:16-27:20, 31:4-32:25, 59:12-25; Dep't Mot. Summ. J. Ex. C, Deposition of Vojin Janjic (Janjic Dep.) 31:6-17; Dep't Reply Ex. A, Affidavit of Vojin Janjic (Janjic Aff.) ¶¶ 5-6, 8-9, Ex. 1 Janjic Dep. 71:17-72:10, 112:5-113:19, 117:15-118:4; Dep't Mot. Summ. J. Ex E, Deposition of Maybelle Sparks (Sparks Dep.) 56:22-57:3.

¹² Dep't Reply Ex. A, Janjic Aff. ¶¶ 18-21, Ex. 1 Janjic Dep. 120:17-121:21, 125:20:126:17; Dep't Reply Ex. B, Deposition of Maybelle Sparks 32:2-10, 41:13-20, 44:8-20, 57:4-13; Dep't Reply Ex. C, Affidavit of April Grippo (Grippo Aff.) ¶¶ 4-8, Ex. 2 Deposition of April Grippo (Grippo Dep.) 40:7-43:16, 48:24-49:25, 159:22-160-25; Dep't Reply Ex. D, Deposition of Karen Harrison (Harrison Dep.) 98:2-100:2.

10. WADC submitted a Supplemental Information Report (“Supplemental Report”) to the Department on December 9, 2022. The Supplemental Report included WADC’s additional discussion of the antidegradation requirements, including its updated socioeconomic justification, which summarized an attached report prepared by Drs. Steven Livingston and Murat Arik of the Business and Economic Research Center at Middle Tennessee State University (“Livingston Report”).¹³

11. The Livingston Report did not address either the specific area of the proposed discharge or the proposed degradation of Lick Creek.¹⁴ Dr. Livingston confirmed that WADC did not request that the report examine the discharge area of the proposed new wastewater treatment facility or any degradation of Lick Creek.¹⁵

12. On January 9, 2023, the Department notified WADC that its amended permit application was complete.¹⁶

13. The Department’s determination that a permit application is “complete” is a preliminary administrative step that allows the review process to continue. Contrary to WADC’s understanding, it is not a definitive finding that an application satisfies all substantive regulatory requirements, and neither prohibits the Department from requesting additional information from the applicant at a later stage, nor guarantees that the Department will ultimately issue a permit

¹³ NOH Ex B ¶ 23, Ex. B, Ex. 10; Dep’t SMF ¶ 14; Pet’r’s Resp. SMF ¶ 14.

¹⁴ Dep’t Mot. Summ. J. Ex. I, Deposition of Dr. Steven Livingston (Livingston Dep.) 42:2-18, 111:20-112:9.

¹⁵ Pet’r’s Response to Dep’t Motion for Summary Judgment Ex. A, Affidavit of Steven Livingston (Livingston Aff.) ¶ 3.

¹⁶ NOH Ex. B, Ex. 11.

authorizing the proposed discharge.¹⁷ While the parties disagree on this point, the issue is not material to the outcome of this case.¹⁸

14. On March 1, 2022, Hickman County Mayor Mark Bently sent a letter to the Department enclosing a Hickman County Commission resolution. The resolution recognized that a large number of Hickman County residents expressed concerns about WADC’s proposed discharge and its negative impacts, including the processing of large volumes of wastewater from neighboring counties. The resolution requested a delay in any permitting decision and that the Department hold a public hearing in Hickman County to provide residents with access to necessary information regarding WADC’s application and proposed degradation.¹⁹

15. On March 17, 2022, Friends sent correspondence to the Department detailing its position regarding WADC’s proposed discharge to Lick Creek.²⁰

16. In early 2023, representatives from the Department met with several Hickman County officials to discuss the proposed discharge. The predominant opinion expressed in those meetings was that WADC’s proposed sewer line and resulting discharge into and degradation of Lick Creek were not necessary to support the type of economic development desired by the residents of Hickman County.²¹

¹⁷ Dep’t Mot. Summ. J. Ex. C, Janjic Dep. 26:21-27-17; Dep’t Reply Ex A, Janjic Aff. ¶¶ 5-9. *See also* TENN. COMP. R. & REGS. 0400-40-03-.06(1)(b)-(e), (4) (requiring that the Department first determine if the application is “complete” before continuing with multiple paragraphs of additional regulations).

¹⁸ Dep’t Reply Ex. A, Janjic Aff. ¶¶ 7-9.

¹⁹ Dep’t SMF ¶ 20; Pet’r’s Resp. SMF ¶ 20.

²⁰ Dep’t Reply Ex. I.

²¹ Dep’t SMF ¶ 22; NOH Ex. B, Ex. 12 at R-10.

17. WADC did not meet with local officials about Hickman County's future plans, its desires for development in the northeast corner of the county, or WADC's proposal for a new wastewater treatment plant in that area and the resulting degradation to Lick Creek.²²

18. Hickman County has a "Land Use and Transportation Policy Plan" in place that provided detail of the County's growth plan with the stated goal of efficient growth protective of "open space and rural preservation, along with the protection of [Hickman County's] natural and historic resources," and the objective that "the County will use [the] plan as a tool for making development decisions regarding land use, zoning, and expansion of public infrastructure."²³

19. Hickman County's growth plan proposed that new development concentrate on smaller portions of development sites so as to permanently preserve open space, affirmatively stating, "Hickman County will ensure that the land resources are allocated for uses that will . . . enhance the rural character, protect the natural and historic resources, ensure adequate community facilities, and provide a range of housing which will result in the preservation of a high quality of life" while "[minimizing] the negative impacts of growth, traffic, land use, stormwater, [and] environmental loss of community character" and that "Hickman County will protect unique resources from the negative impacts of development, including but not limited to water quality."²⁴

²² Dep't Mot. Summ. J. Ex. J, Deposition of Keith Nash (Nash Dep.) 44:4-45:1, 60:4-62:7, 69:4-72:9; Dep't Mot. Summ. J. Ex. K, Deposition of Jim Bates (Bates Dep.) 24:24-25:5, 25:19-22; Dep't Mot. Summ. J. Ex. L, Deposition of Brenda Brock (Brock Dep.) 16:6-24, 40:12-41:3; 96:22-97:4; *See also* Pet'r's' Resp. SMF ¶ 6 (Petitioner admits it did not seek the approval of the Hickman County Mayor or the Hickman County Commission to expand its sewer service in Hickman County to the geographic area identified in the permit application prior to submitting the application to the Department.).

²³ Dep't Mot. Summ. J. Ex. J, Nash Dep. 53:1-54:14, 55:5-24; *see also* Dep't Mot. Summ. J. Ex. L, Brock Dep. 41:10-17.

²⁴ Dep't Mot. Summ. J. Ex. J, Nash Dep. 55:2-6, 55:12-56:19.

20. On April 5, 2023, the Department issued a Rationale proposing to deny WADC's permit application.²⁵

21. The Department explained the grounds for its proposed denial in the Rationale, detailing the deficiencies in WADC's submissions that resulted in the Department's preliminary determination that WADC had failed to demonstrate compliance with the requirements of the Antidegradation Statement.²⁶

22. The Department determined WADC had failed to demonstrated there were no practicable alternatives to the proposed degradation to Lick Creek and cited several deficiencies in WADC's analysis, including that WADC had rejected the "no action alternative out of hand, without demonstrating that new sewer service is necessary," and that although WADC's analysis demonstrated the proposed discharge to Lick Creek was the least expensive option, it had "not demonstrated that other discharge options that would result in less degradation, including [] to the Cumberland River, are not practicable."²⁷

23. The Department further determined WADC had failed to demonstrate "its proposal would result in important social or economic development at or downstream from the discharge location, where the degradation of water quality [would] occur."²⁸

24. The Rationale summarized WADC's position, including the Livingston Report and its key findings, and a report Friends submitted to Governor Bill Lee regarding the proposed project and the opinions expressed to the Department by local Hickman County elected officials.²⁹

²⁵ NOH Ex. B, Ex. 12.

²⁶ *Id.* at R-11 – R-13.

²⁷ *Id.* at R-7 – R-8.

²⁸ *Id.* at R-13.

²⁹ *Id.* at R-8 – R-11.

25. The Rationale also outlined the Department’s justifications for its determination that WADC had failed to demonstrate the Antidegradation Statement’s required socioeconomic justification, including that: (1) expanded sewer service was not necessary to support local development goals; (2) the proposal, as presented, was speculative and “intended to support unidentified, hypothetical industrial development in northeast Hickman County;” (3) sewer service was only one element of the infrastructure required to support high density growth and WADC had failed to consider how Hickman County would fund other infrastructure; and (4) the estimated economic benefits would be geographically separated from the degradation, with the benefits primarily experienced by Dickson and Williamson counties while the degradation would occur entirely in Hickman County, miles downstream and extending further away from the proposed service area.³⁰

26. The Livingston Report assumed wastewater infrastructure was the sole limiting factor to economic development in the northeastern corner of Hickman County and did not address the question of whether the proposed project would result in growth once constructed or if there were additional factors limiting growth in the county.³¹

27. Economic growth requires multiple inputs, including infrastructure like electricity, internet, water, sewer, and highways, but also components such as an educated and skilled workforce and access to amenities like childcare and hospitals, and no element of infrastructure is more or less important than the others.³²

³⁰ *Id.* at R-11 – R-13.

³¹ Dep’t Mot. Summ. J. Ex. H, Deskins Dep. 43:23-44:5, 45:20-47:2, 54:22-55:4, 55:12-19, 101:14-102:4, 106:5-18, 107:16-20, Ex. 3 at 2, 5.

³² Dep’t Mot. Summ. J. Ex. H, Deposition of Dr. John Deskins (Deskins Dep.) 29:4-23, 31:11-21, 51:4-52:1, 54:12-21, 55:12-19, 89:13-18; Dep’t Mot. Summ. J. Ex. I, Livingston Dep. 18:13-19, 20:25-21:2, 27:2-24, 107:5-15.

28. The Livingston Report erroneously compared Hickman to Williamson and Dickson counties instead of counties more similarly situated, such as Trousdale, Smith, or Cannon. The Livingston Report “paints an incomplete picture of the overall economic development . . . in the region” and a broader analysis was needed to determine whether Hickman County, in fact, lags as compared to counties that are equidistant from the statistical core of Davidson County.³³

29. The Livingston Report derived its estimates of economic impact related to population growth that would result from enhanced wastewater infrastructure from numbers provided by WADC itself instead of through independent analysis.³⁴

30. The Livingston Report provided no evidence “that there are people who would like to move into Hickman County and have not done so at present due to a lack of wastewater infrastructure but would do so once [such] infrastructure is in place.”³⁵ Dr. Livingston no longer considered this portion of his report, “Economic Impact of Increased Residential Service,” reliable and could not “stand behind the impact of the population growth.”³⁶

31. The Livingston Report provided no evidence that there were people who had not moved to Hickman County due to a current lack of wastewater infrastructure, but were likely to move once the infrastructure was in place, nor did its discussion of hypothetical businesses provide evidence that such businesses “[were] actually likely to locate in Hickman County upon the

³³ *Id.* at 56:12-57:15, 59:3-15, 60:13-61:17, 63:9-24, 66:18-69-24, 103:8-104:7, Ex. 3 at 4.; *see also* Dep’t Mot. Summ. J. Ex. I, Livingston Dep. 17:13-23, 34:19-35:4, 102:10-18.

³⁴ Dep’t Mot. Summ. J. Ex. H, Deskins Dep. 104:12- 106:1, 113:22-115:3, 116:10-24, 117:18-25, 119:4-120:12, Ex. 3 at 2-3, 7-8; Dep’t Mot. Summ. J. Ex. I, Livingston Dep. 23:6- 12, 44:18-45:13, 45:25-47:3, 49:3-50:17.

³⁵ Dep’t Mot. Summ. J. Ex. H, Deskins Dep. 102:12-103:3, 106:5-18, Ex. 3 at 2-3, 7.

³⁶ Dep’t Mot. Summ. J. Ex. I, Livingston Dep. 23:11-24:12, 25:5-10, 44:1-9; 44:18-45, 52:15-53:8, 65:9-13, 75:6-76:8 85:25-86:5; *see also* Dep’t Mot. Summ. J. Ex. H, Deskins Dep. 120:8-121:1, 123:8-24.

installation of enhanced wastewater infrastructure.” The report failed to demonstrate a demand that could not be met due to infrastructure limitations.³⁷

32. A public hearing was held on May 25, 2023, on the Department’s proposed denial of WADC’s permit application. The Department also accepted public comments through June 5, 2023, two months after the issuance of the Rationale.³⁸

33. On December 21, 2023, the Department issued a Notice of Determination denying WADC’s permit application. The Notice of Determination specified that the Department had denied the permit for two reasons: (1) WADC had not demonstrated that less degrading alternatives to the proposed discharge were not practicable, and (2) WADC had not demonstrated that greater than *de minimus* degradation was necessary to accommodate important economic or social development in the area of the discharge.³⁹

34. On January 19, 2024, WADC filed the Permit Appeal.⁴⁰

35. WADC admits that approximately 75% of its proposed new wastewater treatment facility’s customers would not be Hickman County residents in the year 2045.⁴¹

36. WADC also admits that approximately 74% of its proposed new wastewater treatment facility’s customers would not be Hickman County residents in the year 2100.⁴²

³⁷ Dep’t Mot. Summ. J. Ex. H, Deskins Dep. 26:1-22, 29:1-19, 44:1-9, 59:13-60:19, 85:8-87:6, 102:12-104:19, Ex. 3 at 8; Dep’t Mot. Summ. J. Ex. I, Livingston Dep. 26:1-22, 44:1-9, 59:13-60:19, 103:8-104:19.

³⁸ NOH Ex. B ¶ 28, Ex. 12, Ex. 13.

³⁹ Dep’t SMF ¶ 31; Pet’r’s SMF Resp. ¶ 31.

⁴⁰ Dep’t SMF ¶ 32; Pet’r’s SMF Resp. ¶ 32.

⁴¹ Dep’t SMF ¶ 34.

⁴² Dep’t SMF ¶ 35.

APPLICABLE LAW

The Board has jurisdiction to hear and render a decision in this contested case proceeding pursuant to TENN. CODE ANN. §§ 69-3-105(i) and 69-3-110, and pursuant to TENN. CODE ANN. § 69-3-110(a), the undersigned administrative judge was designated to hear this matter sitting alone for the Board. The Board, not the Department, is the “agency” as defined by TENN. CODE ANN. § 4-5-102(2). *See* TENN. CODE ANN. § 69-3-105 (giving the Board the authority to issue rules and decide contested cases). WADC is a permit applicant under TENN. CODE ANN. § 69-3-105(i) and TENN. COMP. R. & REGS. 0400-40-05-.12(1) and therefore a proper party to bring a permit appeal before the Board. WADC, as the petitioner, has the burden of proof to show by a preponderance of the evidence that the Department’s denial does not comply with the Water Quality Control Act of 1977, TENN. CODE ANN. §§ 69-3-101 to -148 (WQCA), or the rules promulgated thereunder. *See* TENN. CODE ANN. § 69-3-105(i); TENN. COMP. R. & REGS. 1360-04-01-.02(3) and (5); *Pickard v. Tenn. Water Quality Control Bd.*, 424 S.W.3d 511, 525 (Tenn. 2013) (TENN. CODE ANN. § 69-3-105(i) authorizes the Board to reverse or modify the Commissioner’s permit decisions when those decisions fail to comply with the [Water Quality Control Act and the] Act, in turn, specifies that the Commissioner’s permitting decision must comply with the regulations promulgated by the Board).

Both Motions for Summary Judgment are made pursuant to Tennessee Rule of Civil Procedure 56. Summary judgment is appropriate when the moving party can demonstrate “there is no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law.” *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993); *see also* *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998). For facts to be considered at the summary judgment stage, they must be included in the record pursuant to Rule 56 and must be admissible in evidence. *Green*

v. Green, 293 S.W.3d 493, 513 (Tenn. 2009). “When a party makes a motion for summary judgment in accordance with Tenn. R. Civ. P. 56, the burden shifts to the nonmoving party to establish the existence of disputed material facts or that the moving party is not entitled to judgment as a matter of law.” *Holland v. City of Memphis*, 125 S.W.3d 425, 427 (Tenn. Ct. App. 2003). As the Tennessee Supreme Court recognized *Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235 (Tenn. 2015) cert. denied, 136 S. Ct. 2452 (2016), the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading, but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, set forth specific facts *at the summary judgment stage* showing that there is a genuine issue for trial.” *Rye*, 477 S.W.3d at 265 (emphasis in original). “The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.” *Id.* The *Rye* court clarified the standard for summary judgment when the moving party does not bear the burden of proof at trial, recognizing

when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party’s claim or (2) by demonstrating that the nonmoving party’s evidence at the summary judgment stage is insufficient to establish the nonmoving party’s claim or defense.

Rye, 477 S.W.3d at 264.

Summary judgment is not regarded “as a disfavored procedural shortcut, but rather as an integral part of the [rules of civil procedure], which are designed to ‘secure the just, speedy and inexpensive determination of every action.’” *Rye*, 477 S.W.3d at 254 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (quoting Fed. R. Civ. P. 1)). The goal of summary judgment is to avoid the time and expense of unnecessary trials and is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact.” Tenn. R. Civ. P. 56.04. “After adequate time for discovery has been provided, summary judgment should be granted if the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial.” *Id.* at 265 (emphasis in original). When considering the appropriateness of summary judgment, the undersigned must view the evidence in the light most favorable to the non-moving party; all reasonable inferences are drawn in favor of the non-moving party as well. *Huggins v. McKee*, 500 S.W.3d 360, 364 (Tenn. Ct. App. 2016).

ANALYSIS and CONCLUSIONS OF LAW

The WQCA gives the commissioner of the Department the authority to grant permits authorizing discharges or activities, such as the one proposed by WADC, and to impose conditions on such permits to accomplish the purposes of the WQCA.⁴³ The WQCA also gives the Board the authority to promulgate and enforce rules establishing water quality standards and use classifications for all waters of the state in accordance with the stated policy and purpose of the WQCA.⁴⁴ A permit application for a new discharge that proposes greater than *de minimus* degradation must comply with the requirements of the Antidegradation Statement, which was promulgated “to fully protect existing uses of all surface waters as established under the Act.”⁴⁵ The plain language of the WQCA prohibits the Department from issuing a permit authorizing a new discharge that causes greater than *de minimis* degradation of the receiving stream unless the discharge complies with the requirements of the Antidegradation Statement.

⁴³ TENN. CODE ANN. §§ 69-3-107, -108(b)(1)-(2), (4)-(6).

⁴⁴ TENN. CODE ANN. § 69-3-105(a)-(b); TENN. COMP. R. & REGS. 0400-40-03 and 0400-40-04.

⁴⁵ TENN. COMP. R. & REGS. 0400-40-03-.06(1)(a).

The Antidegradation Statement prohibits degradation and requires “that the quality [of Tennessee waters] 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.”⁴⁶ The rule provides that new or increased discharges to an ETW that would cause greater than *de minimus* degradation will “only be authorized if the applicant has demonstrated to the Department that [1] there are no practicable alternatives to prevent or lessen degradation associated with the proposed activity, [2] the degradation is necessary to accommodate important economic or social development in the area in which the waters are located, and [3] the discharge will not violate the water quality criteria for uses existing in the receiving waters.”⁴⁷

As the permit applicant, WADC bears the burden to sufficiently demonstrate to the Department that the proposed degradation of Lick Creek satisfies all three prongs of the rule. The Antidegradation Statement’s three-prong showing is a conjunctive test; if any of the three prongs are not met, the Department may not issue a permit authorizing the degradation.⁴⁸ The issue to be determined in this matter is whether the Department’s decision to deny WADC’s permit application based on its determination WADC had failed to make the required demonstration was arbitrary and capricious or otherwise not in accordance with the law. Even giving the most favorable interpretation to WADC’s evidence, the record does not support its claims.

The entirety of WADC’s submissions to the Department regarding the proposed project’s compliance with the requirements of the Antidegradation Statement are found in the PER and

⁴⁶ TENN. COMP. R. & REGS. 0400-40-03-.06(a)(1).

⁴⁷ TENN. COMP. R. & REGS. 0400-40-03-.06(4)(c)(1).

⁴⁸ See TENN. COMP. R. & REGS. 0400-40-03-.06(4)(c)1.

Supplemental Report.⁴⁹ The fact that WADC provided information to the Department is simply not enough. The rules require the applicant to *demonstrate* to the Department that the proposed degradation is sufficiently justified. The record supports the Department’s review of the substance of the PER and Supplemental Report and its determination that WADC failed to demonstrate compliance with the requirements of the Antidegradation Statement. The Department’s Rationale and Notice of Determination provide a detailed discussion of the Department’s process and identified deficiencies in the information provided such that a reasonable person could find appropriate justification for the Department’s decision to deny WADC’s permit application.⁵⁰

With regard to the Antidegradation Statement’s alternatives analysis, which requires the permit applicant to demonstrate that “there are *no practicable alternatives* to prevent or lessen degradation associated with the proposed activity,”⁵¹ the evidence establishes Department identified information gaps in WADC’s submissions and provided its reasonable justifications for determining WADC had failed to carry its burden.⁵² Specifically, the Department determined WADC rejected the no action alternative “without demonstrating that new sewer service [was] necessary.”⁵³ The record provides sufficient support for the Department’s determination, as the PER and Supplement Report confirm WADC paid very short shrift to the “no action” alternative, and the testimonies of Mayor Bates, Commissioner Nash, and Ms. Brock raise significant

⁴⁹ NOH Ex B, Exs. 3, 10. The Supplemental Report includes the Livingston Report in its Appendix.

⁵⁰ See NOH Ex. B, Exs. 12, 13.

⁵¹ WADC misstates the standard as “the least impactful practicable alternative” in its motion for summary judgment. The Antidegradation Statement requires the permit applicant to demonstrate “that there are no practicable alternatives to prevent or lessen degradation associated with the proposed activity.” TENN. COMP. R. & REGS. 0400-40-03-.06(c)1.

⁵² NOH Ex. B, Exs. 12, 13.

⁵³ NOH Ex. B, Ex. 12 at R-7.

questions about Hickman County’s need for the proposed project.⁵⁴ Additionally, while WADC demonstrated that the discharge to Lick Creek was the least expensive option, it failed to sufficiently demonstrate that other potential discharge locations that would result in less degradation were not practicable. As the Department noted, the Antidegradation Statement provides that “[a]n alternative to degradation is practicable if it is technologically possible, able to be put into practice, and economically viable.”⁵⁵ WADC identified several other possible discharge locations that were both technologically feasible and could be put into practice; however, WADC failed to establish that they were not *economically viable*. For these reasons, the record supports the Department’s determination that WADC “failed to demonstrate a lack of practicable alternatives to the proposed degradation of Lick Creek.”⁵⁶

The record also provides sufficient support for the Department’s determination that WADC failed to demonstrate the degradation of Lick Creek was “necessary to accommodate important economic or social development *in the area in which the waters are located*.”⁵⁷ First, WADC admits in its Livingston Report that its principal support for its antidegradation socioeconomic justification does not address Lick Creek, the proposed discharge, or the resulting degradation.⁵⁸ The Department also determined that, based on WADC’s submitted information, “nearly 93% of the long-term economic benefit of [WADC’s] proposal would [benefit] Dickson . . . and

⁵⁴ See *supra* notes 19, 21-26, 31 and accompanying text.

⁵⁵ TENN. COMP. R. & REGS. 0400-40-03-.06(1)(b)3.

⁵⁶ NOH Ex. 12 at R-14; See also Ex. 13.

⁵⁷ TENN. COMP. R. & REGS. 0400-40-03-.06(4)(c)1 (emphasis added).

⁵⁸ Dr. Livingston also confirmed WADC did not ask for an examination of the discharge area of the proposed facility or of the resulting degradation of Lick Creek, which is the focus of the required Antidegradation Statement analysis. Dep’t Mot. Summ. J. Ex. I, Livingston Dep. 42:2-18, 111:20-112:9; Pet’r’s Resp. Dep’t Mot. Summ. J. Ex. A, Livingston Aff. ¶ 3; see also Dep’t Mot. Summ. J. Ex. C, Janjic Dep. 98:6-17.

Williamson County[,]” while the degradation would occur entirely in Hickman County, miles away, and then extend further downstream from the proposed service area.⁵⁹ In its responses to the Department’s written discovery, WADC admitted “approximately 75% of the [proposed new water treatment facility’s] customers would not be Hickman County residents in the year 2045” and “approximately 74% of the [new water treatment facility’s] customers would not be Hickman County residents in the year 2100.”⁶⁰ The record, as well as WADC’s own admissions, reflect that WADC did not anticipate a significant increase in customers residing in Hickman County over the next 75 years as a result of the construction and operation of the proposed new facility, further evidencing WADC’s failure to demonstrate the degradation was necessary to accommodate important social or economic development in the area of the discharge, i.e., Hickman County.

Evidence in the record of Hickman County residents and elected officials expressing concerns to the Department regarding WADC’s proposal provides additional support for the Department’s determination that WADC failed to demonstrate the degradation to Lick Creek was necessary to accommodate important economic development discharge area. Hickman County passed a resolution requesting that the Department delay its permitting decision, and the predominant opinion expressed by local officials during meetings with the Department was that WADC’s proposed project and the resulting discharge into and degradation of Lick Creek were not necessary to support the type of economic development Hickman County residents desired.⁶¹ At deposition, Hickman County officials also testified that the County had a plan for growth in

⁵⁹ NOH Ex. B, Ex. 12 at R-2, R-9, R-13; *see also* NOH Ex. B, Ex. 10 App. at i.

⁶⁰ Dep’t SMF ¶¶ 34-35. These admissions reflect the same information WADC provided in the Supplemental Report. *See* NOH Ex B, Ex. 10 at 6-7.

⁶¹ Dep’t SMF ¶¶ 20, 22; NOH Ex. B, Ex. 12 at R-10.

place at the time WADC submitted its application to the Department, which proposed that new development concentrate on smaller portions of development sites.⁶²

Finally, Dr. Deskins independently confirmed many of the same issues as the Department in his critique of the Livingston Report. In the Rationale, the Department recognized that sewer is only one element of infrastructure required for growth in northeast Hickman County and determined WADC had not demonstrated how Hickman County would fund other public infrastructure needs.⁶³ Similarly, Dr. Deskins noted that the Livingston Report did not address whether the proposed project would result in growth in Hickman County once constructed, or whether additional factors were limiting growth in the county.⁶⁴ The Department also determined it could not justify greater than *de minimus* degradation on “purely speculative development,” and WADC’s assertions of “unidentified, hypothetical industrial development in northeast Hickman County” were not a sufficient demonstration.⁶⁵ Dr. Deskins likewise noted that the Livingston Report’s discussion of hypothetical businesses provided no evidence that such businesses “[were] actually likely to locate in Hickman County upon the installation of enhanced wastewater infrastructure.”⁶⁶ He also testified that the report provided no evidence “that there are people who

⁶² Dep’t Mot. Summ. J. Ex. J, Nash Dep. 55:2-6, 55:12-56:19.

⁶³ NOH Ex. B, Ex. 12 at R-12.

⁶⁴ Dep’t Mot. Summ. J. Ex. H, Deskins Dep. 43:23-44:5, 45:20-47:2, 54:22-55:4, 55:12-19, 101:14-102:4, 106:5-18, 107:16-20, Ex. 3 at 2, 5.

⁶⁵ *Id.* The testimony of the current and former Hickman County official also provides additional evidence supporting the Department’s conclusions. *See* Dep’t Mot. Summ. J. Ex. L, Brock Dep. 7:8-9, 8:20-24, 40:22-41:3, 43:8-14, 96:22-98-1, 100:4-101:5, 102:10-16, 103:2- 5; *see also* NOH Ex. B, Ex. 12, R-10.

⁶⁶ Dep’t Mot. Summ. J. Ex. H, Deskins Dep. 26:1-22, 29:1-19, 44:1-9, 59:13-60:19, 85:8-87:6, 102:12-104:19, Ex. 3 at 8.

would like to move into Hickman County and have not done so at present due to a lack of wastewater infrastructure but would do so once [such] infrastructure is in place.”⁶⁷

WADC raised several arguments in its response to the Department’s motion; however, none create a material fact in dispute, which is the standard at the summary judgment stage. WADC first argued the circumstances surrounding the Department’s determination of the permit application’s completeness. The Board’s regulations provide that completeness determinations are preliminary administrative findings that allow the permitting review process to continue.⁶⁸ These determinations are not findings that an application satisfies all substantive requirements of law, and therefore, even if these facts are disputed, they are not material to the question at issue. WADC also made allegations regarding what it did or did not receive from the Department during the permit application review process. Although the record does not appear to support WADC’s contentions,⁶⁹ even viewing the evidence most favorably to WADC, what is material is the Department’s analysis of WADC’s submitted information. *The Board’s rules place the burden on the permit applicant to provide the Department with sufficient information demonstrating compliance with the Antidegradation Statement.*⁷⁰ The Department does not dictate the contents of the applicant’s submitted material; the Department’s role is to review the sufficiency of the

⁶⁷ *Id.* 102:12-103:3, 106:5-18, Ex. 3 at 2-3, 7.

⁶⁸ See TENN. COMP. R. & REGS. 0400-40-05-.05(2); TENN. COMP. R. & REGS. 0400-40-03-.06(1)(a)-(b), (4)(c).

⁶⁹ At deposition three Department employees testified the Department advised WADC that the PER insufficiently addressed the requirements of the Antidegradation Statement and specifically requested WADC provide additional justification for its permit application. Dep’t Reply Ex. A, Janjic Aff. ¶¶ 18-20, Ex. 1, Janjic Dep. 120:17-121:21, 125:20:126:17; Dep’t Reply Ex. B, Sparks Dep. 32:2-10, 41:13-20, 44:8-20, 57:4-13; Dep’t Reply Ex. C, Grippo Aff. ¶¶ 4-8, Ex. 2, Grippo Dep. 40:7-43:16, 48:24-49:25, 159:22-160-25. At deposition WADC’s witness, Ms. Karen Harrison, also admitted the Department requested WADC provide additional information to support its permit application. Dep’t Reply, Ex. D Harrison Dep. 98:2-100:2.

⁷⁰ TENN. COMP. R. & REGS. 0400-40-05-.05(2)-(3); TENN. COMP. R. & REGS. 0400-40-03-.06(1)(b)4, (c)1; Janjic Dep. 118:16-21.

applicant's showing and to deny the application if the regulatory requirements are not satisfied. Similarly, the Board's rules do not require the Department to create any supplemental or specialized forms directed at antidegradation compliance. As Mr. Janjic explained, any such attempt would be both impractical and detrimental to permit applicants.⁷¹ Finally, WADC took issue with who in the Department reviewed its permit application. However, WADC cited no legal authority mandating who the Department may or may not utilize in its review of permit applications. The Department itself employs many qualified professionals and, as with all permit applications, its employees reviewed WADC's submissions and used their knowledge, expertise, experience, and training to determine that the permit application did not comply with the Antidegradation Statement requirements.

The Department has demonstrated it is entitled to summary judgment as a matter of law because the Department was justified in denying WADC's permit application as presented. Therefore, the Department's Motion for Summary Judgment is **GRANTED**, and WADC's Permit Appeal is **DENIED**.

As the foregoing discussion shows, the Department's denial of WADC's NPDES permit was not arbitrary and capricious but based on a thorough substantive analysis of the materials submitted by WADC. WADC's argument that the Department's decision was arbitrary and capricious and in violation of the due process clauses of the 14th Amendment to the United States Constitution and Section 1, Article 8 of the Tennessee Constitution is without merit. Accordingly, WADC's Motion for Summary Judgment is **DENIED**.

⁷¹ Department's Response in Opposition to WADC's Motion for Summary Judgment Exhibit E, Janjic Aff. ¶¶ 6-12.

REASONS FOR DECISION

The policy reasons for this decision are to uphold the laws of the State of Tennessee, including protecting the right of the people to unpolluted waters and facilitating the fair and efficient management of the permitting process set out therein. Tenn. Code Ann. § 69-3-102(a), (c).

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **4th day of February 2026**.



**STEVE R. DARNELL
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **4th day of February 2026**.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL, AND GAS (the Board)**, called an Initial Order, was entered on **February 4, 2026**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **February 19, 2026**. A new 30 day period for the filing of an appeal to the Board (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of the document.¹

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied you may file an appeal, which must be **received** by APD no later than 30 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order and/or Other Earlier Orders:** You may appeal the decision, together with any earlier order issued by the Administrative Judge you specifically choose to appeal, to the Board, by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the Board, specifying any earlier order(s) issued by the Administrative Judge that you also want to appeal, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 30 days after the entry of the Initial Order, which is no later than **March 6, 2026**.² The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Board Decides to Review the Initial Order:** In addition, the Board may give written notice of its intent to review the Initial Order within the longer of 30 days or 7 days after the first board meeting to occur after entry of the Initial Order. No later than 7 days after the entry of an Initial Order, TDEC shall file, and serve, a Notice of Filing containing the date of the next Board meeting. No later than 7 days after the next Board Meeting, TDEC shall file, and serve, a Notice of Filing setting forth what action, if any, the Board took with respect to the Initial Order.

¹ See TENN. CODE ANN. §§ 68-201-108 (Air Pollution Control Board); 68-211-113, 68-212-113, 68-212-215, 68-215-115, 68-215-119 (Underground Storage Tanks and Solid Waste Disposal Control Board); TENN. CODE ANN. §§ 60-1-401, 69-3-110, 68-221-714 (Board of Water Quality, Oil & Gas).

² The deadline to file an appeal of the initial order (15 versus 30 days) in cases brought under the Tennessee Water Quality Control Act of 1977, TENN. CODE ANN. § 69-3-101, et seq., is an issue currently under review in a case before the Tennessee Supreme Court. *Jamesway Construction, Inc. v. David Salyers, P.E.*, No. M2023-01704-SC-R11-CV.

NOTICE OF APPEAL PROCEDURES

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Board renders a Final Order affirming, modifying, remanding, or vacating the administrative judge's Initial Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **February 11, 2026**. See TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," within 60 days of the date the Initial Order becomes a Final Order. See TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.filings@tnsos.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102