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TN Clean Water Act of 2007

Efficient, effective protection of our waters

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(Knoxville, TN) Tennessee Clean Water Network drafted legislation this year to streamline TN Department of Environment and Conservation's enforcement process and fund water protection. With bi-partisan support in the state House and Senate, The TN Clean Water Act of 2007 requires enforcement before significant environmental harm occurs, will preserve the waters of the state, and serves as deterrence to future violations.

"The current method employed by TDEC to enforce against polluters leaves taxpayers with an excessive burden to pay for the polluter's unwillingness to follow our clean water laws," stated Jennifer Gerbasi, Director of Programs and Legislative Affairs for TCWN.

In 2005, TDEC assessed \$3.7M in fines and collected only \$1M. Indeed, TDEC forgives 80% of fines assessed.

"This practice does little to deter future water pollution and provides an incentive to break water quality laws: making it more economical to pollute and pay later than prevent pollution," added Renée Hoyos, Executive Director for TCWN.

TDEC is very tentative about using the powers that they are allocated under the Water Quality Control Act and are sorely underfunded. This legislation increases the resources available to TDEC without burdening the public, directs those resources straight to enforcement personnel and streamlines the process to make enforcement certain, swift and self-sustaining.

"Tennessee's vast water resources attract investors to our state," added Gerbasi. "Protecting our waterways ensures we have a viable economy now and 30 years from now."

Unfortunately, Tennessee is losing wetlands equal to the size of the Great Smoky Mountains National Park every 4.5 years because permits are not enforced using tools found in the TN Water Quality Control Act.

Tennessee has more than 60,000 miles of rivers and streams. Of the half that are assessed, 30% are on the state's list of most polluted and impaired waters.

“TN Clean Water Act of 2007 allows TDEC to capitalize on the opportunities currently present in the TN Water Quality Control Act to protect our waters by placing the burden of enforcement on the polluter, not the public,” said Hoyos.

The TN Clean Water Act of 2007 reaches this dynamic by making five discretionary provisions in the TN Water Quality Control Act mandatory.

For example, the Priority Permitting provision allows permit applicants with a history of good erosion control methods to self-monitor and pay minimal fees. Repeat polluters and permit violators will be required to get individual probationary permits that include maintenance fees for increased monitoring by the department. Chronic violators will be considered bad actors ineligible for new permits.

Second, the Standardized Enforcement provision states after two ignored notices to fix a violation, TDEC must initiate an enforcement action with civil penalties.

Thirdly, civil penalties are supposed to fund enforcement actions, but TDEC rarely fines even repeat violators. Under the legislation, the first enforcement action must carry 50% of the maximum penalty for one instance of each violation. The second enforcement action must carry 75% of the maximum penalty for one instance of each violation. The third or later enforcement actions must carry the maximum civil penalty for each violation.

The final two provisions of the Act include increasing public access and stop work orders. One would require TDEC to promptly publish all notices of violation, enforcement actions, fines and agreed orders on the Internet. TDEC also would be empowered to issue immediate stop work orders.

An added benefit of this legislation is it uses market forces to allow good business to flourish by favoring projects where the business has a proven track record of following the law.

Initial investments to implement the Act are minimal. One hundred percent of civil penalties are earmarked for enforcement. Others will be gradual and shared through permit and maintenance fees with the regulated community. Increasing public notification of violations may constitute the largest investment.

TN Clean Water Act of 2007 addresses 81% of all permits issued by the Department that constitute our biggest threats to water quality: stormwater runoff and the destruction/alteration of streams from construction.

Polluters unwilling to follow our clean water laws are eroding the quality of our waters. TN Clean Water Act of 2007 takes a proactive approach to protecting our waters and empowers TDEC to successfully fulfill its mission.

For more information, including an expanded factsheet, enforcement statistics and link to a list of most polluted and impaired waters by county visit <http://www.tcwn.org/pressroom/index.php>

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