

No. 18-1307

IN THE
Supreme Court of the United States

TENNESSEE CLEAN WATER NETWORK and TENNESSEE SCENIC RIVERS ASSOCIATION,
Petitioners,

v.

TENNESSEE VALLEY AUTHORITY,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

**UNOPPOSED MOTION TO DISMISS PETITION PURSUANT TO
RULE 46.2**

Frank S. Holleman III
Counsel of Record for Petitioners
SOUTHERN ENVIRONMENTAL LAW CENTER
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September 4, 2019

Pursuant to Supreme Court Rule 46.2, petitioners Tennessee Clean Water Network and Tennessee Scenic Rivers Association (Conservation Groups) respectfully request that the Petition filed in this case be dismissed without any award of costs by this Court.

This Petition concerns a citizen enforcement action brought by Conservation Groups under the Clean Water Act to address unauthorized pollution entering the Cumberland River from Respondent Tennessee Valley Authority's unlined coal ash impoundments at its Gallatin Fossil Plant. Pet. 1. After trial, the district court found that Respondent was violating the Clean Water Act and ordered Respondent to address the source of pollution by excavating the coal ash and placing it in lined storage. App. 47a. Respondent appealed. The court of appeals wrote that "the district court rightly concluded, 'an unlined [coal] ash waste pond in karst terrain immediately adjacent to a river' that leaks pollutants into the groundwater is a major environmental problem" App. 27a. However, without disturbing the district court's factual findings, the court of appeals reversed and vacated the injunction. App. 27a. This Petition followed.

In response to Conservation Groups' notice of intent to sue, the State of Tennessee brought an enforcement action against Respondent. *See* Pet. 7-8 n.1. Conservation Groups intervened in that matter. *Id.* In July 2019, Conservation Groups, Respondent, and the State of Tennessee reached a settlement, which was entered by the state chancery court as a consent order. Copies of the final consent order and associated administrative order are attached.

Pursuant to the consent order, Respondent has agreed to remediate the source of pollution at the Gallatin Plant. Specifically, Respondent has agreed to close the active coal ash storage compound by removing approximately 12 million cubic yards of coal ash from unlined pits to an appropriate permitted landfill or for beneficial use. At the much-smaller legacy storage site, Respondent will evaluate remedial measures to address the site's contamination and take corrective action approved by the State of Tennessee, which may include excavation. As a result of this settlement, Conservation Groups have achieved the principal goals they sought through this Clean Water Act suit.

For the reasons stated, Conservation Groups move to dismiss the Petition without any award of costs by this Court. Counsel for Respondent has indicated Respondent's consent to Conservation Groups' requested dismissal on these terms. Conservation Groups understand that no fees or costs are owed to the Clerk in this case.

Respectfully submitted,

/s/ Frank S. Holleman III

Frank S. Holleman III

Counsel of Record for Petitioners

SOUTHERN ENVIRONMENTAL LAW CENTER

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September 4, 2019

Attachment 1

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Davidson County Chancery Court

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE ex rel. HERBERT)
H. SLATERY III, in his official capacity as the)
Attorney General and Reporter of Tennessee)
and ROBERT J. MARTINEAU, JR.,)
Commissioner of the Tennessee Department)
of Environment and Conservation,)
)
Plaintiffs,)
)
and)
)
TENNESSEE CLEAN WATER NETWORK)
and TENNESSEE SCENIC RIVERS)
ASSOCIATION,)
)
Plaintiff-Intervenors,)
v.)
)
TENNESSEE VALLEY AUTHORITY,)
)
Defendant.)

2019 JUL 24 PM 3:30
CLERK OF COURT
DAVIDSON COUNTY

F.O 2
No. 15-23-IV

CONSENT ORDER

It appears to the Court, as evidenced by the signatures of counsel for all parties affixed below, that the parties have compromised and settled all matters in dispute between and among them with respect to Plaintiffs' Verified Amended Complaint and Plaintiff-Intervenors' Complaint in Intervention. The parties have agreed to resolution of this lawsuit through entry of this Consent Order.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Defendant Tennessee Valley Authority (Defendant) will complete and submit to Plaintiff Tennessee Department of Environment and Conservation (TDEC) for approval the Final Environmental Assessment Report (EAR) for its facility located at 1499 Steam Plant Road, Gallatin, Sumner County, Tennessee 37066, known as the TVA Gallatin Fossil Plant (GAF). The Final EAR shall be prepared and the underlying investigative work shall be completed consistent with the standards of Paragraphs 2 and 3 of the Agreed Temporary Injunction Between the State of Tennessee and Tennessee Valley Authority, entered on January 21, 2016. The Final EAR shall be submitted within 60 days of TDEC's determination of completion of the ongoing environmental investigation.

2. The Ash Pond Complex: Defendant will close the following units at the GAF (collectively referred to for the purposes of this Consent Order as the Ash Pond Complex) by removing the coal combustion residuals (CCR) and remediating the area consistent with the applicable provisions of the Tennessee Solid Waste Disposal Act, Tenn. Code Ann. §§ 68-211-101 to 68-211-124, and its implementing rules and regulations (closure by removal):

- Ash Pond A
- Ash Pond E
- Middle Pond A
- Bottom Ash Pond
- Stilling Ponds B, C, and D

- a. Defendant will develop and submit to TDEC for approval a plan for the removal and ultimate disposition of all material excavated from the Ash Pond Complex. Closure by removal of the Ash Pond Complex will be completed in accordance with all applicable Tennessee law and under TDEC oversight. Contamination or discharges resulting from Defendant's compliance with this Consent Order

and/or directly associated with the excavation and removal of CCR from the Ash Pond Complex, including but not limited to drop-outs that may occur during the excavation effort despite Defendant's best efforts to prevent or limit such occurrences, shall not be deemed non-compliance with this Consent Order. In the event of such an occurrence, Defendant shall immediately notify TDEC and timely submit a corrective action plan for consideration and approval.

- b. TDEC's approval of such plan for removal shall serve as any approval that may be required pursuant to Tenn. Code Ann. § 68-211-106(j) associated with excavation and removal of CCR from within the Ash Pond Complex.
- c. Defendant's plan may propose, either exclusively or in some combination, beneficially reusing the excavated material in a recycling process for encapsulated beneficial use, placement of the excavated material into an on-site permitted landfill, or transportation of excavated material off-site for disposal into a permitted landfill.
- d. Defendant may submit its plan for removal at any time, but no later than 15 days after the later of (1) TDEC's approval of the Final EAR or (2) publication of the Record of Decision for TVA's Environmental Impact Statement for the Gallatin Surface Impoundment Closure and Restoration Project. Defendant's plan shall be submitted to TDEC by no later than September 30, 2020.
- e. Defendant will provide a copy of its proposed plan for removal to Plaintiff-Intervenors Tennessee Clean Water Network and Tennessee Scenic Rivers Association (the Citizens Groups) at the same time it submits its proposal to

TDEC for review. The Citizens Groups will have 30 days to provide comments on Defendant's proposal to TDEC. The Citizens Groups will also provide a copy of their comments to Defendant.

- f. The plan for removal shall include a schedule for the completion of closure by removal. Defendant will complete closure by removal of the Ash Pond Complex within 20 years of TDEC's final approval of Defendant's plan for removal.
- g. Defendant may request and TDEC may grant extensions of time for closure of the Ash Pond Complex as approved by TDEC for good cause shown. TDEC may deem any delays in its processing of Defendant's permit applications submitted in conjunction with Defendant's plan for closure by removal, and/or any delays caused by challenges to permitting actions taken by regulators (including TDEC) on permit applications, as good cause sufficient to grant an extension of time. TDEC shall use best efforts to expedite the processing of Defendant's applications for permits associated with a lateral expansion of the on-site North Rail Loop landfill.
- h. Following the removal of CCR material from Stilling Ponds B, C, and D, Defendant may submit a plan for continued use of Stilling Ponds B, C, and D for stormwater management at the GAF to TDEC for consideration and approval.
- i. Prior to the commencement of removal, Defendant will develop and submit to TDEC for approval a plan for continued monitoring of discharge locations

during the closure process, including identified outfalls, groundwater monitoring wells, and discharge locations in the Cumberland River identified through the ongoing environmental investigation pursuant to the parties' Agreed Temporary Injunction. Samples will be analyzed for CCR parameters listed in 40 CFR Part 257, Appendices III and IV along with additional parameters required by the state groundwater monitoring program (copper, nickel, silver, vanadium, and zinc). Monitoring shall begin no later than 30 days after TDEC's approval of the monitoring plan.

- j. Within 60 days of TDEC's approval of the plan for removal, Defendant will complete and submit to TDEC for approval a Corrective Action/Risk Assessment (CARA) Plan for groundwater contamination at the Ash Pond Complex. The CARA Plan shall specify all actions Defendant proposes, the basis for those actions, and shall include a schedule of activities to be completed by Defendant.
- k. Defendant will provide a copy of its proposed CARA Plan to the Citizens Groups at the same time it submits its proposal to TDEC for review. The Citizens Groups will have 30 days to provide comments on Defendant's proposal to TDEC. The Citizens Groups will also provide a copy of their comments to Defendant.
- l. Defendant and TDEC shall discuss the draft CARA Plan and any changes TDEC may determine are necessary for tentative approval of the plan. Following completion of the Public Involvement process set forth in Paragraph

4 of this Consent Order, TDEC shall decide to either accept or reject the CARA Plan. Should TDEC disapprove the CARA Plan, TDEC shall provide comments identifying the deficiencies. Defendant shall correct the deficiencies and resubmit the CARA Plan to TDEC for final approval.

m. Defendant shall implement the corrective action and remediation of groundwater contamination no later than 30 days after TDEC's approval of the CARA Plan.

3. The Non-Registered Site #83-1324: The parties agree that resolution of issues regarding investigation and remediation of Non-Registered Site #83-1324 (the NRS) will be governed by the attached administrative order issued by TDEC.

4. Defendant shall provide Public Notice of its proposed CARA Plan. The Public Notice shall contain a summary of the proposed plan and it shall be published in a manner specified by TDEC. The Public shall have a minimum of 30 days to comment on the proposed plan; and, if any comments are received, Defendant shall have 30 days to provide TDEC with responses to the comments. After consideration of all Public comments and Defendant's responses, TDEC will approve, request modifications, or reject the proposed CARA Plan.

5. This Consent Order is in addition to Defendant's obligations under the CCR Rule or other applicable federal laws. As required by the CCR Rule, Defendant shall notify TDEC when it posts CCR-related documents on its CCR Rule public website. TDEC in its discretion may request that Defendant provide it electronic or paper copies of specific documents. The Department shall have 60 days to review CCR Rule related plans, demonstrations, and assessments, after they are placed on Defendant's public CCR Rule website. If TDEC does not

inform TVA that it has comments on a plan, demonstration, or assessment within this 60-day period, Defendant may proceed with such plan, demonstration, or assessment. If TDEC informs Defendant that it has comments, the parties shall meet to discuss those comments within 30 days. Thereafter, Defendant shall appropriately modify its plans, demonstrations, or assessments to respond to TDEC's final comments and resubmit the plan, demonstration, or assessment to TDEC. Thirty days thereafter, unless informed otherwise by TDEC, Defendant may proceed with such plan, demonstration, or assessment. TDEC's review and comment on a CCR Rule plan, demonstration, or assessment shall not be deemed its approval of actions required under this Consent Order; however, Defendant may assume the risk of implementing a CCR Rule plan, demonstration, or assessment.

6. Defendant shall pay all reasonable costs associated with TDEC's oversight of the implementation of the Consent Order. These costs may include, but are not limited to, mileage, lab expense, salary, benefit, and administrative costs for TDEC's employees and other state employees actively employed in oversight of work under this order (including preparation for and attendance at meetings), at the current State overhead rate. Oversight costs also include expenditures for separate office space and related expenses, services contracted for by TDEC that facilitate or support TDEC's oversight under this order, including, but not limited to, the review of documents submitted by Defendant to TDEC as required by the CCR Rule. TDEC shall provide Defendant with periodic statements reflecting oversight costs incurred. Within 60 days of the receipt of each such statement, Defendant shall pay the amount invoiced to TDEC.

7. Absent good cause, failure to comply with any deadline set by TDEC pursuant to this Consent Order except as provided in Paragraph 2.g. shall be a violation of the order.

8. Plaintiffs and Defendant shall designate two individuals to serve as the primary technical and compliance points of contact for implementation of the Consent Order, in writing, sent to the other parties. The Citizens Groups shall designate two individuals to serve as the primary points of contact for submission of documents and written communications as detailed in Paragraph 2. Whenever written notice is required to be given or a document is required to be sent by one party to another, it shall be sent by both electronic and U.S. Mail and directed to the individuals identified in accordance with this Paragraph. Any party may change a designated point of contact at any time by informing the other parties of the change in writing.

9. The Court shall retain jurisdiction over the enforcement of this Consent Order. If Plaintiffs or the Citizens Groups seek to effectuate and enforce the terms and conditions of this Consent Order or the parties seek to resolve disputes arising hereunder as may be necessary or appropriate for the execution of this Consent Order, then the parties may seek to reopen this case for the express purpose of effectuating and enforcing the Consent Order or resolving disputes regarding execution of the Consent Order by filing the appropriate motion.

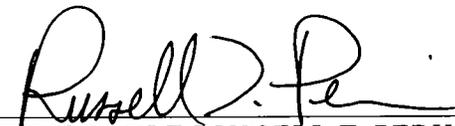
10. This Consent Order is a result of a compromise of disputed claims and shall never at any time or for any purpose be considered as an admission of liability or responsibility of any party with respect to any matters asserted in or pertaining to the subject lawsuit. The parties recognize, and the Court by entering the order finds, that the Consent Order has been negotiated in good faith and will avoid litigation among the parties and that this Consent Order is fair, reasonable, and in the public interest.

11. This Consent Order constitutes a final judgment of the Court, except that the Court retains jurisdiction over the enforcement of the order as set forth in Paragraph 9. Defendant shall

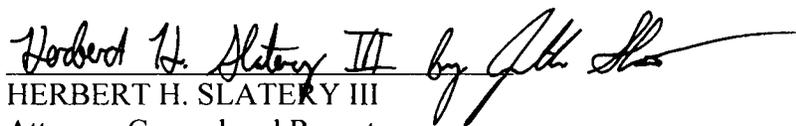
pay all court costs, and each party shall bear its own discretionary costs and fees.

IT IS SO ORDERED.

Entered this the 24th day of July, 2019.


HONORABLE RUSSELL T. PERKINS
CHANCELLOR

Respectfully submitted,


HERBERT H. SLATTERY III
Attorney General and Reporter


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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Consent Order has been forwarded via electronic mail and first-class mail, postage prepaid, on this the 13th day of June, 2019, to:

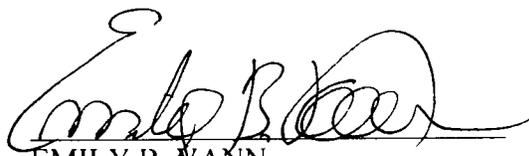
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MAILED
7/24/19

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the Department).

II.

Tennessee Valley Authority (TVA) is a federal agency and instrumentality of the United States Government pursuant to the Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. Sections 831-831ee. Service of process may be made on Jeffrey Lyash CEO at 400 W. Summit Hill Drive, Knoxville, TN, 37902-1499

JURISDICTION

TENNESSEE SOLID WASTE DISPOSAL ACT

III.

“Solid waste” is defined as “spent material, byproducts, . . . ash, sludge, and all discarded material including solid, liquid, [or] semisolid . . . material resulting from industrial, commercial, and agricultural operations.” Tenn. Code Ann. § 68-211-103(8). CCR is a solid waste.

IV.

The Department is authorized to exercise general supervision over the operation and maintenance of solid waste processing facilities and disposal facilities or sites. Such general supervision shall apply to all the features of operation or maintenance *which* do or *may* affect the public health and safety or the quality of the environment *and which* do or *may affect* the proper processing and disposal of solid wastes. Tenn. Code Ann. § 68-211-107(a) (Emphasis added). The Commissioner is also empowered to undertake inspections and investigations of such facilities, operations, and sites. *Id.*

V.

The Department shall require all solid waste disposal facilities to have a groundwater monitoring program and report sampling results to the department at least once each year. *If sampling results indicate that ground water protection standards are exceeded, the owner or operator of the facility shall commence an assessment monitoring program, in accordance with regulations adopted by the board and carry out all corrective measures specified by the commissioner.* Tenn. Code Ann. § 68-211-107(c) (Emphasis added). Further, required corrective measures are specified in Chapter 0400-11-01-.04 of the Rules and Regulations of the State of Tennessee.

SCOPE OF THE ORDER

VI.

This Order shall apply to the historic disposal site known as Non-Registered Site #83-1324 (the NRS) located at the TVA Gallatin Fossil Plant.

ORDER

VII.

WHEREFORE, I, David W. Salyers, P.E., hereby ORDER TVA to perform the following actions and comply with the conditions set forth below.

A. Completion of Environmental Assessment Report

On January 21, 2016, the Davidson County Chancery Court entered Agreed Temporary Injunction Between the State of Tennessee and Tennessee Valley Authority in the matter of *State of Tennessee et. al. v. Tennessee Valley Authority*, Davidson County Chancery Court No. 15-23-IV. As part of that order, TVA developed and implemented an Environmental Investigation Plan (EIP) for the TVA Gallatin Fossil Plant to fully characterize the hydrology and geology of the site

and identify the extent of soil, surface water, and groundwater contamination by CCR material. In compliance with the Court's Consent Order, TVA shall complete and submit for approval to the Department the Final Environmental Assessment Report (EAR) for the TVA Gallatin Fossil Plant. The Final EAR shall be prepared, and the underlying investigative work shall be completed consistent with the standards of Paragraphs 2 and 3 of the Agreed Temporary Injunction Between the State of Tennessee and Tennessee Valley Authority, entered on January 21, 2016. The Final EAR shall be submitted within 60 days of TDEC's determination of completion of the ongoing environmental investigation.

B. Treatability Test and Field Demonstration

TVA shall conduct a laboratory-based treatability test and, subsequently, a field demonstration aimed at adjusting pH along the NRS boundary adjacent to the Cumberland River to determine whether such an adjustment can be an effective method to meet groundwater protection standards:

1. TVA shall prepare and submit to the Department for approval all proposed work plans for the proposed treatability test and field demonstration project. TVA may submit its plan at any time, but not later than 90 days after the Effective Date of this Order. The plan shall include interim benchmarks based on clear performance standards.
2. The proposed project shall be completed within five years of the Department's approval of the final plan.
3. TVA may request and the Department may approve at its discretion for good cause shown extensions of time for the project.

4. Prior to the commencement of the project, TVA shall prepare and submit to the Department for approval a plan for continued monitoring of groundwater monitoring wells and discharge locations in the Cumberland River identified through the ongoing environmental investigation pursuant to the parties' Agreed Temporary Injunction. Samples will be analyzed for CCR parameters listed in 40 CFR Part 257, Appendices III and IV along with additional parameters required by the state groundwater monitoring program (copper, nickel, silver, vanadium, and zinc). Samples shall also be analyzed for pH and byproducts of the treatment process or field demonstration approved in the plan. Monitoring shall begin no later than 30 days after the Department's approval of the monitoring plan.
5. Following the completion of the project, based on the final EAR and data collected in the field demonstration, TVA shall complete and submit to the Department for approval a Corrective Action/Risk Assessment (CARA) Plan for closure of the NRS and remediation of groundwater contamination. The CARA Plan shall specify all actions TVA proposes and the basis for those actions. As appropriate, the final CARA Plan shall include:
 - i. the method(s) TVA proposes to remove and/or close-in-place CCR material at the NRS;
 - ii. the method(s) TVA proposes to remediate CCR-contaminated soil, surface water, and groundwater at the NRS;
 - iii. the method(s) TVA proposes to restore any natural resources damaged as a result of the CCR wastewater treatment and on-site CCR disposal;
 - iv. a plan for monitoring the air and water in the area during the cleanup process;
 - v. a plan to ensure that public and private water supplies are protected from CCR contamination and that alternative water supplies are provided to local citizens if CCR contamination above groundwater protection standards is detected in groundwater drinking wells;

- vi. a plan addressing both the short-term and long-term management of CCR at the NRS, including remediation and stabilization of the NRS with design drawings and appropriate supporting engineering calculations.

The CARA Plan shall include a schedule of activities to be completed by TVA.

6. As part of the parties' agreement in *State of Tenn. et. al. v. Tenn. Valley Auth.*, Davidson County Chancery Court Docket No. 15-23-IV, TVA will provide a copy of its proposed CARA Plan to Tennessee Clean Water Network and Tennessee Scenic Rivers Association (the Citizens Groups) at the same time it submits its proposal to the Department for review. The Citizens Groups will have 30 days to provide comments on TVA's proposal to the Department and TVA.
7. The Department and TVA shall discuss the draft CARA Plan and any changes the Department may determine are necessary for tentative approval of the plan. Following completion of the Public Involvement process set forth in Section VII.C. of this Order, the Department shall decide to either accept or reject the CARA Plan. Should the Department disapprove the CARA Plan, the Department shall provide comments identifying the deficiencies. TVA shall correct the deficiencies and resubmit the CARA Plan to the Department for final approval.
8. TVA shall implement the corrective action for closure of the NRS and remediation of groundwater contamination no later than 30 days after the Department's approval of the CARA Plan.

C. Public Involvement

The Department shall identify opportunities for TVA and the Department to involve the public during the processes of this Order. This shall include providing the Public notice and 30 days to comment before the Department approves the submitted CARA Plan. TVA shall have at least 30 days to provide the Department its responses to the comments received before the Department makes a final determination on the plan under review. After consideration of all public comments and TVA's responses, the Department will approve, request modifications, or reject the proposed CARA Plan.

D. Additional Time

TVA may request a time extension for any deadline in this Order, or in plans approved pursuant to this Order, prior to the deadline. The Commissioner may grant the time extension for good cause shown by TVA.

E. Reimbursement of Costs

TVA shall pay all reasonable costs associated with the Department's oversight of the implementation of this Order. These costs shall include, but are not limited to, mileage, lab expense, salary, benefit, and administrative costs for the Department's employees and other state employees actively employed in oversight of work under this Order (including preparation for and attendance at meetings), and the current State overhead rate. Oversight costs also include expenditures for separate office space and related expenses, services contracted for by the Department that facilitate or support the Department's oversight of work under this Order. The Department shall provide TVA with periodic statements reflecting oversight costs incurred. Within 60 days of the receipt of each such statement, TVA shall pay to the Department the amount invoiced.

F. Point of Contact and Written Communications

The Department and TVA shall designate two individuals to serve as the primary technical and compliance points of contact for implementation of this Order, in writing, sent to the other party. The Citizens Groups shall designate two individuals to serve as the primary points of contact for submission of documents and written communications as detailed in Section VII.B. of this Order. Any party may change a designated point of contact at any time by informing the other parties to the change in writing.

G. Assessment Conferences

At any time deemed necessary by the Department, the Department may schedule an assessment conference that TVA shall attend.

H. Effective Date

This Order shall become effective 30 days after issuance.

I. Termination of Order

Upon completion of all tasks set forth in this Order, the Department shall issue to TVA a letter stating the requirements of this Order have been fulfilled and no further action of TVA is required under this Order; provided, however, that the Department may terminate the Order earlier if changes in conditions warrant this, including changes in applicable regulations.

ASSESSMENT OF CIVIL PENALTIES

VIII.

If TVA does not meet the requirements of this Order, TVA shall pay the following administrative penalties upon request by the Department:

- a. Failure to comply with any specific requirement, including deadlines set forth in this Order or which are specified in schedules that are approved by the Department pursuant to

this Order: \$5,000 per noncompliance and \$1,000 for each day until the noncompliance is remedied.

The Department, in its discretion, may waive a potential penalty in whole or in part for good cause including, but not limited to, a showing by TVA that events beyond its control (i.e., a force majeure event such as act of God, acts of war or terrorism, and/or construction, labor, or equipment delays) impeded or prevented it from complying.

SITE ACCESS

IX.

During the effective period of this Order, and until the Department determines that all activities under this Order have been completed, the Department and its representatives or designees, upon presentation of credentials, shall have access during normal business hours and, upon reasonable notice, at non-business hours to the sites listed in Section VI. of this Order. Such access may be for the purpose of monitoring activities; verifying data; conducting investigation; inspecting and copying records, logs, or other documents that are not subject to a legally applicable privilege; and/or conducting other activities associated with the implementation of this Order. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation, or permit. The Department and its representative shall comply with all reasonable health and safety plans published by TVA or its contractor and used by site personnel for the purpose of protecting life and property.

RESERVATION OF RIGHTS

X.

In issuing this Order, the Department does not implicitly or expressly waive any provision of the Tennessee Solid Waste Disposal Act or the regulations promulgated thereunder, or the

authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

XI.

Respondent(s) may appeal an Order and Assessment. Tenn. Code Ann. §§ 68-211-113 and -117. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received the Order and Assessment or the Order and Assessment will become final.

If an appeal is filed, an initial hearing of the matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-211-113; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

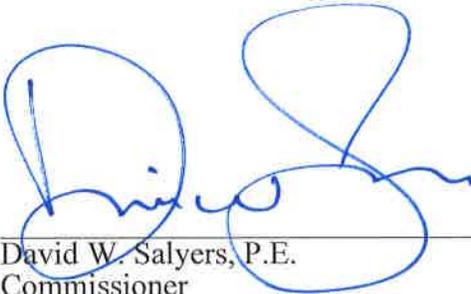
At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Robert Wilkinson, State of Tennessee, Division of Solid Waste Management, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number should be written on all correspondence regarding this matter.**

TVA has waived its right to appeal this Order as part of a negotiated settlement agreement.

Issued this 13th day of June, 2019, by the Commissioner of the
Tennessee Department of Environment and Conservation.

6-13-2019
Date



David W. Salyers, P.E.
Commissioner
Department of Environment and Conservation

Reviewed by:



Jenny Howard, BPR# 024480
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