



EPA's regulations specifically do not preempt state law requirements, and EPA recognized in its rulemaking the significant role that states play in implementing requirements for managing CCR. EPA strongly encouraged states to adopt and implement the CCR criteria as state law. Following the December 2008 Kingston ash spill, Tennessee amended its laws and regulations to reduce the risk of another such event. Among the changes made are requirements that all new or expanded coal ash disposal facilities must include a Resource Conservation and Recovery Act of 1976 (RCRA) Subtitle D equivalent liner and final cap. Further, pursuant to T.C.A. §68-211-107(c) all solid waste disposal facilities must have groundwater monitoring and if sampling results indicate that ground water protection standards are exceeded, an assessment monitoring program is required. Further, required corrective measures are specified in Chapter 0400-11-01-.04 of the Rules and Regulations of the State of Tennessee.

Therefore, this Order is issued pursuant to the provisions of Tennessee's Waste Management and Remediation laws and in furtherance of the public policies specified therein.

## **PARTIES**

### **I.**

Robert J. Martineau, Jr. is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation.

### **II.**

Tennessee Valley Authority 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 William D. Johnson CEO at 400 Summit Hill Drive, Knoxville, TN, 37902-1499

## JURISDICTION

### III.

Pursuant to T.C.A. §68-211-103(8), “[s]olid 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.” CCR are solid waste.

### IV.

Pursuant to T.C.A. §68-211-107(a), “[t]he 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.*” (Emphasis added).

### V.

Pursuant to T.C.A. §68-211-107(c) “[t]he 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.*” (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 all “CCR disposal areas” at the coal-power plant sites listed below that TVA operates or has operated in Tennessee (hereinafter sites or plants). “CCR disposal areas” include all areas where CCR disposal has occurred, including without limitation, all permitted landfills, all “non-registered” landfills (landfills that existed before they were subject to regulation), and all current and former surface water impoundments that contain CCR.

- Allen Fossil Plant
- Cumberland Fossil Plant
- Johnsonville Fossil Plant
- Kingston Fossil Plant
- Bull Run Fossil Plant
- John Sevier Fossil Plant
- Watts Bar Plant

## ORDER

### VII.

WHEREFORE, I, Robert J. Martineau, Jr., hereby ORDER TVA to perform the following actions and comply with the conditions set-out below.

#### **A. Site-Wide CCR Investigation, Assessment and Remediation**

TVA shall conduct an investigation of CCR disposal areas at the TVA plant sites listed in Section VI by taking the following actions:

a. Within 60 days of the issuance of this Order, an investigation conference shall be scheduled at which TVA shall brief the Department on its CCR management plans at each of the listed plant sites and provide information concerning CCR disposal, releases, existing risk analysis, sampling information, etc. At this briefing, TVA shall discuss and provide information about:

- i. Groundwater monitoring and other environmental data at each plant site, including any exceedances of groundwater protection standards and the detection of CCR constituents listed in Appendix III and Appendix IV of the CCR rule in ground water, surface water, or soil;
- ii. Biological monitoring reports and whole effluent toxicity testing that TVA may have conducted near each plant site;
- iii. The hydrology, geology, and hydrogeology of each plant site with an emphasis on the geology at the locations where TVA has disposed of CCR;
- iv. The results of soil borings and analysis of rock cores at each site, including soil, rock, and CCR materials encountered in the borings as well as the analytical work performed on soil boring samples;

- v. Any surface seeps and other observable surface releases from CCR impoundments to surface water;
  - vi. Plans and schedule for closing wet impoundments and converting CCR processes to dry; and
  - vii. The history of CCR activities at each site.
- b. During the investigation conference, the Department and TVA shall discuss what additional documents and/or information TVA shall be required to provide the Department to complete the investigation. Any additional documents requested by the Department shall be provided as expeditiously as practicable, but no later than 45 days, after the conference. Documents may be provided in paper or electronic format or may be posted at a secure internet link.
- c. The Department recognizes that TVA and EPA exchanged detailed information about the condition of its CCR impoundments and that this information is at <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/index.htm>. TVA need not provide copies of reports or analyses found at this internet site.
- d. Following the initial investigation conference and the review of available information about CCR at each plant site, the Department shall identify what, if any, additional information is needed to complete the investigation of each site. The Department shall discuss with TVA the basis for this determination and a schedule for providing the additional information on a per-site basis. TVA shall develop Environmental Investigation Plans (EIPs) for each site and submit them to the Department. Each EIP shall include a schedule of the work to be performed to fully identify the extent of soil, surface water, and ground water contamination by CCR. TVA shall implement the EIP in accordance with a schedule approved by the Department. Within 60 days

of completion of the EIP, TVA shall submit an Environmental Assessment Report (EAR) to the Department. The EAR shall provide an analysis of the extent of soil, surface water, and ground water contamination by CCR at the site. The Department shall evaluate the EAR to determine if the extent of CCR contamination has been fully defined.

e. The process set-out in VII A. item d. above, shall be repeated until the Department determines there is sufficient information to adequately characterize the extent of CCR contamination in soil, surface water, and ground water at each site.

f. Upon approval of each EAR by the Department, TVA shall submit, within 60 days, a Corrective Action/Risk Assessment (CARA) Plan. The CARA Plan shall specify all actions TVA plans to take at the site and the basis of those actions. Corrective measures may include (1) soil, surface water, and ground water remediation, (2) risk assessment and institutional controls, or (3) no further corrective action. As appropriate for the site, the final approved CARA Plan shall include:

- i. The method(s) TVA will employ to remove and/or close in place CCR material at the site;
- ii. The method(s) TVA will employ to remediate CCR contaminated soil, surface water, and ground water at the site;
- iii. The method(s) TVA proposes to restore any natural resources damaged as a result of the CCR waste water 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 ground water protection standards is detected in ground water drinking wells; and,

vi. A plan addressing both the short term and long term management of CCR at the site, including remediation and stabilization of the CCR surface impoundment(s) and/or landfill and/or non-registered disposal site(s), to include design drawings and appropriate supporting engineering calculations.

g. The CARA Plan shall include a schedule of activities to be completed by TVA. The Department and TVA shall discuss the draft CARA Plan and any changes that the Department may determine are necessary for tentative approval of a plan. Following completion of the Public Involvement process set-out in Section B. 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 to TVA identifying the deficiencies. TVA shall correct the deficiencies and resubmit the CARA Plan to TDEC for approval.

### **B. Public Involvement**

The Department shall identify opportunities for TVA and the Department to involve the public during the site investigation, assessment, and remediation processes of this Order. This shall include TVA providing the Public notice of all EIP and CARA Plans. Each Public Notice shall contain a summary of the proposed plan and it shall be published in a manner specified by the Department. The Public shall have a minimum of 30 days to comment on each plan; and, if any comments are received, TVA shall have 30 days to provide the Department responses to the comments. After consideration of all Public comments and TVA's responses, the Department will approve, modify, or reject each EIP and CARA Plan.

### **C. 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; provided, however, that the Department and TVA recognize that deadlines set by the CCR rule cannot be extended except as allowed therein.

### **D. CCR Rule Implementation**

**1. CCR Rule Compliance:** The requirements of Sections A. and B. of this Order are supplemental to the CCR rule and are not intended to impede or delay actions that TVA takes in compliance with CCR rule requirements. The Department recognizes that TVA may, in compliance with CCR rule requirements, elect to close CCR surface impoundments and/or landfills before the full extent of contamination at a site has been determined. However, if TVA elects to do so, it may later be required by Section A. of this Order to take other and further remedial actions.

**2. Notice of CCR Documents:** As required by the CCR rule, TVA shall notify the Department when it posts CCR-related documents on its CCR rule public website. The Department in its discretion may request that TVA provide it electronic or paper copies of specific documents.

**3. Department Review Process:** The Department shall have 60 days to review CCR rule related plans, demonstrations, and assessments, after they are placed on TVA's public CCR rule website. If the Department does not inform TVA that it has comments on a plan, demonstration, or assessment within this 60-day period, TVA may proceed with such plan, demonstration, or assessment. If the Department informs TVA that it has comments, the Department and TVA shall meet to discuss those comments within 30 days. Thereafter, TVA shall appropriately

modify its plans, demonstrations, or assessments to respond to the Department's final comments and resubmit the plan, demonstration, or assessment to the Department. Thirty (30) days thereafter, unless informed otherwise by the Department, TVA may proceed with such plan, demonstration, or assessment. The Department's review and comment on a CCR-rule plan, demonstration, or assessment shall not be deemed its approval of actions required under Section A of this Order. However, TVA may assume the risk of implementing a CCR-rule plan, demonstration, or assessment.

**4. Preliminary Activities:** Notwithstanding any other provision of this Order, TVA may proceed immediately with preliminary activities (e.g., pond surface water drawdown, contouring, etc.) that are necessary to prepare CCR-surface impoundments and/or landfills for closure; provided, however, that discharges from permitted outfalls must remain within limits set forth in applicable National Pollutant Discharge Elimination System permits.

#### **E. Reimbursement of Costs**

TVA shall pay all 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), at 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, including, but not limited to, the review of documents submitted by TVA to the Department as required by the CCR rule. 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. Either party may change a designated point of contact at any time by informing the other party 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. 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-out in this Order or which are specified in schedules that are approved by the Department pursuant

to this Order: FIVE THOUSAND DOLLARS (\$5,000) per noncompliance and ONE THOUSAND DOLLARS (\$1,000) for each day until the noncompliance is remedied.

b. Failure to comply with CCR rule requirements: FIVE THOUSAND DOLLARS (\$5,000) for each noncompliance and ONE THOUSAND DOLLARS (\$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 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.

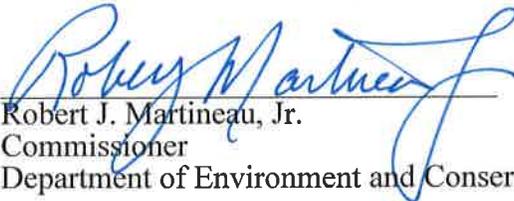
**RESERVATION OF RIGHTS**

**X.**

This Order shall not be construed as waiving any right or authority available to the Commissioner to further assess TVA for liability for civil penalties or damages incurred by the State. The right to order further investigation, remedial action, and/or monitoring and maintenance is also specifically reserved. Further, this Order shall not be construed as waiving, settling, or in any manner compromising any natural resource damage claims which the Department or the State of Tennessee may have under Section 107 of CERCLA or any other statute, rule, regulation, or common law.

Issued this 6<sup>th</sup> day of August, 2015, by the Commissioner of the Tennessee Department of Environment and Conservation.

8/6/15  
Date

  
Robert J. Martineau, Jr.  
Commissioner  
Department of Environment and Conservation

## NOTICE OF RIGHTS

Tennessee Code Annotated (“T.C.A.”) §68-211-113 and §68-212-215(d) allows the Respondent to appeal this Order. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or this Order and Assessment become final (not subject to review).

If an appeal is filed, an initial hearing will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing pursuant to the provisions of T.C.A. §68-211-113, T.C.A. §68-212-215(d), T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedures 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. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of T.C.A. §68-211-117 and T.C.A. §68-212-213 (from \$100 to \$10,000 per day per violation). 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 (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o E. Joseph Sanders, General Counsel, Department of Environment and Conservation, 2<sup>nd</sup> Floor William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243-1548. Payments of any 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,  
10<sup>th</sup> Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243.  
The case number, OGC15-0177, should be written on all correspondence regarding this matter.

A handwritten signature in blue ink, appearing to read "E. Joseph Sanders", is written over a horizontal line.

E. Joseph Sanders BPR# 6691

General Counsel

Department of Environment & Conservation

312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor

Nashville, Tennessee 37243-1548

PH 615-532-0131