

GARY A. DAVIS & ASSOCIATES
ATTORNEYS AT LAW
61 NORTH ANDREWS AVENUE
P.O. BOX 649
HOT SPRINGS, NORTH CAROLINA 28743

GARY A. DAVIS
LICENSED IN NC, TN, CA (INACTIVE)
GADAVIS@ENVIROATTORNEY.COM

REBECCA C. KAMAN
LICENSED IN TN
BKAMAN@ENVIROATTORNEY.COM

JAMES S. WHITLOCK
LICENSED IN NC
JWHITLOCK@ENVIROATTORNEY.COM

TELEPHONE: 828-622-0044
FACSIMILE: 828-622-7610

December 30, 2008

Via Certified Mail – Return Receipt Requested

Tom Kilgore, President and CEO
Tennessee Valley Authority
400 W. Summit Hill Dr.
Knoxville, TN 37902-1499

James H. Fyke, Commissioner Tennessee
Department of Environment and
Conservation
L & C Annex, 1st Floor
401 Church Street
Nashville, TN 37243

Paul E. Davis, Director
Division of Water Pollution Control
Tennessee Department of Environment and
Conservation
Division of Water Pollution Control
L & C Annex, 6th Floor
401 Church Street
Nashville, TN, 37243-1534

Mr. Stephen L. Johnson, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

James I. Palmer, Jr., Regional
Administrator
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

Re: TVA Kingston Fossil Plant Notice of Intent to File Citizen Suit Pursuant to the
Federal Clean Water Act

Gentlemen:

The purpose of this letter is to notify the Tennessee Valley Authority (hereinafter "TVA"), located in Knoxville, Tennessee, and operating a coal-fired power plant called the Kingston Fossil Plant in Roane County, Tennessee, and the federal and state agencies required to receive copies of this notice, that the Southern Alliance for Clean Energy (hereinafter "SACE") and certain of its members intend to file suit in sixty (60) days under 33 U.S.C. § 1365(a)(1) of the Clean Water ACT (hereinafter "CWA"), in Federal District Court against TVA for violations of the Federal Clean Water Act resulting from the operation of its coal fly ash impoundment at the Kingston Fossil Plant.

This Notice is sent on behalf of SACE, Post Office Box 1842, Knoxville, TN 37901. SACE is a non-profit organization, organized under the laws of the State of Tennessee, that promotes responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast. SACE has members who live downstream from the Kingston Fossil Plant and who are directly impacted as a result of the failure of a coal ash dredge cell impoundment at that facility.

The coal ash dredge cell impoundment at TVA's Kingston Fossil Plant is located along the banks of the Emory River near where it joins the Clinch River, which then flows into the Tennessee River. These waters are also part of Watts Bar Reservoir. On December 22, 2008, the containment retention walls for the coal ash dredge cell impoundment failed discharging approximately 1 billion gallons of coal ash slurry into the Emory River, the Clinch River and Watts Bar Reservoir. Most of this coal ash waste remains in these waters or in locations where it is likely that the discharged waste will move into these waters. The coal ash waste will likely remain in these locations for the foreseeable future.

I. VIOLATIONS OF THE FEDERAL CLEAN WATER ACT: DISCHARGING POLLUTANTS WITHOUT A PERMIT

"Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 USCS §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful." 33 USCS § 1311(a). TVA has violated and continues to violate this section by discharging pollutants (coal ash) into waters of the United States without a valid permit authorizing these discharges. This violation commenced on December 22, 2008, and continues as a result of the coal ash waste remaining in the waters and in locations where it can easily reach waters of the United States.

II. VIOLATIONS OF TENNESSEE LAW: ALTERATION OF WATERS AND DISCHARGE OF WASTES WITHOUT A PERMIT

The State of Tennessee has been delegated authority to enforce the federal Clean Water Act and has adopted a statute and rules for this purpose. Violations of these requirements constitute a violation of the Federal Clean Water Act. Pursuant to Tenn. Code Ann. § 69-3-108(b), "[i]t is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

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(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters; . . .”

As a result of the massive discharge of coal ash on December 22, 2008, TVA has violated and continues to violate this section by altering the properties of waters of the state and by discharging wastes into waters and into locations from which it is likely that the discharged substances will move into waters.

III. VIOLATIONS OF TENNESSEE WATER QUALITY STANDARDS AND CAUSING A CONDITION OF POLLUTION

The Emory and Clinch Rivers in the area of the unpermitted discharge of coal ash waste are designated for the following uses: domestic water supply, industrial water supply, fish and aquatic life, recreation, livestock watering and wildlife, and irrigation. See Tennessee Division of Water Pollution Control Rule 1200-4-4-.09. As a result of the massive discharge of coal ash on December 22, 2008, TVA has violated the federal Clean Water Act and Tenn. Code Ann. § 69-3-114(a) by causing a condition of pollution and violations of the water quality criteria for each of these uses, as set out in Tennessee Division of Water Pollution Control Rule 1200-4-3-.03.

Specifically, the coal ash waste discharges have violated the criteria for domestic water supply by:

1. causing “distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits or sludge banks of such size or character as may impair the usefulness of the water as a source of domestic water supply.”
2. polluting the waters with “toxic substances, whether alone or in combination with other substances, which will produce toxic conditions that materially affect the health and safety of man or animals, or impair the safety of conventionally treated water supplies.”

The coal ash waste discharges have violated the criteria for industrial water supply by causing “distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits or sludge banks of such size or character as may impair the usefulness of the water as a source of industrial water supply.”

The coal ash waste discharges have violated the criteria for fish and aquatic life by:

1. causing “distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits or sludge banks of such size or character that may be detrimental to fish and aquatic life.”
2. causing “turbidity, total suspended solids, or color in such amounts or of such character that will materially affect fish and aquatic life.”
3. polluting the waters with “substances or a combination of substances including disease - causing agents which, by way of either direct exposure or indirect exposure through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including

- malfunctions in reproduction), physical deformations, or restrict or impair growth in fish or aquatic life or their offspring.”
4. degrading the quality of stream habitat so that it does not “provide for the development of a diverse aquatic community that meets regionally-based biological integrity goals.”

The coal ash waste discharges have violated the criteria for recreation by:

1. causing “distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits or sludge banks of such size or character that may be detrimental to recreation.”
2. causing “suspended solids, turbidity or color in such amounts or character that will result in any objectionable appearance to the water, considering the nature and location of the water.”
3. polluting the water with “toxic substances, whether alone or in combination with other substances, that will render the waters unsafe or unsuitable for water contact activities including the capture and subsequent consumption of fish and shellfish, or will propose toxic conditions that will adversely affect man, animal, aquatic life, or wildlife.”

The coal ash discharges have violated the criteria for livestock watering by:

1. causing “distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits or sludge banks of such size or character as to interfere with livestock watering and wildlife.”
2. polluting the waters with “substances whether alone or in combination with other substances, which will produce toxic conditions that adversely affect the quality of the waters for livestock watering and wildlife.”
3. polluting the waters with “other pollutants in quantities which may be detrimental to the water for livestock watering and wildlife.”

The coal ash discharges have violated the criteria for irrigation by:

1. causing “distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits or sludge banks of such size or character as may impair the usefulness of the water for irrigation purposes.”
2. polluting the waters with “toxic substances whether alone or in combination with other substances which will produce toxic conditions that adversely affect the quality of the waters for irrigation.”

IV. VIOLATION OF EXISTING NPDES PERMIT

TVA currently has an NPDES permit (No. TN0005452) for an Outfall 1 for discharges from the main fly ash pond of, among other things, fly ash and bottom ash sluice water. This permit does not cover the discharge of coal ash slurry from the dredge cells, but to the extent that TVA would claim that NPDES permit No. TN0005452 covers such discharges, the massive release of coal ash slurry on December 22, 2008, violated this permit and is a continuing violation of the permit. The permit contains the following provisions that are being violated by the release:

There shall be no distinctly visible floating scum, oil or other matter contained in the wastewater discharge. The wastewater discharge must not cause an objectionable color contrast in the receiving stream.

The wastewater discharge shall not contain pollutants in quantities that will be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.

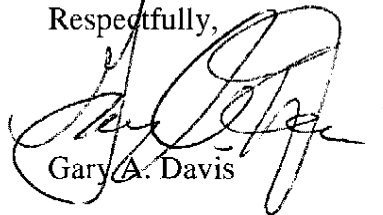
Sludge or any other material removed by any treatment works must be disposed of in a manner which prevents its entrance into or pollution of any surface or subsurface waters.

In addition, TVA violated and continues to violate the prohibition of “overflows” in the permit, which are defined as “the discharge to land or water of wastes from any portion of the collection, transmission, or treatment system other than through permitted outfalls.”

Thank you for your prompt attention to the on-going serious violations of federal and state water pollution requirements by TVA. Unless the U.S. EPA or TDEC commences and diligently prosecutes an action in court to address these violations within sixty (60) days, we intend to file a citizen suit against TVA under section 505(a) of the Clean Water Act for the violations discussed above, 33 U.S.C. § 1365(a). In addition to these violations, this notice covers all violations of the Clean Water Act evidenced by information which becomes available to us after the date of this Notice of Intent to Sue. Pursuant to the Clean Water Act, we will seek an injunction to order TVA to clean up the polluted waters and cease these violations, civil penalties, attorney’s fees and costs.

All communication relating to this matter should be directed to Gary A. Davis or Rebecca Kaman at the address and telephone number listed at the top of this letter. Please contact us if you would like to discuss these ongoing violations.

Respectfully,



Gary A. Davis

GAD/ndg

cc: Michael Mukasey, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001