



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
Division of Solid and Hazardous Waste Management  
5th Floor, L & C Tower  
401 Church Street  
Nashville, Tennessee 37243-1535  
Telephone: (615) 532-0780

December 6, 2012

Ms. Angela Garrone  
Southeast Energy Associate  
Southern Alliance for Clean Energy  
P. O. Box 1842  
Knoxville, TN 37901

**Re: Section 113(h) complaint regarding unpermitted solid waste storage at the Tennessee Valley Authority Allen Fossil Plant**

Dear Ms. Garrone:

Commissioner Martineau forwarded the above-referenced complaint to my attention for a response. I appreciate the efforts of the Southeast Alliance for Clean Energy, as well as those of the Tennessee Clean Water Network, Earthjustice, the Environmental Integrity Project, and the Tennessee Chapter Sierra Club. The work that private citizens do to advance the quality of the state's natural resources cannot be overemphasized.

This correspondence addresses your above-referenced complaint (hereinafter, the "complaint") made pursuant to Tenn. Code Ann. § 68-211-113(h) regarding the Tennessee Valley Authority's ("TVA") operation of the Allen Fossil Plant in Memphis, and, more specifically, the placement of coal combustion wastes at the West Pond within the generator facility. Your complaint that was served on TVA as provided by Tenn. Code Ann. §68-211-113(h). TVA responded on October 16, 2012. According to the response by TVA, TVA has maintained the coal ash impoundment at Allen Fossil Plant since the beginning of 1965, having acquired the facility from the City of Memphis on December 31, 1984. Further, TVA actively sluiced ash into the West Pond until some time in 1978 and ceased sluicing into the West Pond until TVA rerouted ash sluice waste from the East pond to the West pond from May 1991 until October 1992. However, the City of Memphis retained ownership of the West Pond real property as well as joint

ownership and responsibility of the ash in the West Pond shared with Shelby County Port Authority. TVA currently holds an easement granted by the City of Memphis that allows TVA to deposit sluiced ash and wastewater into the West Pond.

TVA has coverage under an NPDES permit for the 002 Outfall from the West Pond. NPDES Permit No. TN0005355, issued to TVA by the Department on November 30, 2007, allows TVA to route "ash transport water, nonchemical metal cleaning wastewaters, precipitator & precipitator pad washdown, low volume wastes, and storm water runoff" to the West pond and to discharge from the pond through Outfall 002.

Your complaint states that "[n]one of the exemptions from the statutory definition of 'solid waste' and the permitting requirements of the TSWDA apply to inactive coal impoundments." While that may be a true statement, the Department agrees with TVA that the Allen Fossil Plant site maintains an active NPDES permit. The report by Stantec Consulting Services, Inc., on which you base your contention that the permit has been terminated, does not terminate an NPDES permit without a finding by the Commissioner or the Tennessee Water Quality Control Board that a violation of the permit conditions or a misrepresentation of fact has occurred, or that a change in any condition requires either a temporary or permanent reduction or elimination of a discharge covered by the permit [see Tenn. Code Ann. § 69-3-108(h)]. Moreover, TVA has not indicated that it will terminate the NPDES permit for the Allen Fossil Plant.

Because TVA maintains a current NPDES permit for Allen Fossil Plant, solid waste compliance is exempted by the NPDES permit requirements as comports with the regulatory scheme for ash impoundments. Pursuant to Rule 1200-01-.07-.02(1)b3.(x)(2010), any site having first obtained an NPDES permit for discharge into waters of the state is not required to obtain a solid waste permit. Rule 1200-01-.07-.02(1)b3.(x)(2010) states as follows:

Solid Waste Disposal Control System:       General, Rule 1200-01-.07-02(1)b3.(x)(2010)

The following facilities or practices are not subject to the requirement to have a permit: (x) Processing of industrial wastewaters in on-site facilities subject to regulation under T.C.A. §69-3-101 *et seq.*

Rule 1200-01-.07-.02(1)b3.(xi)(II) states as follows:

The following facilities or practices are not subject to the requirement to have a permit: xi)(II) Process or disposal of the following materials: (II) Industrial wastewater discharges that are point source discharges subject to permits under T.C.A. § 69-3-101 *et seq.*

Your complaint further alleges that pollutants including arsenic, manganese, calcium, aluminum, iron, boron, molybdenum, sulfate, selenium, chloride, beryllium, cadmium, chromium, cobalt, lead and mercury found in the Allen Fossil Plant ash impoundment at the West Pond pose a health risk. The complaint further alleges that documented water contamination has occurred at the Allen Fossil Plant as well as at the remaining TVA facilities in the state of Tennessee. The Department reviewed the results of sampling at the recently-installed monitoring wells around the West Pond. It is true that the levels of arsenic above the drinking water standard have been reported. While those readings are of a high priority for the Department, please understand that the monitoring reports reflect pre-treatment levels of arsenic and are not representative of treated water intended for human consumption. In addition, the disturbance caused by the construction of new monitoring wells or naturally-occurring arsenic levels could be contributing to higher-than-normal arsenic readings in surrounding soils at the Allen Fossil Plant. Notwithstanding the possible cause(s) of the arsenic reading, the Department will continue to investigate the monitoring.

As you mentioned in your complaint, TVA is in the process of converting its operations from wet ash to dry ash in its coal combustion generator facilities. This conversion will require an expenditure of well over one billion dollars and several years to finalize. Although TVA has indicated that it will undergo necessary changes to its operations at Allen Fossil Plant as well as other facilities, TVA has applied for renewal of NPDES Permit No. TN0005355 prior to 180 days before expiration and currently operates the site under coverage of that discharge permit. The Department will require, as a condition of reissuance of NPDES Permit No. TN0005355, that groundwater monitoring be periodically performed and that a closure plan for the West Pond impoundment be submitted to the Department.

For the foregoing reasons, and after a thorough investigation, I am convinced that the NPDES Permit No. 0005355 remains in effect and serves as an exemption to the requirement that all solid waste storage sites apply for, and obtain, a solid waste disposal permit. However, because of the arsenic levels reported in excess of Maximum Concentration Levels (MCL), I am requesting that the Division of Water Resources require continuous/periodic groundwater monitoring at the Allen Fossil Plant for the facility until the causation has been determined and the hazards have been adequately mitigated by treatment and/or design.

Finally, I want to make you aware of your right to appeal what actions I have decided upon to address your complaint. Those rights and procedures are described fully in Tenn. Code Ann. § 68-211-113(h), which states, in pertinent part, as follows:

(h) Any person may file with the commissioner a signed complaint against any person allegedly violating any provisions of this part. Unless the commissioner determines that such complaint is duplicitous or frivolous, the commissioner shall immediately serve a copy of it upon the person or

persons named therein, promptly investigate the allegations contained therein, and notify the alleged violator of what action, if any, the commissioner will take. In all cases, the commissioner shall notify the complainant of such commissioner's action or determination within ninety (90) days from the date of such commissioner's receipt of the written complaint. If either the complainant or the alleged violator believes that the commissioner's action or determination is or will be inadequate or too severe, such complainant or alleged violator may appeal to the board for a hearing. Such appeal must be made within thirty (30) days after receipt of the notification sent by the commissioner. If the commissioner fails to take the action stated in such commissioner's notification, the complainant may make an appeal to the board within thirty (30) days from the time at which the complainant knows or has reason to know of such failure. The department shall not be obligated to assist a complainant in gathering information or making investigations or to provide counsel for the purpose of preparing such complainant's complaint.

If you have questions about this matter, please do not hesitate to contact me at (615) 532-

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Sincerely,



Pat Flood  
Director, Division of Solid Waste Management  
Tennessee Department of  
Environment and Conservation

cc:

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