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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE *Dav. Co. Chancery Court*
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.)

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 _____ day of _____, 2019.

HONORABLE RUSSELL T. PERKINS
CHANCELLOR

Respectfully submitted,


HERBERT H. SLATTERY III
Attorney General and Reporter


EMILY B. VANN, BPR No. 026642
Senior Assistant Attorney General
Environmental Division
Office of the Attorney General and Reporter
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 532-2583
emily.vann@ag.tn.gov

Counsel for Plaintiffs



AMANDA GARCIA, BPR No. 033773
Senior Attorney
Southern Environmental Law Center
1033 Demonbreun, Suite 205
(615) 921-9470
agarcia@seletn.org

Counsel for Plaintiff-Intervenors



DAVID D. AYLIFFE, BPR No. 024297
Associate General Counsel
Office of the General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902
(865) 632-8964
ddayliffe@tva.gov

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:

Anne E. Passino
Amanda R. Garcia
Frank S. Holleman III
Cristina I. Reichert
Austin Donald Gerkin, Jr.
Southern Environmental Law Center
1033 Demonbreun Street, Suite 205
Nashville, Tennessee 37203
apassino@selecn.org
agarcia@selecn.org
fholleman@selenc.org
creichert@selecn.org
djgerken@selenc.org

*Attorneys for Plaintiff- Intervenors Tennessee
Scenic Rivers Association and Tennessee Clean
Water Network*

David D. Ayliffe
James S. Chase
Frances Regina Koho
Lane E. McCarty
Christine Ball Blakely
Office of the General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902
ddayliffe@tva.gov
jschase@tva.gov
frkoho@tva.gov
lemccarty@tva.gov
caballblakely@tva.gov

Gary C. Shockley
Macy R. Climo
Baker, Donelson, Bearman, Caldwell &
Berkowitz, PC
Suite 800, Baker Donelson Center
211 Commerce Street
Nashville, Tennessee 37201
gshockley@bakerdonelson.com
mclimo@bakerdonelson.com

*Attorneys for Defendant Tennessee Valley
Authority*



EMILY B. VANN
Senior Assistant Attorney General