

STATE OF TENNESSEE

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**VIA ELECTRONIC MAIL (kalove@tva.gov)**

Kelly A. Love  
Senior Attorney  
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Office of the General Counsel  
1101 Market Street, SP6B-C  
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**Re: *State of Tennessee et al. v. Tennessee Valley Authority*  
Davidson County Chancery Court Docket No. 15-23-IV  
TDEC Request for Analytical Data from Recent Sampling Event**

Dear Kelly:

On December 16, 2016, TVA personnel contacted TDEC and advised that TVA had recently completed a groundwater sampling event at the Gallatin Fossil Plant (GAF), that some analytical results from that sampling were available, and that the data showed exceedances of Maximum Containment Levels (MCLs) for some constituents. On December 20, 2016, TDEC sent correspondence to TVA requesting all analytical data from the sampling event so that the Department could begin its independent review of the groundwater information. On December 23, 2016, Mr. Michael Clemmons sent correspondence to TDEC regarding the Department's request for analytical data, advising that TVA would not comply with TDEC's request. For the reasons set forth below, TVA's position is inconsistent with state law, the Department's well established position regarding the purpose and distribution of information produced through the activities outlined in the Agreed Temporary Injunction, and the parties' historic approach to sampling events. The State again requests that TVA comply with TDEC's request and produce the sampling data generated as outlined in the Department's December 20, 2016, letter to Anna Fisher.

The State's lawsuit and the parties' Agreed Temporary Injunction were brought under the authority of the Tennessee Solid Waste Disposal Act (SWDA), Tenn. Code Ann. §§ 68-211-101 to 68-211-124, and the Tennessee Water Quality Control Act of 1977 (TWQCA), Tenn. Code Ann. §§ 69-3-101 to 69-3-137. The SWDA provides TDEC with the authority to exercise general supervision over the operation of solid waste disposal facilities and sites, including supervision of all features of operation "which do or may affect the public health and safety." Tenn. Code Ann. § 68-211-108(a). This section authorizes the Solid Waste Disposal Control Board "to adopt and enforce rules and regulations governing the operation . . . of such facilities, operations, and sites," and provides that "[f]or exercising general supervision, the [C]ommissioner is authorized to investigate such facilities, operations, and sites as often as the [C]ommissioner deems necessary." *Id.* Tenn. Comp. R. & Regs. 0400-11-01-.04(7) outlines the requirements for groundwater protection/monitoring standards for solid waste disposal facilities/sites. In part, the rule requires that "[a]ll ground water sample analysis results . . . must be submitted to the Commissioner within sixty days of the sampling event." Tenn. Comp. R. & Regs. 0400-11-01-.04(7)(a)(viii). Under the terms of the SWDA and its implementing rules and regulations, the Department as the regulating agency for the state of Tennessee is entitled to the information requested.

Similarly, the TWQCA provides the Commissioner with the authority to "make inspections and investigations, carry on research, or take such other action as may be necessary to carry out the [Tennessee Water Quality Control Act]" and "require the submission of [ ] plans, specifications, technical reports, and other information as deemed necessary." Tenn. Code Ann. §§ 69-3-107(5) and -107(10). Additionally, Tenn. Code Ann. §69-3-113 provides that "[a]ny person whom [the Commissioner] has reason to believe is causing, or may be about to cause, pollution, . . . shall furnish [the Commissioner], upon request . . . all pertinent information required by [the Commissioner]." Tenn. Code Ann. § 69-3-113(a)(1). Finally, it is "unlawful . . . to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the [Commissioner] under this part." Tenn. Code Ann. §69-3-114(b). Again, under the authority provided by the TWQCA, the Department as the regulating agency is entitled to the information requested.

Mr. Clemmons' response discusses the parties' Agreed Temporary Injunction and asserts that TDEC's request for analytical data is inconsistent with the order. The purpose of the injunction is to provide TDEC with information concerning the current conditions at and around the Gallatin Fossil Plant (GAF). The State proposed the Agreed Temporary Injunction after TDEC became "concerned that there [was] insufficient information concerning the current hydrology and geology at the GAF, including potential for releases of CCR material to surface and/or groundwater." Agrd. Temp. Inj. ¶ 13. TDEC "determined that additional evaluation and monitoring [needed] to be conducted for the parties to have an accurate understanding of the current conditions at and around the site before proceeding." *Id.* As the State argued before the Davidson County Chancery Court, TVA agreed to be bound by the temporary injunction and the injunction was necessary to prevent harm and/or potential harm to the public and the environment and to protect the integrity of the state's environmental statutes. *See* Tenn. Code Ann. § 68-211-102(a) (express purpose of the SWDA is "to protect the public health, safety and welfare."); Tenn. Code Ann. § 69-3-120(b) (stating "[a]ll sections in this part shall be liberally construed for the

accomplishment of its policy and purposes.”). In entering the Agreed Temporary Injunction, the Court agreed that it is in the public interest for the State to gain not only the information needed to make a corrective action determination with regard to the GAF, but also the information necessary to implement that determination in a way protective of the public health and environment.

TVA contacted TDEC on December 16, 2016, advised that sampling data had returned from the recent sampling event, and reported that the data showed exceedances of MCLs for some constituents. This sampling event included wells installed as part of the work conducted under the terms of the Agreed Temporary Injunction, but also wells installed as part of other unrelated on-site work. Given the notification from TVA and the potential threat to public health and the environment as a result of reported MCL violations in groundwater, TDEC has requested this data so that it may begin its independent review in accordance with its statutory obligations related to protection of public health and the environment. This request is reasonable in light of the information provided and is not inconsistent with the stated purpose of the Agreed Temporary Injunction. Additionally, this request does not “undermine TVA’s ability to meet its obligation to the Court” as claimed in Mr. Clemmons’ letter because it (1) is consistent with TDEC’s statutory obligations and within its express statutory authority, (2) is consistent with the terms of the Court’s order, and (3) does not place an unreasonable burden on TVA or require TVA to perform any additional work. The State has consistently asserted, to both the parties and the Court, that TDEC would independently analyze all data generated through the ordered environmental investigation and make its own determinations as to appropriate corrective action at the GAF. TDEC’s request is consistent with this stated purpose and intent.

As this sampling event also included wells not associated with the parties’ agreement, TVA’s attempt to use the Agreed Temporary Injunction as a means for withholding this data is also somewhat disingenuous. The parties have participated in several sampling events, on and off site and both as a collective and independently. The results from these sampling events, including raw data and laboratory analysis reports, were consistently shared among the parties. TVA’s position regarding TDEC’s request is inconsistent with the parties’ historic approach regarding sharing this type of information.

As a final matter, Mr. Clemmons’ response quoted language from various sections of the Revised Environmental Investigation Plan (EIP) and accompanying Sampling and Analysis Plans (SAPs), all submitted under the terms of the Agreed Temporary Injunction. The identified language appears to be an attempt by TVA to limit TDEC’s access to the data/information produced and/or developed as a result of the ongoing environmental investigation at the GAF. It is the State’s opinion that these attempts are contradictory to Tennessee law and the stated purpose and terms of the parties’ agreement. In each of its “no further comment” letters regarding reviewed sections of the Revised EIP and submitted SAPs, the State specifically reserved “the right to require supplemental revisions should additional information be discovered/developed through the environmental investigation process.” This appears to be such an instance and therefore the State requests that the language quoted in Mr. Clemmons’ correspondence as well as any such similar language in any other sections of the Revised EIP and/or SAPs be removed.

For the forgoing reasons, the State reasserts TDEC's request that TVA provide the information outlined in the December 20, 2016, letter to Ms. Anna Fisher. We look forward to receiving the requested data.

Sincerely,



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