

# SOUTHERN ENVIRONMENTAL LAW CENTER

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January 26, 2017

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312 Rosa L. Parks Ave.  
Nashville, TN 37243

Via email to: [chuck.head@state.tn.us](mailto:chuck.head@state.tn.us)

**Re: Guidance from EPA regarding submerged coal ash waste and closure in place under federal Coal Ash Rule**

Dear Chuck:

I write to bring to your attention guidance from the federal Environmental Protection Agency that confirms our common-sense understanding of the plain language in the federal Coal Ash Rule: leaving coal ash waste perpetually submerged in groundwater is not a lawful option. As we explained in a letter to Commissioner Martineau dated December 21, 2016,<sup>1</sup> TVA's closure plans to leave coal ash waste in place do not comply with the minimum standards of the federal Coal Ash Rule at any coal ash site where the ash is submerged in groundwater, including many TVA impoundments and "landfills"<sup>2</sup> that are subject to both the Commissioner's Order and the federal Coal Ash Rule.<sup>3</sup> EPA recently has provided additional guidance clarifying how to apply the performance standards for closure in place:

In order to close a unit with waste in place, the facility must meet all of the performance standards in § 257.102(d). If the facility is unable to meet the performance standards for closure with waste in place for a particular unit, it must

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<sup>1</sup> Letter to Commissioner Robert J. Martineau, Jr., Tennessee Department of Environment and Conservation, from Amanda Garcia, Southern Environmental Law Center, et al., Re: TVA's Noncompliance with the Federal Coal Ash Rule and State Law Governing Closure of Coal Ash Ponds; TDEC Oversight of TVA's Implementation of Federal Coal Ash Rule Pursuant to the Commissioner's Order, OGC15-0177 (December 21, 2016) [hereinafter "TVA Federal Noncompliance Letter"]. In the TVA Federal Noncompliance Letter, the Southern Environmental Law Center, together with the Environmental Integrity Project, Sierra Club Beyond Coal Campaign, Tennessee Chapter Sierra Club, Earthjustice, Southern Alliance for Clean Energy, and Tennessee Clean Water Network documented four specific ways in which TVA is failing to comply with the federal Coal Ash Rule.

<sup>2</sup> As explained in the TVA Federal Noncompliance Letter, we dispute TVA's characterization of many of its impoundments—which were designed as surface impoundments and still hold both ash and water—as "landfills" within the meaning of the federal Coal Ash Rule.

<sup>3</sup> The Commissioner's Order applies to coal ash disposal areas at Allen Fossil Plant, Cumberland Fossil Plant, Johnsonville Fossil Plant, Kingston Fossil Plant, Bull Run Fossil Plant, John Sevier Fossil Plant, and Watts Bar Plant. The ash impoundments at the Gallatin Fossil Plant are the subject of ongoing litigation and fall outside the scope of the Commissioner's Order.

clean close the unit. Whether any particular unit or facility can meet the performance standards for closure with waste in place is a site-specific determination that will depend on a number of factual and engineering considerations, such as the hydrogeology of the site, the engineering of the unit, and the kinds of engineering measures available. *For example, if a small corner of a unit is submerged in the underlying aquifer, a facility might be able to meet the performance standard for closure with waste in place for the majority of the unit, by “clean closing” the submerged portion of the unit*, and installing the necessary engineering measures to ensure that the rest of the unit meets the performance standards in § 257.102(d).

EPA, Relationship Between the Resource Conservation and Recovery Act’s Coal Combustion Residuals Rule and the Clean Water Act’s National Pollutant Discharge Elimination System Permit Requirements, “Closure Requirements,” <https://www.epa.gov/coalash/relationship-between-resource-conservation-and-recovery-acts-coal-combustion-residuals-rule#Closure> (last accessed January 26, 2017) (emphasis added). “Clean closing” means removing the ash and decontaminating the area. *See* 40 C.F.R. § 257.102(c) (describing performance standard for closure by removal of coal ash). EPA’s guidance makes clear that leaving coal ash waste submerged in groundwater does not satisfy the performance standards that apply to closure in place under the federal Coal Ash Rule. Yet this is precisely what TVA has proposed to do at ponds and “landfills” at every site in Tennessee that SELC has evaluated to date, including at Cumberland Fossil Plant, Kingston Fossil Plant, John Sevier Fossil Plant, and Bull Run Fossil Plant.<sup>4</sup>

Regardless of TDEC’s ultimate determination regarding corrective action under the Commissioner’s Order and state law, TVA must comply with the minimum requirements in the federal Coal Ash Rule. TVA cannot leave coal ash permanently submerged in groundwater, indefinitely polluting our State’s water resources. Pursuant to the Commissioner’s Order, OGC15-0177, TDEC can and should require TVA to comply with the minimum federal requirements to protect public health and the environment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Amanda Garcia', followed by a long horizontal line.

Amanda Garcia  
Staff Attorney

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<sup>4</sup> We have not yet fully evaluated the hydrogeology and other considerations at Johnsonville and Allen but based on our general familiarity with those sites, we anticipate similar conditions of submerged ash will be present. As noted above, the ash impoundments at the Gallatin Fossil Plant are the subject of ongoing litigation and fall outside the scope of the Commissioner’s Order.

SELC, Letter re: EPA Guidance re: Submerged Coal Ash Waste

January 26, 2017

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CC:

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Deputy Commissioner, Bureau of Environment

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