



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

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August 25, 2015

Via First Class and Electronic Mail to fh@tva.gov

Matthew Higdon

National Environmental Policy Act Project Manager
Tennessee Valley Authority
400 West Summit Hill Dr., WT 11D
Knoxville, TN 37902

Dear Matthew Higdon:

The Tennessee Department of Environment and Conservation (TDEC) appreciates the opportunity to provide comments on the Tennessee Valley Authority (TVA) *Draft Environmental Impact Statement for the Floating Houses Policy Review* (Draft EIS). The applicant, TVA, considers the policy implications and proposes alternatives for how to respond to the increased mooring of floating houses (FHs) and nonnavigable houseboats (NNs) on its reservoirs.¹

TDEC's comments are made in the context of proposed actions that would have environmental and other impacts in Tennessee. TDEC's comments do not address any environmental and other impacts of the proposed actions or its alternatives within other states.

Actions considered in detail within the Draft EIS include:

- No Action Alternative (Current Management) - TVA would continue to use discretion in enforcing its Section 26a regulations and would address specific problems caused by FHs/NNs on a case-by-case basis. This alternative serves as the baseline against which all action alternatives are compared.
- Alternative A (Allowing Existing and New FHs) - TVA would change its regulations to set minimum standards for safety and wastewater issues, and TVA would increase its enforcement of these standards. TVA would approve and issue permits for the mooring of existing and new FHs that meet new minimum standards within permitted marina harbor limits. Noncompliant FHs would need to be removed from the reservoir. Existing permits issued to NNs would remain valid if the NN complies with its existing permit conditions. Permitted NNs would not be subject to new standards if they comply with their current permits.
- Alternative B1 (Grandfather Existing and Prohibit New) - TVA would approve and issue permits for the mooring of existing FHs that meet new minimum standards within permitted marina harbor limits. Permitted NNs in compliance with their permits would continue to be allowed.

¹ The terms FHs and NNs are used interchangeably when mentioned throughout this letter.

TVA would prohibit new FHs and update its regulations to clarify that FHs are deemed nonnavigable and not allowed.

- Alternative B2 (Grandfather but Sunset Existing and Prohibit New) - TVA would approve existing FHs that meet new minimum standards and allow mooring within permitted marina harbor limits but would establish a sunset date by which time all FHs must be removed from TVA reservoirs. TVA would prohibit new FHs and update its regulations to clarify that new FHs are prohibited and would establish a date by which existing approved FHs must be removed. For purposes of analysis and this alternative, TVA uses 30 years as the sunset date, but that date could be earlier. TVA would continue to allow existing permitted NNs that are compliant with their permit conditions but would require that they also be removed from TVA reservoirs by the sunset date.
- Alternative C (Prohibit New and Remove Unpermitted) - TVA would prohibit new and existing FHs. TVA would continue to allow permitted NNs that comply with their current permit conditions. TVA would require removal of all unpermitted FHs and permitted NNs that are noncompliant with their permit conditions within 18 months. TVA would amend its regulations to clarify its navigability criteria. TVA would not issue new standards.
- Alternative D (Enforce Current Regulations and Manage through Marinas and Permits) - TVA would use its existing Section 26a regulations and property rights to remove existing FHs and noncompliant NNs, and to stop the mooring of new FHs on its reservoirs. TVA also would use the conditions and covenants in its land use agreements with marina operators to implement this approach.

TDEC'S **Division of Natural Areas (DNA)** has reviewed the Draft EIS and has no specific comments regarding the proposed action or its alternatives.

TDEC's **Division of Solid Waste Management (SWM)** has reviewed the Draft EIS and has the following comments on all alternatives identified:

- SWM concurs that the materials from and the associated policies for FHs /NNs would be considered as household wastes and are eligible for the RCRA Subtitle C Household Hazardous Waste Exclusion. SWM advises that regulatory definitions for household waste and conditions to qualify as a household waste be incorporated into the Final EIS to support the legitimacy of the definitions and the conditions associated with the household waste exclusion.² Additionally, SWM advises that TVA consider including reference materials for additional information on household waste exclusions within the Final EIS and/or its appendices as an additional resource.³ SWM notes that the household exclusion is applicable to the lead based paint generated as a result of renovation, remodeling, or abatement actions by residents of the household or their contractors. [October 23, 2001; 66 FR 5337].

² The regulatory definitions for household waste are found in the federal regulations at 40 CFR 261.4(b)(1) and the Tennessee regulations at 0400-12-01-.02(I)(d)(Household Waste Exclusion). Additionally, the conditions to qualify as a household waste are located in the Code of the Federal Register at 49 FR 44978. Citations to this information would provide support to the TVA text in section 3.6.

³ Consideration should be made to include the U.S.EPA website at www.epa.gov/osw/conservematerials/hhw.htm as a reference for additional information on household waste exclusions.

- SWM comments that TVA does not properly consider in the Draft EIS that household wastes mixed with regulated hazardous wastes, large and small quantity generators (LQGS/SQGS) are subject to the hazardous wastes mixture rule and RCRA Subtitle C. If household waste is mixed with conditionally exempt small quantity generators (CESQG) hazardous waste, the mixture is subject to CESQG standards. Collection facilities, proposed as marinas, do not become the generator by mixing CESQG waste with household waste regardless of the quantity of the mixture. However, if CESQG's mix hazardous and household waste and the resultant mixture exceeds the quantity limits of a CESQG, and the mixture exhibits a characteristic (ignitable, corrosive, reactive, or exhibits the toxicity characteristic), the "mixture" is no longer conditionally exempt.
- SWM advises that TVA address in the Final EIS that the household waste exclusion applies at the point of generation, which in this circumstance is the FHs/NNs. The exclusion applies throughout the waste management cycle from collection through final disposition, to include treatment and resultant residues, unless the aforementioned "mixing" activities or quantity limits are found to be applicable.
- SWM encourages efforts to legitimately reuse and recycle waste materials regardless of the alternative selected.⁴
- Additionally, SWM would like to note that TVA's estimate of material or debris to be sent to a landfill from a removal project associated with a FH/NN may be low. SWM estimates that 1000 square feet of material would be generated for each demolition and this is estimated to be 15 to 20 cubic yards per structure. Typically demolition debris, which this would be, contains a lot of void space. Therefore, SWM recommends that TVA revise its estimates for demolition debris in the Final EIS.

TDEC's **Division of Water Resources (DWR)** has reviewed the Draft EIS and has the following comments:

- DWR concurs with TVA's inclination to select Alternative B1 or B2 and would like to be a party in the development of new TVA regulations in setting minimum standards for safety, drinking water, and wastewater issues as they apply to Tennessee reservoirs if an Alternative requiring new regulations is selected.
- DWR concurs with TVA that "[a]ll sewage discharges, black water or grey water, should be managed in accordance with all applicable federal, state, and local regulations."⁵
- TVA defines grey water as wastewater generated from residential bathroom sinks, bathtubs, showers, clothes washers, and laundry trays and black water as water from toilets, urinals, bidets, kitchen sinks, dishwashers, and garbage disposals in the Draft EIS. DWR concurs that this is how these terms are generally defined, but would like to note that a statewide definition has not been adopted for the term at this time.

⁴ EPA recommends that although non-hazardous management of the household waste is legal, the waste should be handled in the order of reused and recycled, treated in a hazardous waste treatment facility, or disposed in a hazardous waste landfill.

⁵ See Draft EIS, page 41. More specifically, that "[o]n No Discharge reservoirs, grey water from FHs/NNs should be contained and treated with the black water and on Discharge reservoirs, grey water should be discharged through appropriate treatment systems in accordance with federal, state, and local regulations." See Draft EIS, page 206.

- DWR notes that in Tennessee, no discharge, grey water or otherwise, is lawful unless governed by a permit. T.C.A. 69-9-102 states that any person, firm, corporation or business entity operating a commercial boating facility, dock or marina that stores or houses vessels equipped with a toilet and sewage collection tank, or when such facilities are operating on waters in this state, shall provide facilities for the sanitary pumping and disposal of sewage from such collection tanks. ***Therefore, under current law, all FHs/NNs should have a permit if they discharge.*** DWR adds that marinas providing pump out services and/or storing wastewater prior to transport off site are operating a wastewater system and, as such, should be appropriately permitted. At this time, some marinas maintain permit coverage; however, most are likely not aware of the permitting requirement. TCA 69-3-108(c) states that any person operating or planning to operate a sewerage system⁶ shall file an application with the Commissioner for a permit or, when necessary, for modification of such person's existing permit. In these cases, the permit would be a State Operating Permit (SOP) and, as SOPs do not provide for discharge, the end result of the wastewater would be into a land based system or a permitted wastewater treatment facility.
- The existing population of floating homes/marinas should not represent a threat to water quality if permitted correctly. DWR recognizes that FHs/ NNs have not historically been strictly permitted by TDEC, but would like to work with TVA within the scope of TDEC's regulatory authority in the permitting of these structures in the future.

TDEC appreciates the opportunity to comment on the Draft EIS. Please note that these comments are not indicative of approval or disapproval of the proposed action or its alternatives, nor should they be interpreted as an indication of all necessary permits that may be required from TDEC should action be taken. Please contact me should you have any questions regarding these comments.

Sincerely,



Michelle Walker Owenby
Assistant Commissioner of Policy and Planning
Phone: (615) 532-9668

cc:

Stephanie A. Williams, TDEC, DNA
Lisa Hughey, TDEC, SWM
James Sutherland, TDEC, DWR
Britton Dotson, TDEC, DWR

⁶ "Sewerage system," as defined in T.C.A. 69-3-103(35), means the conduits, sewers, and all devices and appurtenances by means of which sewage and other waste is collected, pumped, treated or disposed. Rule 0400-40-05-.05 outlines the process for permit issuance.