

BURNT

IMPROVING THE ENVIRONMENT THROUGH
CITIZEN INVOLVEMENT WITH GOVERNMENT,
BUSINESS, AND ACADEMIA

7 January 2010

Arthur Hayes
Director
Division of the Audit
Office of the Comptroller
Nashville, Tennessee

via electronic mail and 1st class mail

RE: Audit of Tennessee Department of Environment and Conservation

Dear Mr. Hayes:

We appreciate the opportunity to comment concerning the audit of the Tennessee Department of Environment and Conservation (TDEC) Tennessee Parks are award winning, national leaders including selection for the prestigious "Gold Medal" from the National Association of State Parks. TDEC is a multi-year national leader in government work place recycling. We have found TDEC employees to be consistently professional, accessible, and capable. Our comments are confined to the process of this Audit and specific concerns with TDEC regulatory and planning efforts.

Process of the Audit The appearance of impartiality of this audit may be compromised because a closure deadline cancelled a promised in person interview. There was no opportunity to submit additional documents which should be in the audit. An attached "*E-mail to the Division of the Audit*" contains statement of issues discussed prior to the announced closure deadline. CHRONOLOGY AND EVENTS We called a senior manager of the Division of the Audit on 9 December 2009 who urged an in-person appointment to discuss issues below. On 15 December, with no follow up from the Division of Audit, we called the Division of the Audit to schedule an interview. Later that day, we had a conference call with three Division of Audit employees, We followed with a lengthy e-mail and accompanying documents. [attached] We understood an in-person meeting would be scheduled. Nothing was said about a pending deadline for the audit of TDEC. . On 21 December another e-mail to the Division of the Audit asking for an interview was answered on 22 December saying that the audit deadline was closed. This may give the audit an appearance of expediency or politicization concerning TDEC.

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Recommended Action on TDEC Audit— Extend status of the Department for one year with further review based on specific, proposed actions by TDEC listed below, following each section.

STATEMENT OF TOPICS IN EVALUATION OF TDEC PERFORMANCE

- I. **TDEC employees are greatly hindered in their work by Boards which are highly politicized and dominated by special interests.**

- II. **Proposed TDEC regulations for solid waste reform did not meet criteria of enabling act *SB 2267/HB 2280* (year 2007)**

- III. **State and local solid waste numbers are inaccurate if not fraudulent.**

- IV. **Tennessee is the only State which counts landfilled construction waste as recycled**

- V. **Highly polluted Dickson County Landfill regulated by TDEC is governed by a fraudulent “Ground Water Protection Plan”.**

- VI. **Failure to enforce in Dickson County landfill has allowed numerous violations of law to fester.**

- VII. **National and international disaster at TVA Coal Ash Landfill in Harriman Tennessee has cost \$2 billion (2,000,000,000 dollars) to date.**

- VIII. **Expert geologist opinion elucidates range of allegations against TDEC solid waste policies. Tennessee landfills appear to be deeply flawed state wide.**

- IX. **Environmental injustice is very real in TDEC from boards to impact of landfills.**

- X. **TDEC allows nuclear waste in landfills and encourages importation of nuclear waste**

- XI. **Lax enforcement is a distinguishing mark of TDEC**

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DISCUSSION

I. TDEC Boards--Dominated by special interests, no independent staff, segregated

A. Boards within TDEC do not provide effective management for Divisions of Solid Waste, Air Pollution, Water, or Ground Water

1. By law, board composition is dominated by powerful, special interests which name candidates for selection to the boards. Board members often appear loyal to these special interests rather than serving as informed citizens. .

2. Boards have no independent staff, attorneys, or advisors. All research, agendas, and process are determined by the TDEC agencies that each board manages.

a. The head of air pollution, water pollution, and solid waste serve as either non-voting Board secretaries or sit on the Board

b. The State Solid Waste Disposal Control Board has never developed management measures tools to evaluate solid waste policy such as reduction in truck mileage to transport solid waste from Transfer Stations to landfills [currently 12,000,000 miles annually]; change in amount of food waste, yard waste, and unrecycled paper landfilled; or amount of waste processed in county of generation [likely through composting].

c. In absence of independent staff, it is very difficult for citizens to break through to the Boards on issues or for the Board members to see past staff and department point of views.

d. Other Boards in Tennessee and environmental Boards in other states have independent staff and lawyers.

3. Boards are highly segregated with few minority members

a. The “Solid Waste Task Force”, “The Solid Waste Advisory Committee”, and the “State Solid Waste Disposal Board” which made decisions on solid waste reform are 47 out of 49 white. Landfills primarily hurt black and poor. .

b. A State Water Board hearing involving a permit for “Southern Services” a landfill in North Nashville, a primarily minority neighborhood, was decided by seven white male Board members. four of whom worked for the State of Tennessee

c. All boards are dominated by whites

4. The 'Uniform Administration Procedures Act' has been a failure

a. State and local government boards in Tennessee and other states are largely the creation of the 'Uniform Administration Procedures Act' intended to foster citizen involvement in government decision making. For many reasons, this laudable intention has failed

1. government attorneys vigorously defend any and all Board decisions no matter how implausible

2. courts are loathe to over turn government agency decisions

3. board members come and go with few having the seriousness of purpose to understand the implications of their decisions including need to go beyond staff and government lawyer actions

4. appealing a decision of the board is a multi-year court process which favors state and business interests and effectively bar citizen appeals and participation

ANALYSIS Boards are integral to good management. Yet, nomination of board members by specific special interests, failure to provide TDEC Boards independent staff, and highly segregated boards each contribute to poor management. The 'Uniform Administration Procedure Act' further insulates Board decision making citizen participation. *However, weak TDEC boards are quite consistent with the clear intent and purpose of the elected and unelected officials in Tennessee since 1930 to weaken enforcement to seek jobs and business no matter how badly the environment and citizens are damaged (TVA, Kodak, Oak Ridge, Dickson County).*

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Written determination that Board structure and operations are primary contributors to poor performance by TDEC.

2. Independent study by the Office of Comptroller or other agency to determine how other states select their boards. Formulate legislation with analysis of needs for better management to protect citizens and the environment and to avoid federal review of significant liability for environmental injustice and environmental abuses.

3. Develop a framework for evaluating environmental decision making by TDEC Boards and

staff with a primary measure of TDEC performance being support of employees in prosecuting more complaints of environmental abuses.

A. support and train regulatory personnel to resolve environmental problems

B. demonstrate ability to track and evaluate all citizen complaints to resolution rather than stopping individual citizen complaints through obfuscation, neglect, or dilatory actions.

II. TDEC planning for Solid Waste Reform violated the enabling act SB 2267/HB 2280

A. The Solid Waste Act of 2007 (*SB 2267/HB 2280*, pg. 4) stipulated the specific and particular factors for the Solid Waste Disposal Control Board to consider in adapting a rule promoting recycling and waste reduction. The Solid Waste Act of 2007 (*SB 2267/HB 2280*, pg. 4)

1. “[T]he board shall consider the use of incentives, disincentives, public education, costs and benefits of recycling, and the widely varying circumstances of the different solid waste regions. The Solid Waste Act of 2007 (*SB 2267/HB 2280*, pg. 4)

2. “...population and amount of commercial and industrial activity ...proximity to markets for recyclable materials and the solid waste activities of municipalities.” The Solid Waste Act of 2007 (*SB 2267/HB 2280*, pg. 4)

3. “...opportunities for recycling and for reduction of waste generated ...[based on]... both market factors and technological developments.” The Solid Waste Act of 2007 (*SB 2267/HB 2280*, pg. 4)

Proposed Regulations did Not Meet Criteria of Enabling Act

B. . The eleven page “Recommended Regulations” [public comment on 1 September 2009 and Written Comment deadline on 30 September 2009] demonstrate the primary content of the proposed Regulations was vague requirements for poorly defined “goals”, “plans” and “reports” by solid waste regions, counties, and all cities above 3,000

1. Nothing in the TDEC developed rules and regulations considered composting which is a proven solution nationally and internationally and diverts food waste (12% of the waste stream), yard waste (13%) or unrecycled paper (25%) and prevents unhealthy landfill gas.

2. The members of the “Solid Waste Task Force’ primarily local solid waste managers voted unanimously to divert all food waste and yard waste from landfills but TDEC never researched these costs or procedures

3. Even though TDEC has spent \$12 million since 1992 for solid waste research and 'chairs of Excellence' at one Tennessee university, there are no studies concerning how to manage solid waste as a resource to generate jobs and business.

a. Bartlett, Tennessee, a city in Shelby County diverts 90% of their yard waste from landfills. Yard waste is approximately 950,000 tons of the Tennessee waste stream. Diversion of 90% would divert approximately 850,000 tons of waste from the landfills which is a prime contributor to methane gas, a major green house gas.

b. Just before the Regulations went to the Solid Waste Board for approval for 'Public Comment', a member of the 'State Solid Waste Advisory Committee' asked how much composting would cost. TDEC staff had no information on this. Composting was then recommended to be dropped from the regulations. How could TDEC Division of Solid Waste not have full information on a range of composting programs including costs two years into reform?

4. Despite the mandates of *SB 2267/HB 2280*, (pg. 4), there was no consideration of population and amount of commercial and industrial activity in the differing counties—for example the largest 17 counties in Tennessee generate more than 50% of the solid waste.

5. Even though a very significant cost of not recycling is severe damage to ground water and fresh water, TDEC management categorically refused to investigate future savings if organic food waste, yard waste, and unrecycled paper were composted which would eliminate a major contributor to water pollution.

6. More than 150 pages of public comment were submitted to TDEC by local governments, major groups representing business and local governments, and citizens criticizing the proposed regulations for lack of transparency, costs of additional reporting on local governments, and failure to reduce solid waste.

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Require strict adherence to research and decision making goals of the Solid Waste Act of 2007 (*SB 2267/HB 2280*) in development of new regulations Including

A. Composting food and yard waste and unrecycled paper with incremental implementation in largest cities and counties and targeting largest generators—food stores, schools. And hospitals

B. Evaluate cost of recycling in terms of protecting ground water and fresh water from pollution.

- C. Evaluate incentives to recycle and compost in terms of creating jobs and business

III. State Solid Waste Numbers Are Inaccurate If Not Fraudulent

A. The 'State Solid Waste Task Force', primarily comprised of local solid waste managers from across the state and formed as part of solid waste reform under the Solid Waste Act of 2007 (SB 2267/HB 2280), voted unanimously that local solid waste reports to the State are inaccurate and do not reflect reality

B. Local solid waste reports with a 25% waste reduction goal, have been basic to state solid waste management since 1991, yet because of exceptions, funny numbers, politics, and waivers, no local government has been sanctioned, fined, or reprimanded for failing to meet the 25% waste reduction goal.

C. Solid waste figures of Metropolitan Government of Nashville and Davidson County [attached analysis] demonstrate misrepresentations and falsehoods of State Solid waste figures

1. The Davidson County Region Solid Waste Board Metro issued a "Region Solid Waste Plan Update" in December 2008 which contained a waste stream analysis on Table 3-3 that stated Metropolitan Government recycled and composted 421,405.46 tons of out of a 1,287,077.00 million ton waste stream. The indicators these figures in the report are false---

a. Waste stream numbers were broken down to the hundredth of a ton in a 1,287,077.00 million ton waste stream--for example--128,001.17 tons of ferrous metals or 46,328.58 tons of corrugated cardboard. It is impossible to have such figures down to 20 pounds in a 1, 287,077.00 ton waste stream.

b. the only firm numbers in the State of Tennessee solid waste system are the landfills report back to local governments on amount of waste landfilled at that landfill from the County. There is no information on composition of the waste anywhere as stated by Metropolitan Nashville government.

c. the basis of the of the claimed 421,405.46 tons of "Total Public and Private Sector Recycling" are eleven, handwritten faxed reports from large companies to Metro Public Works which were neither researched or analyzed.

2. Nashville does not have the infra structure, history, or products made out of recycled goods to demonstrate recycling and composting 421,405.46 tons out of a 1, 287,077.00 million ton waste stream.

3. Since 1991, Tennessee's solid waste system has revolved around a "25% waste reduction goal". For the "Solid Waste Task Force" comprised primarily of local solid waste managers to vote unanimously in 2008 that local solid waste reports to government do not reflect reality goes to heart of the integrity of the state solid waste management.

4. . False solid waste figures are the basis for state solid waste policy making. There is no base line to measure future recycling and composting .

5. Metropolitan Nashville, and all other Tennessee governments, simply do not have the infra-structure to recycle and compost 35% of the solid waste stream yet this is the base line from which future Nashville efforts will be measured.

6. Tennessee landfills are very unhealthy for people and pollute ground water and freshwater. Landfilled organic food waste, yard waste, and unrecycled paper create dangerous methane gas which pollutes ground water and contributes to high rates of infant mortality in Tennessee (women who live within two miles of a landfill are significantly more likely to give birth to a developmentally disabled baby)

7. These false figures destroy incentive to actually compost and recycle solid waste if we can demonstrate paper figures with strong results.

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Develop proposed regulations which comply with the language and intent of the enabling act
2. Programs for recycling and composting will divert sufficient waste to generate accurate numbers.
3. Good composting and waste diversion programs will create accurate numbers.

IV. Tennessee is The Only State Which Counts Landfilled Construction Waste as Recycled

A. In 1996, TDEC pushed legislation through the General Assembly to credit construction waste landfilled in Class IV Construction and Demolition Landfills as recycled,

1. Tennessee is the only state in the country with this bizarre loop hole

2. The number of Class IV Construction and Demolition landfills increased from 12 in 1994 to 80 now as counties took advantage of this easy loop hole to 'recycle'.

3. Counting landfilled construction waste as recycled greatly complicated already inaccurate solid waste reports.

4. Unlined Class IV Landfills are repositories for construction waste which can contain multiple chemicals

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Fully evaluate flawed and inaccurate solid waste numbers including this flagrant loop hole. Crediting landfilled construction waste as recycled.

V. Dickson County Landfill Fraud

A. The Dickson County Landfill, now closed, was the destination for heavy industrial chemicals including solvents, pesticides, and by-products from fiber glass manufacturing. The chemicals have heavily polluted ground water and fresh water in Dickson County

1. Landfills which pollute ground water or freshwater with listed Appendix II pollutants trigger State regulations which mandate specified steps including, notifying citizens who live above the pollution plume, holding a public meeting for citizens, researching remediation, actual remediation, a vertical and horizontal ground water assessment, and other steps. .

2. However, TDEC and Dickson County, the landfill owner, developed a "Ground Water Protection Plan" which

a. is a fictional and made up term that does not exist in Federal or State law—there is no regulatory basis for the term "Ground Water Pollution Plan"

b. allows Dickson County to avoid mandated obligations such as notification of citizens who live above the pollution plume, performing a vertical and horizontal ground water assessment, holding a public meeting to discuss remediation, and actual remediation.

c. The "Ground Water Protection Plan" instead focuses on 'institution controls' such as public water pipes, not allowing new drinking wells, and continued water testing.

1. Under law, the 'institution controls' are intended as final steps in the process and not to substitute for remediation, public meetings, and a vertical and horizontal ground water assessment.

d. TDEC and Dickson County have subverted specific regulations designed to protect the environment, humans, and to remediate highly polluted ground water and fresh water caused by a Class I landfill

B. Following our repeated inquiries about the regulatory basis of the term "Ground Water Protection Plan" [BURNT letter to TDEC on 13 March 2007], a Senior Director of TDEC wrote to *BURNT* on 4 April 2007 with no citation in federal or state regulations or law for the term "Ground Water Protection Plan".

VI. Failure to Enforce a 'Notice of Violation' (NOV) issued 24 March 2003 by TDEC to Dickson County has allowed numerous violations of law to fester

A. A Notice of Violation (NOV) issued 24 March 2003 by TDEC determined that Dickson County is in violation of two (2) Commissioner's Orders issued 15 October 2001

1. Violations range from failure to sample correctly, not reporting results, and failure to install an agreed monitoring well (page 2-3, 24 March 2003 NOV))

2. Dickson County failed to notify people who own and/or reside on land overlying areas that are known to overlie any part of the plume of contamination (pg. 5, 24 March 2003 NOV))

a. This is major violation. Dickson County has not notified people who are directly impacted and some of whom are illiterate.

3. Dickson County has not completed an assessment of corrective measures including vertical [and horizontal] extent of ground water assessment [pg. 5-6, 24 March 2003, NOV]

a. The water pollution has migrated 12 square miles from the 75 acre landfill.

b. Failure to remediate the pollution or comply with notice requirements to people living above the pollution plume or to perform mandated vertical and horizontal ground water assessments has created an extremely polluted site.

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Review all 'Commissioner's Orders' to demonstrate compliance with the Commissioner's Orders and also regulations governing each site including Dickson County, TVA Coal Ash Fills in Harriman and New Johnsonville, Coffee County Landfills, and other sites

2. Find federal or other funding for remediation of ground water and surface water contaminated by the Dickson County Landfill .

VII. National and international disaster at TVA Coal Ash Landfill in Harriman Tennessee has cost \$2 billion (2,000,000,000 dollars) to date

A. The State of Tennessee permitted and regulated the Coal Ash Landfill in Harriman Tennessee

1. This disaster has caused \$2 billion (2,000,000,000 dollars) in damages

2. This is single most damaging and embarrassing action and event by any agency of Tennessee government in many years

3. This environmental disaster is exceptional in scope of damage but not in regulation of landfills–Dickson County, Coffee County, Cedar Ridge, Middle Point, two major landfills in urban Memphis, and eighty (80) unlined, under regulated Class IV Construction and Demolition Landfills.

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Demonstrate through solid waste reform and new solid waste regulations that TDEC will no longer be committed to landfills as the primary way to process solid waste.

2. Create technical expertise needed for curing dangerous solid waste landfills on karst geology and other risky landfills. Tennessee and landfill companies have significant potential liability for leaking landfills.

3. Develop different career paths for TDEC personnel than permitting landfills and evaluating and approving local solid waste reports.

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VIII. Expert geologist opinion elucidates range of allegations against TDEC solid waste policies.

A. 'Globally Green Consulting' evaluated several landfills in middle-Tennessee to determine enforcement practices, regulatory efforts, and compliance with environmental standards [attached] **NOTE:** *The quotes from the Expert's report are accurate but the Professional Geologist has taken no part in the issue at hand—a Sunset Review of TDEC.*

1. This report has been submitted to the TDEC Division of Solid Waste, the State Solid Waste Disposal Control Board, State Solid Waste Advisory Committee, and submitted to the Governor's Office with no refutation or dispute over any of the material

2. Line by line, page by page, the expert opinion verifies allegations concerning TDEC solid waste regulations made in this letter

a. TDEC procedures for permitting and monitoring landfills sometimes do not protect our ground water and surface water. (Pg. 1, par. 2) TDEC data demonstrate that landfills routinely contaminate our ground water {pg. 1, par. 4}; TDEC data indicates that landfills are leaking in all regions of Tennessee including landfills with state of the art liners.(pg. 1, par. 5) Of 221 closed and active landfills with required ground water monitoring, as of 1 January 2008, 74 (34 per cent) have ground water contamination in at least one well (pg. 1, par. 6)

b. Restoration of polluted ground water to usable condition is rarely required by TDEC of landfill owners (pg. 1-2, par. 6); delay of clean up of contaminated ground water may put the burden on the public and local governments (pg. 2, par. 2)

c. landfill permits are issued at sites that TDEC determined to be unsuitable for land disposal. (Pg. 1, par. 4) Cedar Ridge is among landfills located in karst geology and a top TDEC official stated polluted landfill water if moving off site before detection by the monitoring system. (pg. 4, par.2)

d. landfills are commonly located immediately adjacent to waterways some of which are which are used for public drinking waster—Middle Point Landfill (in flood plain of Stones River), Smith County Landfill (in flood plan of the Cumberland River), and Cedar Ridge Landfill (adjacent to East Fork Globe Creek) have each discharged leachate to groundwater that discharges to springs that feed surface waterways. (pg. 2, par. 3)

e. public water testing does not reflect risks from landfills—water treatment plants have no ability to remove volatile or semi-volatile organic compounds. Sampling of ground water monitoring wells is only required every six months. Contaminated water could be provided to consumers without water utility or consumers knowing (pg. 2, par. 4)

f. The TDEC list of 221 permitted landfills does not include old landfills which had no liners and do not have a ground water monitoring system. These landfills would be expected to contain industrial chemicals. (pg. 3, par.1)

g. Even if landfills have groundwater monitoring programs, the monitoring programs analytical tests needed to detect expected wastes disposed in the landfills

1. Class I landfills have received thousands of tons of low level radio active waste but have never monitored for radioactive isotopes (pg. 3, par.2)

2. Southern Services Class III/IV landfill in North Nashville does not monitor for volatile organic or semi-volatile organic compounds even though thousands of tons of industrial wastes including uncured rubber, heavy metals, fiberglass, asbestos are landfilled there. (Pg. 3, par. 3)

h. Karst geology with sinkholes and cracks in rock, in much of the state do not alter the minimum landfill designs of TDEC (pg. 4, par. 1)

1. The Chief geologist for TDEC Division of Solid Waste states that at Cedar Ridge Landfill "...groundwater that has been impacted from Cedar Ridge landfill is moving offsite before it can be detected under the current monitoring system [due to geology]." (p 4, par 3)

2. TDEC uses springs as an early warning system in lieu of wells—only one groundwater monitoring well exists at Cedar Ridge Landfill. This is unsatisfactory because once contamination is detected in an off-site spring, the surface water is polluted. Landfill owners and operators continue to use springs as early warning detection system in Cedar Ridge Landfill, Middle Point Landfill, Williamson county Landfill, and the Smith County Landfill (Pg. 4, par. 3)

i. Landfill gas requires more aggressive approach (pg. 5, par. 1)

1. Landfill gss has explosive hazard and contaminates groundwater when it is in contact with well water and ground water (pg. 5, par. 1)

2. Any landfill which receives organic food and yard waste is subject to formation of landfill gas. TDEC requires an active gas recovery system when there are unsafe levels of gas. Even though two residences adjacent to Dickson County landfill burned to the ground and explosive concentrations of methane are commonly found along the perimeter of the Dickson County Landfill, no active gas recovery system has been required by TDEC. (Pg. 5, par. 1) .

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. TDEC recognize and correct policies which landfills endanger drinking water, ground water, and surface water. For example, no more use of surface springs as early warning testing—landfill owners must dig on site wells.
2. Eliminate methane gas in landfills by eliminating organic food and yard waste.
3. Change policies to require landfill owners to remediate polluted water, as required by law

IX TDEC aggressively encourages importation, processing, and landfilling of nuclear when all other states, except Utah, and foreign countries are reducing nuclear waste

A. Oak Ridge Tennessee is one of the most polluted places on the planet. If we stopped polluting Oak Ridge right now, it would take 20,000 years for air, water, and ground pollution to dilute.

1. Some of this pollution is environmental injustice—raw dumping of radio active waste into a creek through Scarborough, a primarily black neighborhood. This stream was used for recreation, fishing, and water.
2. Deer shot by hunters must be weighed, measured, and examined at official stations. In counties surrounding Oak Ridge, deer are also checked for radioactivity. Apparently, 40% of the deer are too radioactive for human consumption. .

B. TDEC allows landfilling of radioactive waste without requiring monitoring of groundwater or sources of drinking water which could be polluted. (Expert Opinion, pg. 3, par. 2)

C. Memphis has two major, regional landfills in the inner city which accept radioactive waste and a invaluable aquifer vital to the city yet there is no monitoring of the landfill or groundwater for radioactive run off

D. Inexplicably, when all other states, except Utah, and most countries are restricting imports of radio active waste, TDEC is allowing growing imports for processing, repackaging, and landfilling in state.

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X. Environmental injustice is very real in TDEC from boards to impact of landfills.

A. As discussed above, state environmental boards are highly segregated.

B. From Dickson County to urban Memphis to Nashville and across the state, landfills are placed where poor and minority live. Studies demonstrate that women who live within 2 miles of a municipal solid waste landfill have a significantly greater likelihood of giving birth to a developmentally disabled baby.

C. Southern Services Landfill in mostly minority North Nashville on the Cumberland River has been allowed to expand since 1993 during which protected wet lands were destroyed, dangerous industrial wastes landfilled, and in year 2007 130,000 tons of highly recyclable construction waste were landfilled

D. Generally lax enforcement standards hurt poor and minority who are unable to work within the system

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Fix the solid waste and landfill problems by composting not landfilling organic food waste, yard waste, and unrecycled paper to address many concerns of poor and minority
2. Change Board structure—-independent staff and attorney and selection process of board members for talent not to appease special interests.
3. Obey the law in actually following up and prosecuting citizen complaints

XI. Lax enforcement is a distinguishing mark of TDEC

A. Several enforcement actions of TDEC illustrate problem of agency

A. **Egyptian Lacquer** polluted air and water in Franklin, Tennessee yet for many months TDEC and company representatives denied that any such pollution existed or could possibly have come from Egyptian Lacquer—none of the discovered chemical were ever used at Egyptian Lacquer. In the end, Egyptian Lacquer was fully responsible for the chemicals which leaked from an unused tank. Only committed citizens and a strong citizen group overcame TDEC institutional inertia.

B. Dickson County Landfill TCA 69-3-118(a) Water Complaint—Citizens complained under *TCA 69-3-118(a)* that the Dickson County Landfill leaked polluted leachate when it rained. *TCA 69-3-118(a)* allows TDEC staff to investigate and report on citizen complaints. A hearing is guaranteed before the State Water Board if there is no resolution. Instead, the Office of General Counsel and a senior member of the Commissioner’s Office dismissed the action with no hearing on the basis a corporation was representing the citizens without an attorney and that the action duplicated previous hearings and actions. The action was dismissed with no hearing, or at least no hearing the citizens knew about.

RECOMMENDED CRITERIA FOR RENEWAL AFTER ONE YEAR

1. Do not hire and promote TDEC employees on their ability to stall and defeat citizens who wish to complain about alleged environmental abuses
2. Develop methods and training for TDEC employees to advise complaining citizens and alleged polluters on resolution of complaints
3. Aggressively protect the environment

Statement and summary

Perhaps, Tennessee has the quality and type of environmental regulation which would be expected for a state at the bottom of national rankings in literacy, obesity, smoking, infant mortality, and health. For seventy years, our elected and unelected officials have recruited business, no matter how polluting, to create jobs to fight poverty. It is difficult to expect a State agency to stand independent of this culture. Yet, with the emergence of even more pernicious chemicals to pollute our water and the vital growth of tourism as a clean, money making business, we must protect the environment and our people. We have listed individual goals for TDEC to meet after most sections above. These include

1. New board structures with independent staff and legal representation
2. Change solid waste policies so that protecting water and managing solid waste as a resource to create jobs and business is a priority. Current solid waste reform and composting organic food waste, yard waste, and unrecycled paper to prevent methane gas and better landfill regulations are a fundamental first step.
3. Understand our people and air, water, and land are the resources of the state, not the

Class IV Southern Services Landfill where 90% of the landfilled waste can be recycled.

Thank you

Bruce Wood

R C Bartlett

President

Vice President

cc: BURNT Board

TDEC Deputy Commissioner Sloan and staff

President, State Conference NAACP; President, Nashville Branch of the NAACP

Chairs, House and Senate Government Operations Committee

Attachments Globally Green Consulting–Expert opinion (*Report to Advisory Committee*)

Dickson County Enforcement–fraudulent ‘Ground Water Protection Plan’

Fraudulent solid waste numbers–Davidson County

15 December e-mail to Division of the Audit (before deadline closure)