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Commissioner David W. Salyers, P.E., P.G.
Tennessee Department of Environment and Conservation
500 James Robertson Parkway
Nashville, Tennessee 37243

Deputy Commissioner Ronné Adkins, Ph. D
Tennessee Department of Environment and Conservation
500 James Robertson Parkway
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Director Lisa Hughey
Division of Solid Waste
Tennessee Department of Environment and Conservation
500 James Robertson Parkway
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Director April Grippo
Division of Water Resources
Tennessee Department of Environment and Conservation
500 James Robertson Parkway
Nashville, Tennessee 37243

Re: Roberta Landfill Phase II Request for "Recertification."
Landfill Permit SNL 76-0281 and NRS 09.273

Dear Commissioner Salyers;

The purpose of this correspondence is to request that TDEC carefully review the circumstances surrounding the SNL 76-0281 permit originally issued by Division Director Mike Apple July 23, 2010 for a 24-acre site in Scott County and deny any request to "recertify" it. The permit has been controversial to say the least, was never used, remains invalid by its own terms, and continues to be invalid based on several mandatory statutes. It is also located next to an existing landfill with more than 24 years left of fill space.

This request is made on behalf of my client, Cumberland Clear, a Tennessee Corporation in Scott County whose members have standing. It is further based on a review of the permitting

history, state statutes, solid waste regulations, the letter from Roberta Landfill Phase II, Inc. dated July 3, 2025 requesting "Recertification" with the accompanying ARAP "Progress Report," and County records, all of which authorize if not require the Commissioner to deny "recertification."

Summary.

The 2010 solid waste permit SNL 76-0281 has been invalid by its own terms for several reasons. First, the site was required by law to be approved both by the regional solid waste board and also, separately under the Jackson Law. There is no record available of those approvals for this site. TDEC was aware of the problem as shown in the record but avoided compliance with these mandatory requirements.

Second, the permit contains a Facility Specific Condition No. 3. It requires a valid Aquatic Resource Alteration Permit (ARAP) for the permit to be effective. The record shows ARAP NRS 09.273 for the "Roberta Phase II" site was issued in July of 2012 but expired and has not been renewed. In addition, the same condition further specifies that if the ARAP issued later substantially differs from what the Division had to work with in 2010, the permit will need to be modified. That has happened. The applicant recently disclosed to TDEC that a new stream, "Stream 10" has "developed" since the 2012 ARAP expired and there may well be more than that according to a 2024 report by the applicant to the Army Corps of Engineers. Whatever the new ARAP application, it will differ substantially from the one in 2012, affecting the design which was problematic to begin with as discussed further below. Given that the number and extent of new water resources are substantially different than those considered by TDEC in 2010 and could or should alter the construction plans, a major modification is required.

Third, as to leachate, the applicant suggested in the recertification request that Oneida Water and Wastewater would handle the leachate. The letter from Oneida Water says something different. Oneida Water stated in their letter that taking the proposed leachate depended on technical upgrades or pre-treatment of which none has yet been identified or agreed upon.

For the reasons set out below and based on new extensive information about water resources on the site, the permit should not be "recertified."

Background.

Permit SNL 76-0281 for Roberta Landfill Phase II, Inc. proposed in Scott County is over fifteen (15) years old. Then Division Director of Solid Waste, Mike Apple¹ issued it. The permit was expressly conditioned on ARAPs. The terms stated that if later ARAPs differ substantially from the form they were in as of July 2010, "the permittee must modify this permit as appropriate in order for the permit to become effective." (Facility Specific Condition No. 3.) The ARAP, NRS 09.273 was issued in 2012 after the solid waste permit and has since expired.

No construction of the landfill has occurred. Recently, dozens of new water resources on the site have been identified, including the "Stream 10" that recently "developed" according to the applicant in its July 3, 2025 request to the Commissioner that included an "ARAP Progress

¹ Mike Apple was fired by Governor Haslam at the start of his administration with no publicly stated reason.

Report” suggesting that the expired ARAP could also be “recertified.” According to a report by the applicant to the Army Corps of Engineers in 2024, “Stream 10” appears to be about 600 linear feet and likely not the only new water resource to reconsider as impacted by the 24 acres. The expired ARAP appeared to put an existing stream into a French drain that would essentially be in saturated groundwater and under the landfill.

The Roberta Phase II is a “phase II” in name only. It has repeatedly been confused with the entirely separate project from the mid-1990’s known as the “Roberta Sanitary Landfill Facility” now owned and operated as Volunteer Landfill by Waste Connections, Inc. under permit SNL 76-0271. The Volunteer Landfill is near Roberta II but the two sites do not share ownership, operations, or acreage.

The Volunteer Landfill began taking waste in 1999 on approximately 63 acres of fill after a protracted dispute in Scott County. The County had held a Jackson Law hearing in 1990 after significant opposition to that landfill. The County denied the proposal. The owner appealed the denial to the local chancery court and obtained a ruling in 1992 that the applicant was “entitled to the approval he seeks.” The decision does not appear to have been appealed. Despite the lack of a site or construction plan in the record, years later when Volunteer sought another expansion for approximately 224 additional acres, they again relied on the 1992 ruling and the assumption became that Jackson Law approval was resolved for an expansion as well. (See Volunteer Regional Landfill Application for County Commission Approval, expansion April 2005.) The Volunteer site continues operating with at least 25 remaining years of fill space.

The point to that history is clarifying that the Volunteer Landfill exists over hundreds of acres, while the Roberta II project does not yet exist at all. While the Jackson Law ruling from 1992 may have covered some or all of the Volunteer expansion, there is no known record showing the ruling extended to the 24 acres proposed for Roberta II.

For Roberta II, there is no record of it being submitted to the Scott County Solid Waste Regional Board (SCSWRB) and no record of it being submitted to the County for the Jackson Law approval. Scott County adopted the Jackson Law in 1989.

TDEC was expressly warned about both problems in public comments and notably from the respected law firm of Baker, Donelson, Bearman, Caldwell, & Berkowitz on behalf of the Volunteer Landfill. Records indicate that TDEC was aware that both approvals were lacking.

As discussed below, there were other problems the Division of Solid Waste seemed willing to overlook including the objection that the site would essentially be constructed over headwaters flowing into Bear Creek and the Big South Fork National River and Recreation Area.

The recent controversy over the requested “recertification” has prompted a look back at the records showing who was involved in bringing about the permit and the events surrounding issuance.

1. TDEC Disregards Two Mandatory Local Approval Processes.

A. No Jackson Law Approval.

TDEC began the review of SNL 76-0281 in direct violation of T.C.A. §68-211-105(h). Under state law, local approval in compliance with the Jackson Law is mandatory before the Commissioner can “review” the proposed design, let alone make a final determination.² The Jackson Law statutes detail the requirement of submitting plans, holding a noticed public hearing, and obtaining a local vote. (§68-211-701-707.) The Legislature ensured the Commissioner’s authority was expressly limited by stating the local approval had to be done first and in accordance with the law. By adding subpart (h) in Part 1 as well as in Part 7, the express limits on the Commissioner’s power were emphasized. Subpart (h) prohibits both “review or approve” actions and is more explicit than §68-211-707 which states that “local review and approval shall be conducted prior to issuance of a permit” by TDEC or the commissioner. (Emphasis added.)

These limits on TDEC put everyone, including the landfill applicant, on notice that investing time and money for the state permit before getting local approval is done at one’s own risk. If a municipality adopted the Jackson Law, they get ‘first bite at the apple’ on land use power over landfills. It is undisputed that Scott County adopted it in 1989.

An early red flag was raised on behalf of the neighboring Volunteer Landfill by their attorneys at Baker, Donelson who wrote to TDEC citing four reasons why there was no Jackson Law approval for Roberta II. The Baker Donelson letter was dated December 28, 2009, seven months before the permit decision in July 2010.

The four points raised by Baker, Donelson about the Jackson Law were: 1) The 1992 local chancery court ruling applied to the Volunteer Landfill not the Roberta II project; 2) Nothing in the old chancery ruling showed it could be used for or applied to another site and to emphasize that point, the attorney for Volunteer, Mr. Wellford, attached the entire ruling to the letter for TDEC to read for themselves; 3) The 1992 ruling plainly related to technical information owned by Scott Solid Waste Company, and there was no grant of right for anyone else to use it; 4) Fourth, Volunteer had been required to obtain local approval from the City of Oneida and the Roberta II project made no reference to needing the City’s approval.

Having been provided the full text of the 1992 ruling, the Division could see for themselves there was no basis to conclude the ruling applied to the Roberta II site. The Baker Donelson letter put it plainly:

² §68-211-105(h) states: “The commissioner **shall not review or approve** any construction for any new landfill for solid waste disposal or for solid waste processing in any county or municipality which has adopted §§ 68-211-701 - 68-211-704 and § 68-211-707 until such construction has been approved in accordance with such sections.” Emphasis added.

"It is not at all clear that the ruling was intended to, or could, cover the proposed Roberta Phase II Landfill now the subject of public comment." (December 28, 2009 Baker, Donelson letter in part 1, b. page 2.)

In its Response to Comments on SNL 76-0281, the Division ignored the Baker Donelson letter and the lack of documentation. Instead of requiring proof from the applicant that the Jackson Law process for the 24-acre Roberta II project was approved, the Division suggested that the Jackson Law may have "expired," and complained TDEC had not received a response to a 2010 letter to Scott County asking for more information about that. The Division then strangely quoted – without stating why – part of a May 2005 letter from the Scott County Mayor that pre-dated the red flag Baker Donelson letter by five years earlier. The partial quotes from the Scott County Mayor stated his "opinion" about the 1992 ruling and claimed that "the applicant" met the "necessary requirements of the Jackson Law" while providing zero support for the statement.

The necessary Jackson Law approval for the 24-acre Roberta II site remains missing. The record shows no such plan or map submitted to Scott County or approved under the Jackson Law. Two decades after 1992 chancery ruling there remains no record on which to conclude the approval applied to any acreage being used by Roberta I.

In recent years, TDEC has required signatures under penalty of perjury on the Part 1 landfill applications for new site and expansion that include statements on whether the Jackson Law applies in the location, and whether a regional solid waste board approval is required. The applicant here should not gain recertification under the same demonstrably illegal process that the Apple administration previously used and TDEC no longer allows.

B. No Regional Board Approval under §68-211-814(b)(2).

The Division did the same thing regarding the necessary local approval from the Scott County Solid Waste Regional Board. (See §68-211-814(b)(2)(A).)

According to the Response to Comments, TDEC was well aware they had no regional board approval and instead plugged the hole with a letter from John A. Beaty, identified as the Scott County Attorney, dated only 7 days before the final determination was issued. Inexplicably again relying on one person's "opinion," TDEC quoted only portions of Mr. Beaty's letter which openly substitutes his opinion for the required board vote by the SCSWRB.

The quoted section stated *"I have reviewed the pending application" and "it is my opinion that the ... application is not inconsistent with existing solid waste plans and furthermore, I cannot specify any specific grounds on which the application is inconsistent with such plans."* (Response to Comment SNL 76-0281 # 36)

The 2010 Division staff were well aware of what the law required and that it did not include an opinion from any attorney. Mr. Larry Cook within the Division had previously written to the applicant in July of 2005 about the "Phase II" project, citing T.C.A. §68-211-814(b) and clearly stating that the *"Scott County Regional Solid Waste Board will need to*

provide written approval” after a review by that board before a final permit could be issued. The Division quite blatantly disregarded the law here as well.

The law is straightforward and requires a plan be submitted to the “region” with public notice, two hearings followed with a vote, after which “the region shall immediately notify the commissioner of its acceptance or rejection of an application.”

The December 2009 Baker Donelson letter also raised the lack of approval related to the “Local Solid Waste Management Plan” again warning, “The information provided in the Part I application is from 1996 and is for the Volunteer Landfill, not the Roberta Phase II Landfill.” One might conclude that confusing the two projects had become a feature, not a bug.

Minutes of the Scott County Solid Waste Regional Board for August 8, 2005 show the applicant’s attorney Mr. Mark Blakely came to the board expressing an “interest” in a landfill which prompted the board to “defer” until the 10-year plan was reviewed. No record has been found locally or in the TDEC dataviewer that Mr. Blakely came back, presented any plan, or asked for or obtained a vote. More concerning is that when the Division raised this lack of approval with the site engineer for the Roberta II project, QE2 in Knoxville, and gave their opinion that the approval was “not applicable” and claimed the SCSWRB plans “have since expired.” No basis for this legal opinion from an engineer was provided.

Mr. Blakely was disclosed as an additional owner of the project a month before the permit was issued.

2. New ARAPs and The Old Design Plan for Roberta II.

Along with the lack of local approvals, serious concerns persist about whether the water resources on site have been identified, which of those will be impacted, and how those would be treated under current ARAP regulations for permitting and how those are inter-related with construction design.

Initially the applicant disclosed no water features in a 2007 submission according to TDEC’s 2010 Response to Comments. Later, the ARAP issued in 2012 was for 1 tributary and 1 wetland which notably did not include 506 linear feet of another water feature that TDEC stated would be “impacted” but then later disregarded. (See QE2 document dated June 28, 2010, “Replies to TDEC Public Comments Dated 05/14/10, page 3.)

By 2024, the acreage under review for water resource permitting had grown from 24 acres to 310 based on an April 25, 2024, report of water resources from the Roberta II applicant to the Army Corps of Engineers. The Army Corps recounted those as follows;

- 21 stream segments
- 27 “WWC/EPH” segments
- 11 wetlands
- 4 ponds
- 6 “seeps.”

It is unclear how many of these water resources would be impacted in the original 24 acres covered in SNL 76-0281 or whether all of those resources were identified because the actual goal is to expand the solid waste permit from 24 acres to 310 on the premise that they already have one to expand. Judging by records recently obtained in a FOIA to the Army Corps of Engineers, the photographed and documented water resources on the site are far beyond the single unnamed tributary and small wetland identified for mitigation in the now expired ARAP.

Whatever new ARAP application is ultimately submitted, it will include at a minimum the new "Stream 10" which is not a wet weather conveyance. That accounts for at least one significant change triggering the permit condition for a modification. If any of the dozens of other water resources reported in 2024 by the applicant to the Army Corps are newly admitted and will impact the proposed construction of the landfill, starting over is not just warranted but necessary. The facility design was nearly two decades old. Careful planning would be essential because all of this is uphill and upstream of the Big South Fork National River and Recreation Area and Bear Creek.

As to the design, TDEC had very little information in 2010 about the impacted water resources. For example, only 3 bore holes had been drilled inside the waste footprint and ground water was so shallow in some areas that one bore hole hit water at 1.5 feet below surface, with others hitting groundwater at 5, 6 and 10 feet. The record indicates the landfill would have been built over "perennial" flow fed by groundwater flowing above the bedrock formation with no clear determination of whether the recharge came from upslope or below ground. TDEC accepted a design plan where construction of the landfill itself was relied upon to cut off any recharge from an upslope source with a French drain placed in saturated soils expected to carry the flow away from the waste cells. (See 2010 Response to Comments SNL 76-0281.)

Design calculations from QE2 Engineering on behalf of the applicant appear to confirm that the "depth of water above geomembrane liner" calculates to "1.5' vertically above geomembrane liner." A public comment was made that the liner is below groundwater in violation of regulatory standards. It is unclear how this was addressed.

Lastly, the Commissioner is referred to technical comments in the TDEC record dated March 26, 2010 provided on behalf of Tennessee Scenic Rivers Association prepared by Global Environmental, LLC, by a licensed geologist. Among the relevant points was noting the location of the liner in relation to groundwater, the lack of ground and surface water characterization, the "French Drain" being within a saturated zone, (which would prevent it from working) and lack of means to detect a release of leachate because the proposed monitoring wells were far deeper than the acknowledged groundwater flow.

3. Lack of Realistic Leachate Management.

There is no current leachate treatment plan that TDEC should consider adequate.

In the 2025 request for "recertification," the applicant claimed to have "obtained updated permission to discharge into the Oneida Sewer System" and that while "pretreatment discharge standards are yet to be established" the applicant "will meet all discharge requirements set by the

Oneida system.” The representation sounds promising, but the details are notably different. The attached letter from Oneida Water & Wastewater does not grant permission. Instead it affirms “a willingness to serve” before immediately clarifying there are future conditions that have not been discussed let alone met; “... however, our ability to do so is contingent upon advancements in treatment processes or the implementation of required pretreatment measures ... (and) these terms and conditions of which along with effluent limits would need to be defined in a mutually acceptable agreement between both parties.”

In other words, Oneida Water would either need to have an “advancement in treatment processes” – which sounds like an infrastructure upgrade that they do not actually have - or pre-treatment measures at the landfill would need to be in place. It does not appear that any pre-treatment facility was factored into the site design in 2010 for Roberta II. Issues with leachate such as ammonia, high COD, and PFAS have changed the leachate landscape for many local water treatment utilities. A “willingness to serve” is only a starting point.

The leachate management is a changed condition and remains unresolved.

Conclusion.

On behalf of Cumberland Clear, time and effort was taken to bring these issues to the attention of the Commissioner and provide clarification on some of the key points that have long plagued this proposal. Additional technical information is expected to be provided to TDEC as it becomes available to Cumberland Clear.

Cumberland Clear is comprised of landowners, taxpayers and persons interested in land use in Scott County. They are opposed to the perpetuation of this invalid permit and intend to take whatever steps are necessary to ensure it is not “recertified” without full compliance with the law.

Respectfully Submitted,



Elizabeth L. Murphy
Attorney on Behalf of Cumberland Clear

CC: Scott County Attorney John A. Beaty
Scott County Mayor Jarried Jeffers
City of Winfield Mayor Jerry Dodson
Oneida City Mayor Lori Phillips-Jones