



Memorandum from the Office of the Inspector General

November 14, 2023

Rebecca C. Tolene

**REQUEST FOR MANAGEMENT DECISION – EVALUATION 2023-17409 – SECTION 26a
PERMIT MANAGEMENT**

Attached is the subject final report for your review and management decision. Your written comments, which addressed your management decision and actions for 4 of the 7 recommendations, have been incorporated into the report. You are responsible for determining the necessary actions to take in response to our findings. Please advise us of your management decision within 60 days from the date of this report. In accordance with the Inspector General Act of 1978, as amended, the Office of the Inspector General is required to report to Congress semiannually regarding evaluations that remain unresolved after 6 months from the date of report issuance.

If you have any questions or wish to discuss our findings, please contact Deana D. Scoggins, Senior Auditor, at (423) 785-4822 or Lindsay J. Denny, Director, Evaluations, at (865) 633-7349. We appreciate the courtesy and cooperation received from your staff during the evaluation.

David P. Wheeler
Assistant Inspector General
(Audits and Evaluations)

DDS:FAJ

Attachment

cc (Attachment):

TVA Board of Directors
Mary C. Corbitt
Samuel P. Delk
Buddy Eller
David B. Fountain
Rebecca Hayden
Jeffrey J. Lyash
Jill M. Matthews
Donald A. Moul
Ronald R. Sanders II
Ben R. Wagner
Kay W. Whittenburg
OIG File No. 2023-17409



Office of the Inspector General

Evaluation Report

To the Vice President,
Environment and
Sustainability

SECTION 26a PERMIT MANAGEMENT

Evaluation Team
Deana D. Scoggins
Kenneth H. (Trey) Sims

Evaluation 2023-17409
November 14, 2023

ABBREVIATIONS

CFR	Code of Federal Regulations
FY	Fiscal Year
NR	Natural Resources
OIG	Office of the Inspector General
TVA	Tennessee Valley Authority
V&E	Violation and Encroachment

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MEMORANDUM FROM REBECCA C. TOLENE TO DAVID P. WHEELER
DATED NOVEMBER 1, 2023



Evaluation 2023-17409 – Section 26a Permit Management

EXECUTIVE SUMMARY

Why the OIG Did This Evaluation

Section 26a of the Tennessee Valley Authority (TVA) Act requires TVA's approval prior to construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River and its tributaries. Examples of obstructions include boat docks, piers, buoys, floats, boat launching ramps, bridges, fish attractors, and shoreline stabilization projects. TVA manages these requirements through the Section 26a permit process.

Title 18, Code of Federal Regulations (CFR), Part 1304.1–1304.412, *Approval of Construction in the Tennessee River System and Regulation of Structures and Other Alterations* (18 CFR §§ 1304.1–1304.412) contains regulations related to the application process and information on what is allowable under a Section 26a permit. Additionally, 18 CFR §§ 1310.1–1310.3, *Administrative Cost Recovery* requires applicants pay TVA fees for its review of Section 26a permit applications. TVA's Natural Resources group has also established a series of stewardship guidelines to provide guidance for effective, consistent management of TVA reservoir land and natural resources that includes the Section 26a permit process.

Due to a concern identified in public comments prior to a TVA Board of Directors meeting, as well as concerns reported to the Office of the Inspector General (OIG) EmPowerline[®],ⁱ we performed an evaluation to determine if Section 26a permits were being effectively managed.

What the OIG Found

We determined Section 26a permits were not being managed effectively by TVA. Specifically, we found:

- TVA is not complying with requirements to recover all the associated cost of permits in accordance with 18 CFR § 1310.3. When costs associated with processing Section 26a permits are not recovered from applicants, TVA's ratepayers are effectively subsidizing the Section 26a permitting process.
- TVA's oversight of the Section 26a permit process is inadequate. The oversight concerns are related to TVA: (1) performing minimal compliance oversight, (2) not providing oversight to ensure violations

ⁱ EmPowerline[®] is the OIG-sponsored hotline system for employees, contractors, and the general public to report suspected fraud, waste or abuse that affects TVA.



Evaluation 2023-17409 – Section 26a Permit Management

EXECUTIVE SUMMARY

and encroachments are addressed in a timely or consistent manner, and (3) inconsistently documenting permit noncompliances as violations and encroachments.

- Instances of noncompliance with 18 CFR §§ 1304.1–1304.412 related to permit application requirements and multiple instances of poor recordkeeping.

TVA is responsible for managing the Tennessee River system. An important part of that responsibility is to ensure obstructions affecting navigation, flood control, or public lands across, along, or in the Tennessee River and its tributaries are built and maintained to protect the safety of all river users and the environment. TVA manages these responsibilities through the Section 26a permit process. However, based on the issues identified during our review, TVA's oversight is not adequate to ensure the Section 26a permit process is effective.

What the OIG Recommends

We made recommendations to the Vice President, Environment and Sustainability, related to fees, oversight, CFR noncompliance, and recordkeeping issues.

TVA Management's Comments

Prior to issuing a formal response, TVA management reviewed the draft report and provided informal comments that have been incorporated into the final report as appropriate. In TVA management's formal response to the draft report, they provided actions taken or planned to address four of the seven recommendations. TVA management also provided additional context related to three of our recommendations. See the Appendix for management's complete response.

Auditor's Response

We agree with TVA management's taken or planned actions in response to the four recommendations related to recording violations and encroachments, planning and completing permit compliance checks, and recordkeeping. However, TVA management should develop actions to ensure better oversight of violations and encroachments resolution, and compliance with the CFR.

BACKGROUND

Section 26a of the Tennessee Valley Authority (TVA) Act requires TVA's approval prior to construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River and its tributaries. Examples of obstructions include boat docks, piers, buoys, floats, boat launching ramps, bridges, fish attractors, and shoreline stabilization projects. TVA manages these requirements through the Section 26a permit process. Title 18, Code of Federal Regulations (CFR), Part 1304.1–1304.412, *Approval of Construction in the Tennessee River System and Regulation of Structures and Other Alterations* (18 CFR §§ 1304.1–1304.412), contains regulations related to the application process and information on what is allowable under a Section 26a permit. Additionally, TVA's Natural Resources (NR) group has established a series of stewardship guidelines to provide guidance for effective, consistent management of TVA reservoir land and natural resources, including the Section 26a permit process.

As shown in Table 1, 7,948 Section 26a permits were applied for in fiscal years (FY) 2019–2022, and 7,848 applications were completed.¹ TVA had 59,581 total active Section 26a permits as of January 5, 2023.

Summary of Section 26a Permit Applications	Number of Permit Applications
Open at the beginning of FY 2019	429
Applied For – FYs 2019–2022	7,948
Completed – FYs 2019–through 2022	-7,848
Open at the end of FY 2022	529

Table 1

Section 26a permits are subject to TVA's Things of Value protocol. This protocol notes a risk that someone may attempt to exercise special influence to obtain a Section 26a permit. TVA requires an Applicant Disclosure Form for the applicant to self-identify whether they are a covered person.²

¹ We considered an application completed when there was an end date listed for the project. This includes the following: 6,645 approved, 326 withdrawn, 147 returned, 30 canceled, 33 denied, 1 active, and 666 superseded permits.

² The Things of Value protocol identifies classes or categories of individuals (covered persons) subject to the requirements. Covered persons include elected government officials or candidates; senior-management-level employees of a TVA power customer, or of an entity that regulates TVA; current TVA employees or directors; former TVA officers or directors for 1 year after service; current members of a TVA council created pursuant to the Federal Advisory Committee Act; and the spouse or dependent child of any of the above.

Fees Billed by TVA for Section 26a Applications

TVA's cost recovery is governed by 18 CFR §§ 1310.1–1310.3, *Administrative Cost Recovery*, which requires applicants pay TVA fees for its review of Section 26a permit applications, including both the direct and applicable overhead costs. The CFR states that TVA may establish standard charges that shall be approximately equal to the administrative costs incurred by TVA for each category of action. TVA currently classifies most new applications as category 1, 2, or 3.³ Category 1 and 2 are described as minor construction and category 3 is described as major construction or any action that is not determined to be a category 1 or 2. TVA's Section 26a standard (categories 1 and 2) application fees range from \$250 to \$500. Category 3 applications⁴ have an initial application fee of \$1,000 and require full-cost recovery beyond the initial application fee. At the time of a major application, a cost-recovery form should be completed that acknowledges the applicant is responsible for all costs. In addition, TVA has a standard fee of \$250 for transfer of ownership permit applications. TVA may waive fees under some circumstances, including preapproved waivers for stabilization projects, county and municipal road projects, and sewage pump out facilities, among others. TVA also allows for waivers of fees with management approval. See Table 2 below for a breakdown of the fees TVA recorded by category for FYs 2019–2022. (TVA records fees in its tracking system TRIRIGA⁵ when initial applications for Section 26a permits are made.)

Summary of Section 26a Fees Recorded by TVA FYs 2019–2022					
Category	FY 2019 Fees	FY 2020 Fees	FY 2021 Fees	FY 2022 Fees	Total
1	\$250,750	\$290,500	\$359,750	\$255,250	\$1,156,250
2	391,250	472,250	572,000	509,000	1,944,500
3	37,500	37,250	39,250	49,000	163,000
No Objection	0	0	0	1,000*	1,000
Transfer of Ownership	27,250	36,000	58,250	36,500	158,000
Total	\$706,750	\$836,000	\$1,029,250	\$850,750	\$3,422,750

*TVA subsequently refunded this fee but did not remove it from the fees recorded.

Table 2

Violations and Encroachments

Each year TVA selects a sample of active Section 26a permits and a compliance check is performed for adherence to permit plans and conditions. TVA requires a checklist to document actions performed and whether the facilities were compliant with the permit. The checklist includes steps to measure dimensions, assess vegetation, shoreline stabilization, etc. NR Stewardship Guidelines state the permits selected should be chosen from a population of all permits that were

³ TVA also classifies a limited number of permit applications as No Objection when applicants are not required to submit plans to TVA for approval but do submit plans. No Objection applications do not require a fee.

⁴ Major applications include, but are not limited to, commercial facilities, community facilities, and bridges.

⁵ TRIRIGA is the system used by TVA to track Section 26a permits and V&Es. TRIRIGA is used by NR for other purposes including land-use licenses, inquiries, and NR Management needs.

issued and active within the 18–30 months prior to selection. According to a NR employee, each year they determine the reservoirs of focus and select permits for compliance checks, with a maximum of 5 permits selected for each reservoir. However, NR management noted that the NR Stewardship Guidelines do not set a maximum number of permits to be reviewed.

As part of the process, TVA will leave a notice on the facility indicating TVA’s review and prompting the permit holder to contact them to obtain more information about the compliance check, including any violations identified. When a permit noncompliance is identified, NR Stewardship Guidelines state a violation and encroachment (V&E) should be recorded in TRIRIGA. A V&E review team assigns a priority level of low, medium, or high.

- **High Priority V&Es** – V&E’s are classified as high priority when (1) they pose a risk to health and safety or to TVA’s financial or environmental liability, (2) they impact sensitive or natural resources, (3) a Vice President or above is involved in the V&E decision, or (4) impermissible activity continues after a cease and desist notice.
- **Medium Priority V&Es** – TVA typically classifies V&Es as medium priority when they have been in contact with the responsible party by either posting a notification poster, letter, e-mail, or open application.
- **Low Priority V&Es** – Not defined in the NR Stewardship Guidelines.

Table 3 provides a summary of the Section 26a V&E’s recorded by TVA in TRIRIGA for FYs 2019–2022.⁶

Summary of Section 26a V&E’s Recorded in TVA’s TRIRIGA System	Number of V&Es by Priority				
	Blank	Low	Medium	High	Total
Open at the beginning of FY 2019	180	88	35	3	306
V&Es added – FYs 2019–2022	12	89	313	5	419
V&E’s closed - FYs 2019–2022	-4	-108	-140	-1	-253
Open at the end of FY 2022	188	69	208	7	472

Table 3

NR Stewardship Guidelines provide four options to resolve V&Es that include voluntary compliance, removal of structures by TVA, restoration of site by TVA, and litigation. 18 CFR § 1304.406 also states that TVA may remove, or cause to be removed, any structure and charge the removal cost to the owner of the structure if it is not constructed or maintained in accordance with TVA’s approval, or if it is not kept in a good state of repair. The CFR also allows for the removal of any structure constructed or installed without a permit or approval.

⁶ We were unable to determine the final population of Section 26a V&Es. TVA identified 988 V&Es during FYs 2019–2022; however only 419 of those were associated in TRIRIGA with a Section 26a permit. For the remaining 569 V&Es, the V&E could be related to a land issue, or it could be related to a Section 26a issue but there may not have been a permit to associate it with, or TVA could have failed to properly associate it in TRIRIGA. For example, there could be a V&E identified for a structure where TVA does not know the appropriate person to assign it to, due to a lack of permit.

Due to a concern identified in public comments prior to a TVA Board of Directors meeting, as well as concerns reported to the Office of the Inspector General (OIG) EmPowerline[®],⁷ we performed an evaluation to determine if Section 26a permits were being effectively managed.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our evaluation was to determine if Section 26a permits were being effectively managed. The scope of our evaluation was FYs 2019–2022. To achieve our objective we:

- Interviewed TVA personnel and reviewed relevant CFRs and NR Stewardship Guidelines to gain an understanding of the Section 26a process.
- Reviewed a random sample of 69 of the 7,311 Section 26a permits approved in FYs 2019–2022 to determine if applications were completed as required and fees were correctly assessed.
- Reviewed the following unapproved permit applications⁸ to determine why they had not been approved.
 - A random sample of 10 of the 100 unapproved Section 26a permit applications greater than 200 days old and less than 1,000 days old.
 - All 5 unapproved permit applications greater than 1,000 days old.
- Interviewed TVA personnel and reviewed available documentation to determine if TVA's fee structure was supported.
- Reviewed the following Section 26a permit applications to determine if the fees charged or waived were adequately supported.
 - All 24 permit applications with nonstandard fees.
 - A random selection of 27 of the 137 permit applications with zero fees that appeared as if a fee should be required.
 - All 45 permit applications showing fees were paid but marked as fee waived.
- Reviewed all 30 Section 26a permit applications that were not marked as a covered person, but listed the same last name and address as a TVA employee, to determine if the Applicant Disclosure form was completed.
- Reviewed permit compliance check schedules and results to determine if checks were conducted and identified V&Es were documented.
- Reviewed all 33 Section 26a related V&Es not classified as high priority, but appeared to meet the criteria to be high priority, to determine if priority levels were appropriately assigned.

⁷ EmPowerline[®] is the OIG-sponsored hotline system for employees, contractors, and the general public, to report suspected fraud, waste or abuse that affects TVA.

⁸ As of January 5, 2023, there were 230 unapproved Section 26a permit applications that were applied for prior to the end of FY 2022.

- Reviewed all 8 high priority V&Es to determine if actions were being taken by TVA.
- Reviewed all 100 applications withdrawn due to structures not complying with a prior permit, or that were not able to be permitted to determine if a V&E was required and entered.

This evaluation was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

FINDINGS

We determined Section 26a permits were not being managed effectively by TVA. As discussed in detail below, our review found (1) TVA is not complying with requirements to recover permitting costs, (2) TVA's oversight of the Section 26a permit process is inadequate, (3) instances of noncompliance with 18 CFR §§ 1304.1–1304.412 related to permit application requirements, and (4) multiple instances of poor recordkeeping.

TVA IS NOT COMPLYING WITH THE REQUIREMENT TO RECOVER PERMITTING COSTS

18 CFR § 1310.3 requires TVA to charge fees approximately equal to the costs incurred for a Section 26a permit. TVA currently charges \$250 or \$500⁹ for most category 1 and 2 permit applications and \$250 for a permit transfer. Category 3 applications have an initial application fee of \$1,000 and require full-cost recovery beyond the initial application fee.

Each year Financial Services prepares an estimate of Section 26a revenue and expenses for TVA management. Based on TVA's revenue and expense estimates for category 1 and 2 permits and transfer of ownership costs for FYs 2020–2022, TVA did not recover \$9.7 million in Section 26a related costs as shown in Table 4 on the following page.¹⁰

⁹ For off-reservoir category 1 and 2 permits, the standard fee is \$250. For on-reservoir category 1 and 2 permits, the standard fee is \$500. According to a NR employee, off reservoir permits generally can be approved with less administrative costs and adoption of environmental reviews by other federal agencies, so the fee is lower.

¹⁰ Our review of category 3 permit applications found all associated costs were billed to the applicant, except for any fees covered under a waiver.

Summary of TVA's Estimate of Section 26a Revenues and Costs for FYs 2020–2022 (For Category 1 and 2 Permits and Transfer of Ownership Costs)	
Estimated:	Total
Revenue	\$2,335,750
Costs	<u>12,048,514</u>
Net Unrecovered Cost	\$9,712,764
<p>Note: TVA's Financial Services uses estimates for both revenue and costs. We noted TVA's revenue used in the calculation does not match the fees TVA recorded in TRIRIGA (\$2,589,500) for the same period as seen in Table 2. Table 4 revenue is estimated for permit status of Approved, Denied, and Superseded and Table 2 details fees for all permit statuses.</p>	

Table 4

When costs associated with processing Section 26a permits are not recovered from applicants, TVA's ratepayers are effectively subsidizing the Section 26a permitting process.

TVA'S OVERSIGHT OF THE SECTION 26A PROCESS IS INADEQUATE

We determined TVA's oversight of the Section 26a permit process is inadequate. Specifically, we found (1) TVA performed limited compliance checks, (2) V&Es were not addressed in a timely or consistent manner, and (3) permit noncompliances were not always documented as V&Es.

Limited Compliance Checks Were Completed

During FYs 2019 –2022, TVA processed 7,848 Section 26a permit applications. However, TVA only planned to perform compliance checks on 179 during that time period which would provide minimal compliance oversight. Additionally, TVA subsequently only conducted about one-half (89 of the 179) of the permit compliance checks it had planned to conduct.¹¹

The reasons TVA cited for not completing the planned compliance checks, included implementation of a new process, travel restrictions, and a high volume of permit applications. Additionally, for 55 of the 89 checks conducted, TVA did not complete the permit compliance checklist. Without the completed checklist, there is nothing to document that all the required steps were completed. Completing a limited number of compliance checks and not completing compliance checklists can result in V&Es not being identified and resolved.

¹¹ We noted TVA's completion rate improved from 12 percent in FY 2019 to 91 percent in FY 2022.

TVA's Oversight Did Not Result in V&Es Being Addressed in a Timely or Consistent Manner

During the course of permit application reviews, permit compliance checks and other oversight activities, TVA identifies permit noncompliances. TVA enters V&Es in its TRIRIGA tracking system to document the noncompliance. As shown previously in Table 3, TVA added 419 Section 26a permit V&Es in TRIRIGA during the 4-year period FYs 2019–2022. However, as illustrated in Table 5 below, TVA's oversight actions resulted in less than one-half of the identified V&Es being closed, indicating resolution. This includes all 5 high priority and 173 medium priority V&Es.

Summary of V&E's Associated with Section 26a Permits Identified by TVA in TRIRIGA for FYs 2019–2022		
Priority	Section 26a V&Es	Total Closed (as of March 14, 2023)
Low	89	35
Medium*	313	140
High*	5	0
Not Prioritized	12	3
Total	419	178

*2 of the 5 categorized as high priority and 2 of the 313 classified as medium priority had been resolved but had not been closed in TVA's system. For the remaining 3 high priority V&Es, 1 was in the process of being litigated, 1 was subsequently closed on September 18, 2023, and 1 had the permit revoked and TVA plans to continue seeking compliance.

Table 5

One factor that could be impacting V&Es not being addressed is the notification method. When V&Es are identified during permit compliance checks, the violation notice is attached to the structure. If the permit holder does not find the attached notification, they would be unaware that there was an issue to address.

We also found TVA's oversight was not always consistent for high priority V&Es. For example, TVA required one responsible party to pay restitution for cutting trees and closed a similar V&E for another party without any restitution paid or other remediation completed. According to an NR employee, each V&E is specific to the site and must be evaluated on a case-by-case basis. In addition, 1 high priority V&E was issued to a site that has received 77 V&Es since 1998. Of the 77, 74 were identified in 1999 and 18 of the 77 have been closed.

Some Permit Noncompliances Were Not Documented as V&Es

As mentioned previously, when a permit noncompliance is identified, a V&E should be documented in TVA's TRIRIGA tracking system. However, our testing found some permit noncompliances were not documented as V&Es, including:

- Twenty permit noncompliances identified by TVA during permit compliance checks were not recorded as V&Es in TRIRIGA.
- Twelve permit noncompliances identified during permit application reviews by TVA were not recorded as V&Es in TRIRIGA
- Eleven V&Es did not include all permit noncompliances identified by TVA in supporting documentation in TRIRIGA.

- - - - -

V&Es cannot be consistently addressed without identification, notification, and accurate tracking. Additionally, since each V&E is specific to a site and can result in different actions to address similar issues, it could lead to the perception that applicants or permit holders were not being treated equally.

CFR NONCOMPLIANCE

TVA's Section 26a permit process is governed by 18 CFR §§ 1304.1–1304.412. The CFR includes a required list of items to be included in a Section 26a permit application. During our review of permit applications, we identified some requirements for information that were not included, or not always included, in the applications. CFR noncompliance included the following:

- All 69 permit applications we sampled did not include the sequence of work as required by the CFR.
- Forty-three of the sixty-nine permit applications did not explicitly identify the purpose and intended use for the items on the application; however, a NR employee indicated that TVA would be able to infer the intended use.
- Twelve of the sixty-nine permit applications did not include a plan/drawing that showed the elevation of the structure above the full summer pool; however, a NR employee indicated the approved permit would specify the elevation required.

POOR RECORDKEEPING CONTRIBUTES TO INADEQUATE OVERSIGHT OF THE SECTION 26a PROCESS

During our review, we identified multiple instances of poor recordkeeping which indicates an overall lack of attention to detail. The following provides a summary of the various recordkeeping issues we identified for permit applications, permit compliance checks, and V&E's.

Issues Identified With Recordkeeping for Permit Applications

We reviewed random and judgmental samples of the Section 26a permit applications applied for or completed from FYs 2019–2022 and found the following errors:

- Eleven of the twenty-four permit applications with nonstandard fees contained incorrect category levels.
- Twenty-six of the ninety-six permit applications included in our three fee samples, incorrectly recorded the fees that were actually received.
- Thirteen of the forty-five permit applications that had been marked as fee waived had fees that had been paid.
- Six of the thirty permit applications where the applicant's disclosure of being a covered person under the Things of Value protocol were not recorded correctly.

Issues Identified With Recordkeeping for Permit Compliance Checks

We reviewed 89 permit compliance checks completed by TVA for FYs 2019-2022 and identified the following:

- Seven of the eighty-nine permit compliance checks completed by TVA during FYs 2019–2022 had V&Es with missing information and the V&Es were not reviewed for priority.
- Four of the eighty-nine permit compliance checks completed by TVA identified permits that had expired, however the permit status was not updated in TRIRIGA to indicate the expiration.

Issues Identified With Recordkeeping for V&Es

As shown in Table 5 on Page 7, TVA added 419 V&E's associated with Section 26a permits to its TRIRIGA tracking system from FYs 2019–2022.

- Twelve of the four hundred nineteen V&Es did not contain a priority level, which could indicate they were not screened as required.
- Seven V&Es identified in our V&E (4 of the 41) and permit application (3 of the 169) testing, had been resolved, but the record in the system was not closed.

Continued poor recordkeeping could make it harder to have proper oversight of the Section 26a process.

CONCLUSION

TVA is responsible for managing the Tennessee River system. An important part of that responsibility is to ensure obstructions affecting navigation, flood control, or public lands across, along, or in the Tennessee River and its tributaries are built and maintained to protect the safety of all river users and the environment. TVA manages these responsibilities through the Section 26a permit process. However, based on the issues identified with V&Es not being addressed in a timely manner, limited compliance checks being performed, CFR noncompliances, and the numerous documentation and recordkeeping issues, the oversight is not adequate to ensure the Section 26a permit process is effective.

RECOMMENDATIONS

We recommend the Vice President, Environment and Sustainability, take actions to:

- Set fees to recover all associated costs of permits as required by 18 CFR § 1310.3.

TVA Management's Comments – TVA management stated a rate study is conducted each year to estimate the costs per permit issued compared to the standard fees collected. TVA continually strives to strike the right balance for the good of the program—and correspondingly the good of TVA and the public—in setting standard application fees. TVA will continue to conduct an annual rate study and evaluate whether the standard application fee charged is appropriate to sustain the program while continuing to provide public benefit. TVA included the OIG recommendation and information from the audit report to use during the FY 2024 analysis. See the Appendix for TVA management's complete response.

Auditor's Response – TVA management's response does not indicate if they plan to come into compliance with 18 CFR § 1310.3 that requires TVA to charge fees approximately equal to the costs incurred for a Section 26a permit. With costs exceeding fees collected by over \$9,700,000 for FYs 2020–2022, it does not appear TVA is meeting the requirements of the CFR.

- Reinforce the expectation to record V&Es when identified.

TVA Management's Comments – TVA management agreed with the recommendation and stated they will reinforce expectations with staff during first quarter FY 2024 to document V&Es as they are discovered during stakeholder interactions, shoreline inspections, permit compliance checks, and normal daily work. See the Appendix for TVA management's complete response.

Auditor's Response – We agree with TVA management's planned actions.

- Take steps to increase resolution of V&Es.

TVA Management's Comments – TVA management agreed with the recommendation and stated as of September 5, 2023, NR resolved 133 V&Es through the issuance of a permit, a 37 percent increase from this time last year, and has closed another 81 V&Es through other efforts. Additionally, they stated NR will continue to balance resource allocations and utilize all enforcement avenues to resolve V&Es. See the Appendix for TVA management's complete response.

Auditor's Response – Although TVA management stated they agreed with our recommendation, they did not provide the steps being taken to increase resolution of V&Es.

- Determine if an appropriate number of permit compliance checks are being planned and completed.

TVA Management's Comments – TVA management agreed with the recommendation and stated NR will continue to assess resource availability to conduct permit compliance checks when determining the FY 2024 plan. See the Appendix for TVA management's complete response.

Auditor's Response – We agree with TVA management's planned actions.

- Verify that permit compliance checklists are completed for each permit compliance check.

TVA Management's Comments – TVA management agreed with the recommendation and stated oversight of the process has been strengthened and expectations have been reinforced with staff. Additionally, TVA stated that as of September 5, 2023, 100 percent of compliance checks for FY 2023 were completed and documented. See the Appendix for TVA management's complete response.

Auditor's Response – We agree with TVA management's actions taken.

- Obtain all CFR required information from applicants before approving future permit applications.

TVA Management's Comments – TVA management stated the regulation is written to communicate the expectations to the applicant of what documents may be required by TVA to process an application. TVA uses its broad statutory discretion to determine if the submitted application is adequate, if additional items are needed from the applicant, or if the information is available by other means. Additionally, TVA implemented an online Section 26a Application System in April 2023 to enhance and streamline incoming application information. See the Appendix for TVA management's complete response.

Auditor's Response – TVA management stated the regulations are written to communicate the expectations to the applicant of what documents may be required by TVA to process an application. However, the CFR (1) lists information that is required from all applicants and (2) states TVA may require applicants to provide additional information TVA deems necessary for

adequate review of a particular application. Accordingly, to comply with the CFR, TVA should ensure applicants provide all required information.

- Identify gaps with recordkeeping and take steps to address those gaps.

TVA Management's Comments – TVA management agreed with the recommendation and stated expectations about adequate recordkeeping will be reinforced with staff during first quarter FY 2024. Additionally, a new guideline that clarifies documentation expectations was published on September 5, 2023, and NR plans to conduct random checks in FY 2024. See the Appendix for TVA management's complete response.

Auditor's Response – We agree with TVA management's planned actions.

November 1, 2023

David P. Wheeler, WT 2C-K

**RESPONSE TO REQUEST FOR COMMENTS - EVALUATION 2023-17409 - SECTION 26a
PERMIT MANAGEMENT**

The Tennessee Valley Authority (TVA) appreciates the TVA Office of the Inspector General's (OIG) evaluation of TVA's violation and encroachment (V&E) program and TVA's cost recovery processes under Section 26a of the TVA Act. Environment and Sustainability (E&S) and Natural Resources (NR) value the OIG team's insight as it provides TVA an opportunity to further strengthen and improve our efforts to manage obstructions across, along, or in the Tennessee River system.

Section 26a was an amendment to the TVA Act in 1935 and established TVA's authority to protect the unified development and regulation of the Tennessee River System. The permitting program we implement today ensures the program of development and regulation of the river system and 11,000 miles of shoreline for multiple purposes is protected.

On average, TVA processes approximately 1,600 permits per year. The team has shown strong performance over the past few years including:

- Handled the highest permit volumes in 14 years in fiscal years 2021 and 2022 (two years in the scope of this review)
- Implemented a new workflow management system in fiscal year 2021 and a new online Section 26a system last year for external applicants
- Met the needs of the valley with flexibility during the COVID-19 pandemic
- Updated external communications outlining the process for applicants and providing answers to frequently asked questions
- Scored "high satisfaction" for courtesy and respectfulness in our stakeholder satisfaction survey of applicants
- Reduced legacy applications over 75% in fiscal year 2023
- Resolved 133 V&Es through the issuance of a permit, a 37% increase from this time last year, and has closed another 81 V&Es through other efforts (through September 5, 2023)
- Completed 100% of the compliance checks for fiscal year 2023

Our responses to each recommendation are outlined below.

Recommendations:

1. **Set fees to recover all associated costs of permits as required by 18 CFR § 1310.3.**

Response:

The Section 26a program provides important benefits to TVA and to the public. TVA balances multiple factors when determining the standard application fee.

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TVA's cost recovery regulations were developed under the Independent Offices Appropriations Act (31 U.S.C. § 9701), which provides that "each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible." The statute allows the head of an agency to "prescribe regulations establishing the charge for a service or thing of value provided by the agency." As outlined in § 1304.1, the purpose of TVA's Administrative Cost Recovery regulations is to establish a schedule of fees to help ensure that activities listed are self-sustaining to the fullest extent possible.

TVA conducts a rate study each year to estimate the costs per permit issued compared to the standard fees collected. TVA continually strives to strike the right balance for the good of the program -- and correspondingly the good of TVA and the public -- in setting standard application fees. For example, if the fee necessary to recover the costs of the permit program are deemed to be unreasonable, TVA risks stakeholders choosing not to apply and building obstructions without a permit, leading to costs to TVA for enforcement. These unauthorized structures also have the potential to impact environmental resources, navigation, and TVA's operation of the integrated river system.

TVA will continue to conduct an annual rate study and evaluate whether the standard application fee charged is appropriate to sustain the program while continuing to provide public benefit. TVA included the OIG recommendation and information from the audit report to use in during the fiscal year 2024 analysis.

2. Reinforce the expectation to record V&Es when identified.

Response:

TVA agrees. During first quarter in fiscal year 2024, management will reinforce expectations with staff to document V&Es as they are discovered during stakeholder interactions, shoreline inspections, permit compliance checks, and normal daily work.

Additionally, TVA, as a practice of continuous improvement, will continue to explore the use of mobile technology to enhance these efforts.

3. Take steps to increase resolution of V&Es.

Response:

TVA agrees. Natural Resources will continue to balance resource allocations and utilize all enforcement avenues to resolve V&Es. Resolution of V&Es can come in many forms and are site specific. Natural Resources will continue evaluation of resolution options including litigation, voluntary compliance, and resolution with a permit.

As of September 5, 2023, Natural Resources resolved 133 V&Es through the issuance of a permit, a 37% increase from this time last year, and has closed another 81 V&Es through other efforts. Additionally, TVA has engaged in litigation related to Section 26a violations and received favorable outcomes in cases that challenged TVA's authority in permit decision-making.

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4. Determine if an appropriate number of permit compliance checks are being planned and completed.

Response:

TVA agrees. Natural Resources will continue to assess resource availability to conduct permit compliance checks when determining the fiscal year 2024 plan.

5. Verify that permit compliance checklists are completed for each permit compliance check.

Response:

TVA agrees. Natural Resources will continue to refine the process and communicate progress with management earlier in the year to ensure adequate focus and quality.

Oversight of this process has been strengthened and expectations have been reinforced with staff. As of September 5, 2023, 100% of the compliance checks for fiscal year 2023 have been completed and documented.

6. Obtain all CFR required information from applicants before approving future permit applications.

Response:

The purpose of Section 26a of the TVA Act and TVA's subsequent regulations is to promote unified development of the Tennessee River. The regulation is written to communicate the expectations to the applicant of what documents may be required by TVA to process an application. TVA uses its broad statutory discretion to determine if the submitted application is adequate, if additional items are needed from the applicant, or if the information is available by another means.

Related to this, TVA implemented an online Section 26a Application System in April 2023 to enhance and streamline incoming application information. Natural Resources will continue to explore further enhancements to the system.

7. Identify gaps with recordkeeping and take steps to address those gaps.

Response:

TVA agrees. There are opportunities for improved recordkeeping. Expectations about adequate recordkeeping will be reinforced with staff during the first quarter in fiscal year 2024. A new guideline that clarifies documentation expectations was published on September 5, 2023 and Natural Resources plans to conduct random checks in fiscal year 2024.

Protecting TVA's ability to operate the integrated river system for TVA's long-term success is

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valuable. Embracing TVA's service value, Natural Resources aligns and focuses on TVA's mission on energy, environmental stewardship, and economic development. Thank you for allowing us to provide this response.



Rebecca C. Tolene
Vice President
Environment and Sustainability
WT 11C-K

MKW:TP

cc: Samuel P. Delk, BR 5A-C
David B. Fountain, WT 6A-K
Rebecca L. Hayden, WTR 1A-GRT
Donald A. Moul, WT 7B-K
Kay W. Whittenburg, MR 3A-C
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