

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 9 2009

THE ADMINISTRATOR

Mr. R. Steven Brown
Executive Director
The Environmental Council of the States
444 North Capitol Street, N.W., Suite 445
Washington, D.C. 20001

Dear Mr. Brown:

I am writing to bring you up to date on the U.S. Environmental Protection Agency's work on coal combustion residue (CCR) and to ask for your help.

The release of over 5 million cubic yards (1.1 billion gallons) of coal ash from the Tennessee Valley Authority's Kingston, Tennessee, facility in December 2008 changed the way we must approach this issue. The coal ash from the facility flooded more than 300 acres of land, damaging homes and property. It flowed into the Emory and Clinch rivers, virtually filling large areas of the river and resulting in fish kills. TVA seems likely to spend more than \$500 million addressing the spill.

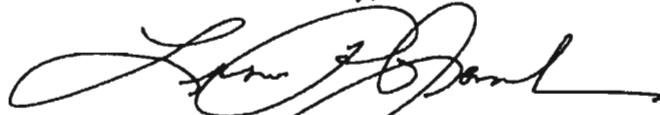
To avoid more catastrophes like that one, impoundment safety must be added to the issues we address when considering CCR. EPA is sending information requests (like the one attached) to the owners and operators of CCR impoundments at electric utilities, and we are asking EPA regions to identify facilities they are aware of that need top-priority visits. Likewise, if you are aware of such facilities, your early identification of them would be of great help.

With this information, we will ask experts in structural integrity to assess all such facilities in the country. We are working closely with other agencies with expertise in dam safety in light of the structural similarities between CCR impoundments and dams. We are arranging for engineers to review previous assessments by federal or state regulators and make site visits if necessary. A site-by-site report on each facility is anticipated. We will make sure that the state environmental commissioners have copies of each report for their state, and we will make them available to the communities near the impoundments.

We are also moving forward on developing regulations addressing coal combustion residue, with impoundment integrity added to the issues we will address. We will move quickly on these regulations, and we plan to propose rules by the end of this year.

As we move forward, we will want to work closely with you. EPA's Office of Solid Waste and Emergency Response will request a conference call with Environmental Council of the States Waste Committee representatives, and this work is on the agenda for the Waste Committee at the upcoming ECOS meeting. We look forward to working with you on this important project.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", with a long horizontal flourish extending to the right.

Lisa P. Jackson

Enclosure

March 9, 2009

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Dear XXXX:

The release of over 5 million cubic yards (1.1 billion gallons) of coal ash from the Tennessee Valley Authority's Kingston, Tennessee, facility in December 2008 serves as an important reminder of the need for our continued diligence on disposal units where coal combustion wastes are managed. The coal ash from the facility flooded more than 300 acres of land, damaging homes and property.

It is critical that we all work to the best of our abilities to prevent a similar catastrophic failure and the resultant environmental damage. One of the first steps in this effort is to assess the stability of the impoundments and similar units that contain coal combustion residuals and by-products to determine if and where corrective measures may be needed and then to carry out those measures as expeditiously as possible. I am asking that you assist us in this endeavor by giving your personal attention to the enclosed information request issued under the authority of Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act and that you work with us throughout the process. By exercising the utmost care and diligence in examining whether there are any safety concerns at the units and then taking appropriate actions to address these concerns, you will be ensuring the protection of public health, safety, and the environment.

Thank you for making this a priority at the highest levels of your organization.

Sincerely,

Lisa P. Jackson

Enclosure

Via CERTIFIED MAIL/RETURN RECEIPT REQUESTED

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RE: Request for Information Under Section 104 (e) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9604(e)

Dear XXX

The United States Environmental Protection Agency is requesting information relating to the surface impoundments or similar diked or bermed management unit(s) or management units designated as landfills which receive liquid-borne material from a surface impoundment used for the storage or disposal of residuals or by-products from the combustion of coal, including, but not limited to, fly ash, bottom ash, boiler slag, or flue gas emission control residuals. EPA is requesting this information pursuant to the authority granted to it under Section 104 (e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9604(e) which provides in relevant part that whenever the Agency has reason to believe that there may be a release or a threat of a release of a pollutant or contaminant, they may require any person who has or may have information to furnish information or documents relating to the matter, including the identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed at the facility and the nature or extent of a release or a threatened release. EPA believes that the information requested is essential to an evaluation of the threat of releases of pollutants or contaminants from these units. **EPA hereby requires that you furnish to EPA, within ten (10) business days of receipt of this letter a response to each request for information set forth in the Enclosure, including all documents responsive to such request.**

Please provide a full and complete response to each request for information set forth in Enclosure A. The provisions of Section 104 of CERCLA authorize EPA to pursue penalties for failure to comply with or respond adequately to an information request under Section 104(e). In addition, providing false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. 1001.

Your response must include the following certification signed and dated by an authorized representative of (insert company name)

I certify that the information contained in this response to EPA's request for information and the accompanying documents is true, accurate, and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

This request has been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C., 3501-3520.

Please send your reply to:

Mr. Richard Kinch
US Environmental Protection Agency (5306P)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If you are using overnight or hand delivery mail, please use the following address:

Mr. Richard Kinch
US Environmental Protection Agency
Two Potomac Yard
2733 S. Crystal Dr.
5th Floor; N-56
Arlington, VA 22202 2733

EPA expects the owners and operators of these units to exercise the utmost care and diligence in examining whether there are any potential concerns at the units and to take appropriate actions to address them. We ask that this effort be a priority at the highest levels of your organization to ensure the protection of public health, safety, and the environment.

If you have any questions concerning this matter, please contact Mr. Kinch in the Office of Solid Waste and Emergency Response at (703)-308-8214. I appreciate your attention to this critical matter.

Sincerely,

Barry Breen
Acting Assistant Administrator

Enclosure

Enclosure

Please provide the information requested below for each surface impoundment or similar diked or bermed management unit(s) or management units designated as landfills which receive liquid-borne material for the storage or disposal of residuals or by-products from the combustion of coal, including, but not limited to, fly ash, bottom ash, boiler slag, or flue gas emission control residuals. This includes units that no longer receive coal combustion residues or by-products, but still contain free liquids.

1. Relative to the National Inventory of Dams criteria for High, Significant, Low, or Less-than-Low, please provide the potential hazard rating for each management unit and indicate who established the rating, what the basis of the rating is, and what federal or state agency regulates the unit(s). If the unit(s) does not have a rating, please note that fact.
2. What year was each management unit commissioned and expanded?
3. What materials are temporarily or permanently contained in the unit? Use the following categories to respond to this question: (1) fly ash; (2) bottom ash; (3) boiler slag; (4) flue gas emission control residuals; (5) other. If the management unit contains more than one type of material, please identify all that apply. Also, if you identify "other," please specify the other types of materials that are temporarily or permanently contained in the unit(s).
4. Was the management unit(s) designed by a Professional Engineer? Is or was the construction of the waste management unit(s) under the supervision of a Professional Engineer? Is inspection and monitoring of the safety of the waste management unit(s) under the supervision of a Professional Engineer?
5. When did the company last assess or evaluate the safety (i.e., structural integrity) of the management unit(s)? Briefly describe the credentials of those conducting the structural integrity assessments/evaluations. Identify actions taken or planned by facility personnel as a result of these assessments or evaluations. If corrective actions were taken, briefly describe the credentials of those performing the corrective actions, whether they were company employees or contractors. If the company plans an assessment or evaluation in the future, when is it expected to occur?
6. When did a State or a Federal regulatory official last inspect or evaluate the safety (structural integrity) of the management unit(s)? If you are aware of a planned state or federal inspection or evaluation in the future, when is it expected to occur? Please identify the Federal or State regulatory agency or department which conducted or is planning the inspection or evaluation. Please provide a copy of the most recent official inspection report or evaluation.
7. Have assessments or evaluations, or inspections conducted by State or Federal regulatory officials conducted within the past year uncovered a safety issue(s) with the management unit(s), and, if so, describe the actions that have been or are being taken to deal with the issue or issues. Please provide any documentation that you have for these actions.

8. What is the surface area (acres) and total storage capacity of each of the management units? What is the volume of materials currently stored in each of the management unit(s)? Please provide the date that the volume measurement(s) was taken. Please provide the maximum height of the management unit(s). The basis for determining maximum height is explained later in this Enclosure.

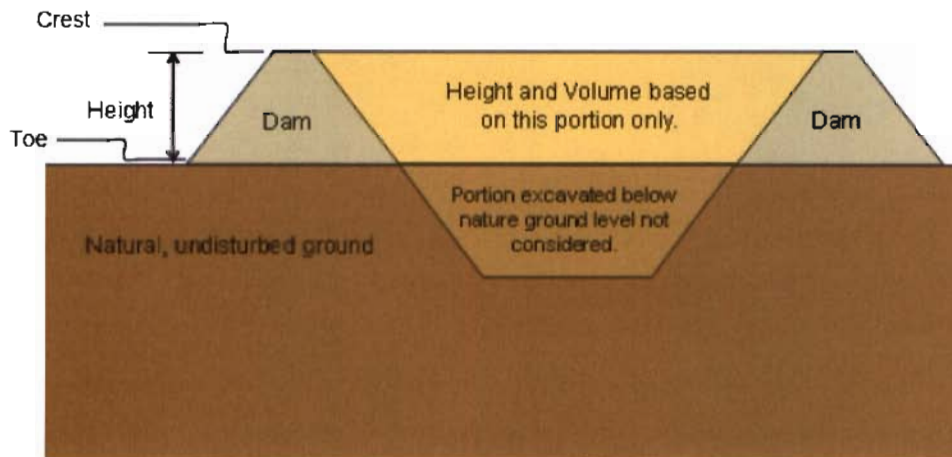
9. Please provide a brief history of known spills or unpermitted releases from the unit within the last ten years, whether or not these were reported to State or federal regulatory agencies. For purposes of this question, please include only releases to surface water or to the land (do not include releases to groundwater).

10. Please identify all current legal owner(s) and operator(s) at the facility.

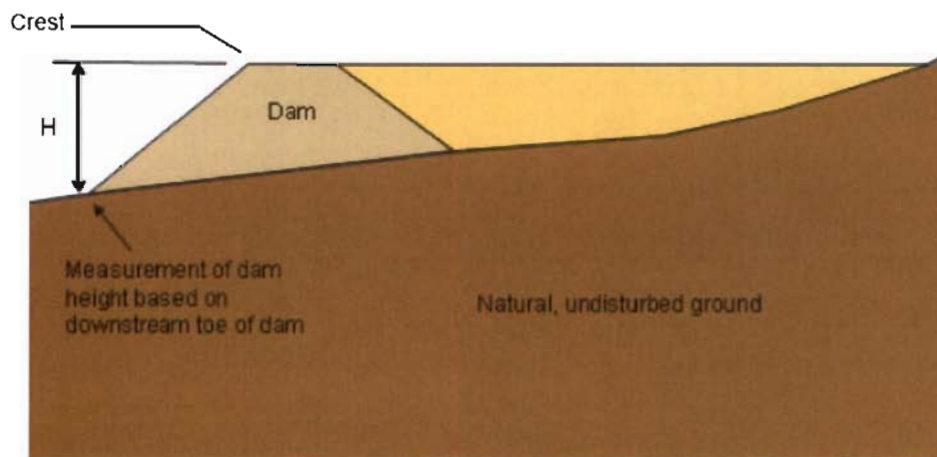
Enclosure (Cont'd)

Dam Height

Height of the dam, in feet to the nearest foot, which is defined as the vertical distance between the lowest point on the crest of the dam and the lowest point in the natural, undisturbed ground. See diagrams below.



NOTE: On slopes, the height of the dam should be measured from the downhill or downstream toe of the dam to the lowest point on the crest of the dam.



CERTIFIED MAIL/RETURN RECEIPT REQUESTED

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RE: Request for Information Under Section 104 (e) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9604(e)

Dear XXX

The United States Environmental Protection Agency has requested information from a number of your facilities relating to the surface impoundments or similar diked or bermed management unit(s) or management units designated as landfills which receive liquid-borne material from a surface impoundment used for the storage or disposal of residuals or by-products from the combustion of coal, including, but not limited to, fly ash, bottom ash, boiler slag, or flue gas emission control residuals. EPA has requested this information pursuant to the authority granted to it under Section 104 (e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9604(e) which provides in relevant part that whenever the Agency has reason to believe that there may be a release or a threat of a release of a pollutant or contaminant, they may require any person who has or may have information to furnish information or documents relating to the matter, including the identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed at the facility and the nature or extent of a release or a threatened release. EPA believes that the information requested is essential to an evaluation of the threat of releases of pollutants or contaminants from these units. EPA has required that your facilities provide EPA, within ten (10) business days of receipt of this letter, a response to each request for information, including all documents responsive to such request. A list of the facilities to whom we have sent information requests is contained in the Enclosure.

In addition, pursuant to Section 104 (e) of CERCLA, we request that you identify and furnish to EPA a list of any additional facilities in your corporation to whom we have not sent an information request and which have surface impoundments or similar diked or bermed management unit(s) or management units designated as landfills which receive liquid-borne material from a surface impoundment used for the storage or disposal of residuals or by-products from the combustion of coal, including, but not limited to, fly ash, bottom ash, boiler slag, or flue gas emission control residuals. If you have no additional facilities with such units, please respond by indicating that fact.

EPA believes that the information requested is essential to an evaluation of the threat of releases of pollutants or contaminants from these units. The provisions of Section 104 of

CERCLA authorize EPA to pursue penalties for failure to comply with or respond adequately to an information request under Section 104(e). In addition, providing false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. 1001.

Your response must include the following certification signed and dated by an authorized representative of (insert company name)

I certify that the information contained in this response to EPA's request for information and the accompanying documents is true, accurate, and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

This request has been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C., 3501-3520.

Please send your reply to:

Mr. Richard Kinch
US Environmental Protection Agency (5306P)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If you are using overnight or hand delivery mail, please use the following address:

Mr. Richard Kinch
US Environmental Protection Agency
Two Potomac Yard
2733 S. Crystal Dr.
5th Floor; N-56
Arlington, VA 22202 2733

If you have any questions concerning this matter, please contact Mr. Kinch in the Office of Resource Conservation and Recovery at (703)-308-8214. I appreciate your prompt attention to this critical matter and appreciate you making it a priority at the highest levels of your organization.

Sincerely,

Barry Breen
Acting Assistant Administrator

Enclosure

Enclosure: List of facilities in your corporation which have received an Information Request