

US EPA ARCHIVE DOCUMENT



May 22, 2009

Mr. Richard Kinch
U.S. Environmental Protection Agency
Two Potomac Yard
2733 South Crystal Drive
Fifth Floor; N-5783
Arlington, Virginia 22202-2733

Re: Response to Request for Information Regarding Lansing Smith Power Station

Dear Mr. Kinch:

On behalf of Gulf Power Company ("Gulf Power"), this responds to a letter from the Environmental Protection Agency ("EPA"), which was not dated but received by Gulf Power on May 11, 2009, requesting certain information regarding the management of coal combustion by-products ("CCPs") at Lansing Smith Power Station ("Plant Smith"). Gulf Power appreciates the purpose of EPA's review of current management practices at CCP impoundments across the electric utility industry, and we trust this response will assist EPA in that regard.

EPA has requested some information which Gulf Power does not ordinarily report or maintain for the use of any state or federal agency. Some of EPA's requests have required Gulf Power to gather, compile, and confirm information in a manner which is beyond its usual business practices. To provide complete and accurate responses, Gulf Power has relied on personnel and information located at the plants, at corporate headquarters, and at Southern Company Services, an affiliated company. Gulf Power has made a reasonable effort to ensure the accuracy and completeness of its responses within the short time demanded by EPA. Gulf Power reserves the right to supplement this response should the company determine it is appropriate to do so based on additional information or for other reasons.

Certain information included in Gulf Power's responses would raise homeland security concerns if publicly disclosed, and some of that information is also confidential commercial information. Accordingly, some of Gulf Power's responses are confidential or not otherwise subject to public disclosure for purposes of 5 U.S.C. § 552(b)(2), (4) and (7) and 18 U.S.C. § 1905. Gulf Power has provided the responses which include confidential information in a separate appendix. Gulf Power asserts a claim of

confidentiality for the information provided in all of these appendices and has marked them as confidential. Gulf Power provides the information marked as confidential on the condition that EPA not disclose the information publicly pursuant to the Freedom of Information Act or any other authority. Should EPA dispute Gulf Power's claim of confidentiality or consider disclosing the confidential information to any other party, please contact me immediately.

Enclosure B to your letter included the following instructions:

Include an explanation of your claim that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, referring to the applicable substantive criteria in 40 C.F.R. § 2.308. Specify the harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and substantial harmful effects.

At the present time, Gulf Power is responding to a request for information. EPA's regulations implementing the Freedom of Information Act ("FOIA") provide Gulf Power the opportunity to make a claim of confidentiality at such a time, *see* 40 C.F.R. § 2.203(b), as Gulf Power has provided above. The regulations do not require a substantiation of a claim of confidentiality at the time of responding to a request, as EPA has acknowledged publicly. 65 Fed. Reg. 80,394, 80,395 (Dec. 21, 2000) ("The CBI regulations generally do not require a business to submit a substantiation until disclosure becomes an issue."). EPA's letter received on May 11, 2009, did not purport to make a determination, preliminary or otherwise, on confidentiality, nor did it provide notice of a FOIA request for Gulf Power's information. Should EPA have cause to consider whether to afford confidential treatment to any of Gulf Power's information, we trust EPA will follow its own FOIA regulations, which provide for notice to Gulf Power under a range of scenarios. *See* 40 C.F.R. Part 2, Subpart B.

While an up-front substantiation of Gulf Power's claim is not required, Gulf Power nevertheless provides the following additional explanation in an effort to assist EPA in understanding the nature of Gulf Power's claim. By providing this explanation, Gulf Power does not suggest or concede that it has received any notice from EPA of any determination regarding confidential treatment of Gulf Power's information. Gulf Power is aware of no basis as yet to trigger the procedures of 40 C.F.R. § 2.204 and subsequent sections of EPA's regulations.

Gulf Power has two basic competitive concerns. Because of these competitive concerns, the confidential responses are subject to FOIA Exemption 4 and the Trade Secrets Act.

First is the exposure of an ash pond to potential wrongdoers. The confidential responses to questions 5 and 8 provide information that pertains directly to the structural integrity of Gulf Power's ash ponds; the size of the ash ponds; and the volume of materials contained in the ash ponds. A potential wrongdoer could take the information provided in Gulf Power's responses; supplement that information with other, publicly

available information; and identify the facility or facilities with the greatest vulnerabilities and consequences of a dam failure. EPA should not publicize or allow publication of the information it has obtained in a manner that enhances the ability of potential wrongdoers to cause harm.

Any failure of an ash pond has the potential to cause obvious direct impacts, including harm to Gulf Power's personnel and facilities, environmental impacts, and impacts to neighboring property. Damage to the ash pond may also impair a power plant's ability to use the structure until repairs can be completed. Without an effective ash pond, a power plant would be required to identify other means to store, sell, or otherwise dispose of coal combustion byproducts. Alternative disposal methods, such as the transport of coal combustion byproducts to a third party's Subtitle D landfill, have the potential to increase costs significantly.

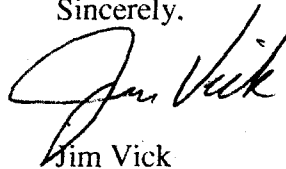
Second, Gulf Power actively markets coal combustion byproducts for beneficial uses. Information pertaining to the remaining capacity of the ash ponds as requested by question 8 is competitively sensitive because it allows potential purchasers of coal combustion byproducts to assess the availability to Gulf Power of competing disposal or storage options.

Public disclosure of Gulf Power's confidential responses also raises homeland security issues for many of the same reasons provided above. Accordingly, the confidential responses are subject to FOIA Exemptions 2 and 7(F).

Gulf Power has gathered information to respond to EPA's request in consultation with legal counsel. Providing this information does not constitute any waiver of the attorney-client privilege or any other applicable claim of confidentiality with respect to communications, documents, or any other information of Gulf Power. Gulf Power provides this response on a voluntary basis. Gulf Power does not concede the authority of EPA to compel disclosure of the information provided or to require a certification pursuant to CERCLA Section 104(e), nor does Gulf Power waive any other right or privilege it may possess.

Please direct all future correspondence regarding this and related matters to: Jim Vick, c/o Gulf Power Company, One Energy Place, Pensacola, Florida 32520-0328.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Vick", is written over a horizontal line.

Jim Vick

Environmental Affairs Director

Enclosures

GULF POWER COMPANY RESPONSES TO EPA QUESTIONS
REGARDING MANAGEMENT OF COAL COMBUSTION BY-PRODUCTS

LANSING SMITH PLANT
May 22, 2009

Note: The text of EPA's questions is included below in *italics*. Gulf Power's responses are provided in plain text.

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 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.*

The Plant Smith ash pond is not rated on the NID.

2. *What year was each management unit commissioned and expanded?*

The Plant Smith ash pond was commissioned in 1965. There have been no expansions of the ash pond.

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).*

The Plant Smith ash pond currently contains: Fly Ash, Bottom ash, boiler slag, flue gas emission control residuals and other permitted low volume wastes as allowed by 40 CFR 423.11.

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?

Gulf Power's review does not indicate the professional qualifications and credentials of those associated with the original design and construction of the Smith ash pond in 1965; however the management unit was built to generally accepted engineering standards at the time of construction and is supported by an operational history of more than 44 years. The inspection and monitoring of the safety of the management unit is conducted by plant personnel who are not required to be P.E.'s. Gulf Power submits annual certifications to the Florida Department of Environmental Protection, as required by NPDES Permit #FL0002267, that no breaches or structural defects resulting in discharges to surface water of the State have occurred.

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?*

[Response provided in an appendix.]

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.*

An inspection was conducted by the Florida Department of Environmental Protection on February 5, 2009. At the close of the inspection, Gulf Power was informed by the agency that the ash management units were in compliance. A copy of the inspection has not yet been received.

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.*

No.

8. [Response provided in an appendix.]

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).*

To our knowledge, there have been no known unpermitted spills or releases from the Plant Smith ash pond in the last ten years.

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

Gulf Power Company is the owner and operator of this facility.

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**CONFIDENTIAL BUSINESS INFORMATION
NOT SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT**

CONFIDENTIAL APPENDIX

**GULF POWER COMPANY RESPONSES TO EPA QUESTIONS
REGARDING MANAGEMENT OF COAL COMBUSTION BY-PRODUCTS**

LANSING SMITH PLANT
May 22, 2009

Note: The text of EPA's questions is included below in *italics*. Gulf Power's responses are provided in plain text. This confidential appendix provides only those questions and responses for which the response includes information subject to a claim of confidentiality.

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.

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?*

The last safety/structural integrity inspection was conducted on January 14, 2009. The inspection was conducted by a geologist from Gulf Power Company's affiliate, Southern Company Services. The inspector is a licensed Professional Geologist in Georgia, who has over thirty years of experience, and specializes in dam safety. The inspection did not identify any issue requiring corrective action with respect to the structural integrity of the pond or which would otherwise affect continued safe operations. The recommendations made as a result of the most recent dam safety inspection of the Plant Smith Ash Pond can all be classified as maintenance or monitoring activities that will be addressed by facility personnel in the course

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of their normal duties. The company is evaluating plans to conduct a survey of the crest elevation, followed by grading and maintenance of the dike crest to prevent ponding of water and to direct surface drainage into the ash pond. The company continues to review and implement vegetation management activities related to the Plant Smith Ash Pond.

Plant personnel visually monitor the ash pond on a weekly basis with an in-depth inspection annually. The next in-depth annual inspection will be conducted no later than December 2009 at a date to be determined.

8. *What is the surface area (acres) and the total storage capacity of each of the management units? What is the volume of material 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.*

The Plant Smith ash pond is subdivided into three internal cells.

Approximate Acres: 172 Total East Cell 79.2 acres Middle Cell 35.4 acres
Southwest Cell 57.6 acres

Approximate Total Storage Capacity: 4,212,716 cy

Approximate Volume Stored: 3,278,089 cy

Approximate Maximum Height: 19.85 ft

Date Volume Measurement taken: March 17, 2009

Measurement volume calculated on March 24, 2009.