

Justification Statement
Information Collection Request for EPA's Assessment of Coal Combustion Waste Impoundments (EPA ICR No. 2350.01, OMB Control No. 2050-NEW)

Purpose

In this information collection request, the Office of Solid Waste and Emergency Response (OSWER) seeks approval to require owners/operators of management units^a that contain coal combustion residues or by-products that are located at or receive residuals or by-products from electric utilities that burn coal, to submit information to the U.S. Environmental Protection Agency (EPA) in order to assist the Agency in the assessment of the structural stability of such units. This is a time-critical assessment; the information is urgently needed to determine if and where corrective measures are required to prevent further harm to public health and the environment. Through these assessments and corrective measures at the units, as appropriate, EPA seeks to prevent another catastrophic failure, such as the one which occurred at the Tennessee Valley Authority's Kingston, Tennessee facility in December 2008.

EPA seeks to collect the information in the Attached CERCLA 104(e) Information Request letters. (Attachment's A and B).

Justification

EPA's work on assessing coal combustion impoundments at coal fired electric utilities began immediately after the catastrophic Kingston release. In this event, more than 5 million cubic yards (1.1 billion gallons) of coal ash slurry waste was released, traveling across at least 300 acres of property, damaging homes and flowing into the Emory and Clinch rivers, resulting in fish kills. In addition, the spill has necessitated substantial monitoring of drinking water wells. It was fortunate that no lives were lost in this particular incident, although release of this magnitude could have resulted in a loss of life. While EPA does not yet have a total cost for the emergency response, monitoring activities, and ultimate clean up and restoration of the contaminated land, TVA estimates costs for the clean up range between \$525 million and \$825 million; this estimate does not include long term remediation costs.

In order to prevent a similar catastrophic failure, and prevent further large-scale harm to the environment and public health, including costly response and remediation actions, EPA's Administrator, Lisa P. Jackson, in her confirmation hearing, committed to immediately assess the stability of similar impoundments to ensure that catastrophes like the one that occurred at TVA's Kingston facility do not occur. EPA has worked with other federal and State agencies, as well as using the information already in our other data bases to develop a baseline inventory of coal combustion impoundments; however, the data available from existing federal and State sources

^a The types of units to be addressed in this information collection request are surface impoundments or similar diked or bermed management units or management units designated as landfills which received liquid-borne material from a surface impoundment used for the storage or disposal of residuals or by-products from the combustion of coal. We will refer to these management units as "impoundments" in the information collection request.

and the Agency's other data bases do not provide us with the information needed to design an effective assessment strategy, to identify highly vulnerable impoundments that deserve priority attention, or to identify impoundments that warrant lower priority. The responses to these requests will provide basic information on the size of the impoundments, their potential threat, and a record of assessments (including summaries of assessment reports). Specifically, the information requested in Attachment's A and B are designed to provide EPA with a list of the universe of management units and critical data about them in order to develop a plan that prioritizes the work that EPA will perform, including which units are most vulnerable and should be assessed immediately. The collection of information from units that the National Inventory of Dams rates as High, Significant, Low or Less than Low Hazard Potential will provide EPA with an understanding of the conditions at these units and the level of engineering evaluations and oversight that their ongoing operation and maintenance have received, both from within the facility and from regulatory bodies. The type of materials stored, the volume, location and history of releases at these units are all relevant factors which EPA will consider as it prioritizes its assessments of these units.

EPA, in cooperation with other Federal agencies through the Interagency Committee on Dam Safety, will review information provided in response to this survey, together with other available information to provide critical background information for experts doing follow-up assessments, and to identify impoundments or similar units warranting priority attention, as well as units that have had recent assessments by appropriately qualified experts, and therefore don't warrant the same attention. Thus, EPA will be able to develop a cost-effective coal ash impoundment assessment strategy based on the information provided. The information provided will also allow the Agency's contractors to assess specific impoundments to focus on identified issues of concern, and generally to target their assessments. Without this information up front, EPA will waste considerable time and effort in developing an assessment strategy and in assessing individual impoundments, since it will not be able to set priorities in a meaningful fashion, and since the contractors will not have readily available information from prior assessments.

The respondents for this information collection are the owners/operators of coal-fired electric power plants in the United States. The information request letters (Attachment's A and B) are attached to this justification.

Use of Improved Information Technology to Reduce Burden

There are no plans to provide for the electronic filing as it may be difficult for certain types of information requested to be transmitted this way.

Assurance of Confidentiality of Responses

The information requested is not considered to be confidential.

Consultation with Individuals Outside the Agency on Availability of Data, Frequency of Collection, Clarity of Instructions and Forms and Data Elements

Periodic and informal consultations between EPA and the Federal Emergency Management Agency's Interagency Committee on Dam Safety, U.S. Army Corps of Engineers (Dam Inventory), and the Association of State Dam Safety Officials were held to discuss the type of information being requested and the availability and efficiency by which it could be obtained. We have also consulted with the Utility Solid Waste Activities Group, an industry trade association, to provide a list of impoundments and ascertain the types of information utilities are likely to have readily available. This input, along with professional judgment was used to determine the adequacy of the information requested along with the estimate of burden on the respondents.

Attachment A: Draft CERCLA 104(e) Facility Information Request Letters

DRAFT INFORMATION REQUEST LETTER

Via CERTIFIED MAIL/RETURN RECEIPT REQUESTED

XXXX
XXXX
XXX
XXXX

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.

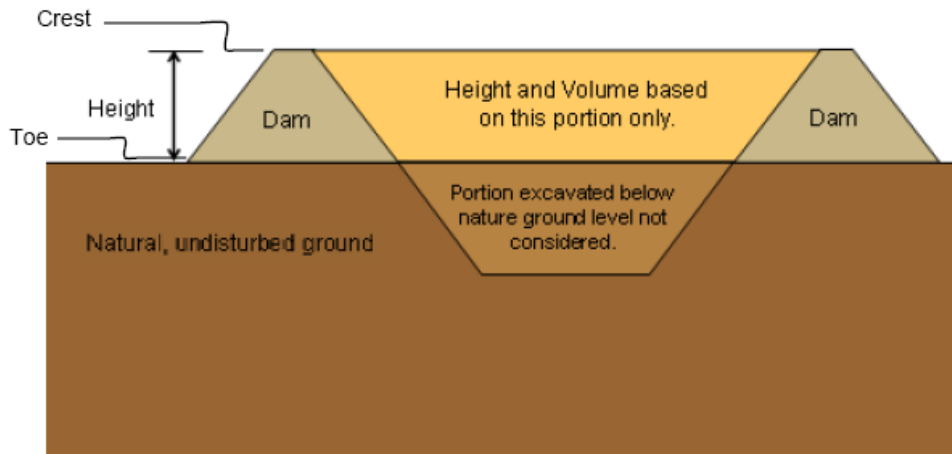
9. Please provide a brief history of known spills or unpermitted releases from the unit within the last ten years, whether or not these were reported to State or federal regulatory agencies. For purposes of this question, please include only releases to surface water or to the land (do not include releases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

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

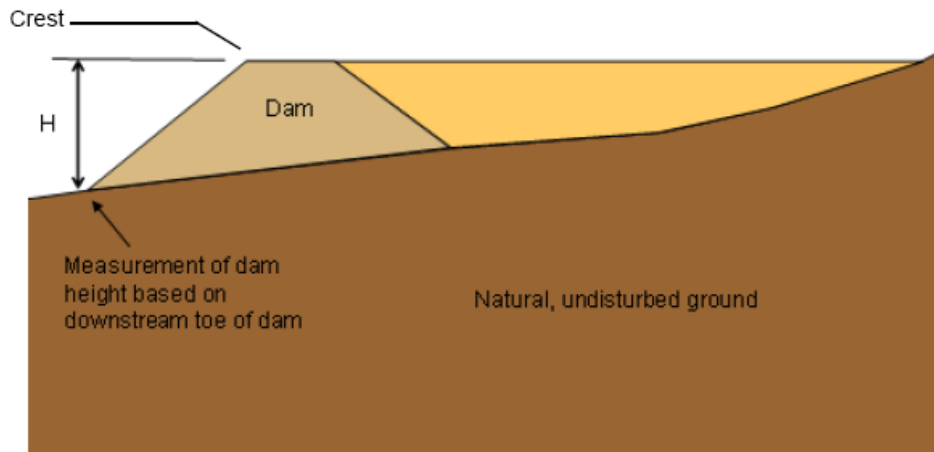
Enclosure (Cont'd)

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
LETTER TO CORPORATE HQ

XXXX
XXXX
XXXX

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

Burden/Cost Estimate for Respondents

The respondents for this information collection are the owners/operators of surface impoundments that contain coal combustion residues or by-products at coal fired electric utility companies in the United States (referred to as “facility respondent”), as well as the corporate offices of those facilities (referred to as “corporate respondent”). Using data obtained from the Department of Energy and from our State partners, EPA has identified 163 specific facilities (facility respondents) with approximately 300 impoundments and 77 associated corporate offices (corporate respondents). We continue to refine our inventory and so the number of facility respondents may change; however, we believe that the number of specific facility respondents that will need to respond to this information collection request will not exceed 225. This ICR is a one time data request and the burden relates to collecting the information identified in the information request letters in Attachments A and B.

To respond to this ICR, we estimate that the affected specific facility respondents will incur a total labor burden of approximately 10 hours to answer the specific questions, while the corporate respondents will incur a total labor burden of approximately 2 hours to address and provide to EPA the names, addresses and point of contact for other facilities that contain coal combustion residuals in management units that EPA missed in its mailings. This assumes that each facility respondent has approximately 2 units and it takes approximately 5 hours (including 3 hours of staff time to assemble the documents and 2 hours of management review time) to complete the response for each unit and each corporate respondent takes approximately 2 hours (including 0.5 hours of staff time and 1.5 hours of management review time). Note that our information collection request is for information that the facility should easily have accessible in its files; we are not requesting the company to perform any additional monitoring or testing or develop any new documentation. In addition, we believe that there are some units that may no longer receive coal combustion residues or by-products, but still contain free liquids at these facilities. We are estimating that perhaps as many as 30 units fit this description. Thus, our best estimate for the hour burden for this ICR is approximately 2,554 hours (10 hours X 225 facility respondents plus 2 hours X 77 corporate respondents plus 5 hours X 30 units that no longer receive coal combustion residues or by-products, but still contain free liquids).

For this ICR, the labor rate used for managerial employees is calculated at a GS-14, step 1 (\$45.52 per hour—using the “rest of the US” table) and the labor rate for staff is \$29.20. This labor rate is based on data on the U.S. Department of Labor, Bureau of Labor Statistics web site at <http://www.bls.gov>. When considering both managerial and worker hours, labor costs are estimated to be \$92,128.96 [assuming 195 facility respondents with 2 units at \$357.28 per respondent plus 30 facility respondents with 3 units at \$535.92 per respondent plus 77 corporate respondents at \$82.88 per respondent].

Burden/Cost Estimate for the Federal Government

The burden to the Federal government to send, receive, process, and follow up on the requests is 76 hours (8 hours to send the letters, 60 hours to process the information - 15 minutes per letter -- and 8 hours for follow up). This does not include subsequent analyses, site visits, or

dam safety assessments the Agency may take based on the results. Using a mid-step GS-13 at an hourly rate of \$78.82 ($\49.26 base hourly rate $\times 1.6 = \$78.82$ standard loaded labor cost), the cost to EPA is \$5,990.32.