

## **EPA Targets Electric Utilities**

The agency steps up efforts to manage coal ash damage.

By Lynn Bergeson, Regulatory Editor  
*Chemical Processing*, November 2009

Approximately 5.4 million cubic yards, or 1.1 billion gallons, of coal ash from the Tennessee Valley Authority (TVA) plant near Knoxville, Tenn., in December 2008 flooded some 300 acres of land, damaging property, polluting waterways, and killing fish. TVA will likely spend more than \$500 million and perhaps as much as \$1 billion dollars on the cleanup, says the U.S. Environmental Protection Agency (EPA). The TVA debacle was EPA's wake-up call for potential hazards presented by coal ash staged in some 584 units at approximately 219 domestic electric utilities.

### **A Symptom of Accumulation**

Coal ash has been accumulating for years at U.S. electric utilities. It's the residual typically contained in surface impoundments and similar land management units from coal-fired power plants generating electricity. The coal ash released at TVA's Kingston Fossil Plant accumulated over 50 years and rose to more than 65 feet.

"Coal ash management is an immediate EPA priority."

Ash can be stored wet or dry. TVA used wet storage, and last December, an earthen dam burst, spilling the ash over land. While such incidents are uncommon (four similar events have occurred over the past five decades), they are messy, costly, controversial and certainly memorable.

Coal ash isn't regulated as a hazardous waste under the federal Resource Conservation and Recovery Act (RCRA). Congress asked EPA in 1980 whether it should be regulated and in 1993, EPA responded "no." In 2000, EPA proposed regulating coal ash not as a hazardous waste, but under stricter management standards. Cost of the proposed rule to the electric utility industry inspired fierce opposition, and EPA relented. In 2006, a National Research Council study found that coal ash contains metals and other constituents in quantities that could pose a health risk if improperly managed. Still, however, additional regulatory controls weren't forthcoming, until now.

### **EPA's Plan**

The coal ash release ignited renewed calls for stricter regulation. In January, Senate Committee on Environment and Public Works Chair Barbara Boxer (D-CA) convened a hearing to explore the scope of the problem. Boxer noted that the issue isn't whether the material is considered hazardous waste or not, but rather what measures are or should be in place to control the material and prevent releases. Boxer by issuing Senate Resolution 64 directed Lisa Jackson, EPA administrator, to look into the matter.

Jackson, on March 9, announced EPA's new program to address the TVA release and prevent

future ones. EPA will gather and assess information from electric utilities and develop additional regulatory measures to prevent future mishaps.

EPA requested on March 9, information from electric utilities about the structural integrity their surface impoundments or similar land units. EPA also will compel repairs, where needed. The information request was made under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), authorizing EPA to impose penalties for failure of adequately and timely responses to the request. Among other questions, EPA asks when was the last time a state or federal regulatory official inspected the coal ash management unit, when did the company last assess or evaluate the safety of the management unit, and does the company have professional engineer's certification for the safety of the unit?

EPA intends to issue a proposed rule outlining new regulations to address management of coal combustion residuals. Presumably, information contained in the CERCLA Section 104 letters will be used to develop new regulations.

EPA publicly released information from electric utilities on management of coal combustion residuals on September 8. EPA also announced that it was assessing "all of the units that have a dam hazard potential rating of 'high' or 'significant' in the responses provided by utilities to EPA's information request." More information is available at [www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys/index.htm](http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys/index.htm).

Rep. Ed Markey (D-MA), on October 20, requested information on EPA's "findings" related to health and environmental risks posed by coal ash. Markey is chair of the House Energy and Commerce Committee's Subcommittee on Energy and the Environment, which has jurisdiction over protection of drinking water.

The TVA spill made coal ash management an immediate priority in the Jackson Administration. Coal ash management standards may well now be part of Jackson's legacy to environmental protection.

*Lynn Bergeson is Chemical Processing's Regulatory Editor. You can e-mail her at [lbergeson@lawbc.com](mailto:lbergeson@lawbc.com). Lynn is managing director of Bergeson & Campbell, P.C., a Washington, D.C.-based law firm that concentrates on chemical industry issues. The views expressed herein are solely those of the author. This column is not intended to provide, nor should be construed as, legal advice.*