U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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February 10, 2009

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

Congratulations on your recent confirmation as Administrator of the United States Environmental Protection Agency.

The recent spills at two of the Tennessee Valley Authority's (TVA's) power plants have raised questions about whether federal regulations are adequate to protect the public from risks associated with coal ash disposal. We appreciate your commitment to consider stricter standards, and request your assistance obtaining information that would help the Committee to evaluate the human health and environmental risks produced by certain coal combustion waste storage and disposal practices.

On August 29, 2007, the United States Environmental Protection Agency (EPA) published in the Federal Register a draft risk assessment of existing ash disposal impoundments and landfills. This draft risk assessment assumes that cancer risks resulting from exposure to the carcinogens in coal ash should be considered "unacceptable" where such exposure is expected to result in a one in one hundred thousand chance of developing cancer.

However there is evidence that the disposal of ash in some surface impoundments may result in excess cancer risks from arsenic as high as approximately one in one hundred, based on the model used in the EPA's draft risk assessment. Similarly, the non-cancer human health risks at some disposal sites were up to four times greater than levels generally considered acceptable by EPA. The risk assessment model is based on evaluation of specific sites that were identified by matching data from a voluntary industry survey to the information available to the EPA from other sources.

1. We request that the EPA provide the Subcommittee on Water Resources and Environment with the identity and location of the sites evaluated in the risk assessment, along with the cancer and non-cancer risks estimated for each of the identified sites, as well as their potential link to surface or ground water.

It has come to our attention that specific ash disposal sites may be discharging toxic metals and other pollutants to surface water, either directly through pipes, conduits, ditches, or other point sources, or indirectly through the contamination of groundwater that migrates to nearby rivers and streams. These releases are in potential violation of the Clean Water Act (33 USC 1251 et seq.), the Safe Drinking Water Act (42 USC 300f et seq.), and the Resource Conservation and Recovery Act (42 USC 6901 et seq.).

2. While the EPA evaluates the need for additional regulation, we would appreciate your assurance that it will investigate violations of the Clean Water Act and other federal laws at existing ash disposal sites, and take appropriate enforcement action where serious violations have been identified.

Over the past eight years, the Agency has frequently relied on voluntary industry surveys to provide the factual bases for writing rules that protect the public health. While voluntary surveys may provide useful information, Congress has provided the EPA with the authority to request the data it needs to enforce existing law and write new regulations, including the authority under section 308 of the Clean Water Act to require monitoring and sampling as needed. It would be helpful to know how the EPA plans to exercise its statutory authority in the wake of the releases from TVA's Kingston and Widows Creek facilities. More specifically:

3. Does the EPA agree that it has the authority to order sampling and monitoring at or near coal ash disposal sites, where needed to enforce laws or obtain data needed to evaluate or revise regulations?

4. Has the EPA issued requests for information to TVA to determine whether that Agency's storage, disposal, or treatment of coal ash or other coal combustion waste may have violated the Clean Water Act, the Safe Drinking Water Act, or Resource Conservation and Recovery Act at the Kingston or Widows Creek sites, or at other facilities owned or operated by TVA? If so, please provide the Subcommittee with copies of such information requests, or any responses or data received to date.

5. Has the EPA issued requests for information to any other utility, power company or power plant within the last eight years to determine whether that the storage, disposal, or treatment of coal ash or other coal combustion waste is in violation of the Clean Water Act, the Safe Drinking Water Act, or RCRA? If so, please provide the Subcommittee with copies of such information requests, and any responses or data received to date.

6. Within the past eight years, has the EPA issued any request to TVA or any other utility, company, or power plant to monitor or sample for the presence of pollutants in coal ash or coal combustion wastes, or in groundwater or surface water adjacent to

such sites? If so, please provide the Subcommittee with copies of such information requests, and any responses or data received to date.

7. An EPA review of select sites in July of 2007[1] confirmed that some ash impoundments or landfills were known to have caused damage to groundwater or surface water, some had the potential to cause such damage, while the status of still others was "indeterminate." Some of the analysis appears to rely on information that is out of date or very limited in scope. Has the Agency taken any action to determine whether the data used to support the conclusions in its review was accurate, complete, or up to date?

8. We request that EPA order sampling and monitoring of all sites identified in EPA's July 2007 review that are known to have caused damage to groundwater or surface water, that had potential to cause damage, or of which the status of damage was "indeterminate." Please provide the Subcommittee with the results of this sampling and monitoring, as well as a schedule by which we can expect to receive results.

Please provide the requested information to the Subcommittee on Water Resources and Environment as it becomes available, but in no event later than February 24, 2009. If you have any questions, please contact Ben Webster of the Subcommittee at 202-225-0060.

Sincerely,

Jim Oberstar

James L. Oberstar
Chairman
Committee on Transportation
and Infrastructure

Eddie Bernice Johnson

Eddie Bernice Johnson
Chairwoman
Subcommittee on Water Resources
and Environment

[1] US EPA, Office of Solid Waste. *Coal Combustion Waste Damage Case Assessments.* (July 9, 2007)