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May 15, 2009

VIA OVERNIGHT DELIVERY – MONDAY DELIVERY

Mr. Richard Kinch
US Environmental Protection Agency
Two Potomac Yard
2733 S. Crystal Dr.
5th Floor: N-5738
Arlington, VA 22202-2733

RE: Response to Request for Information Under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act

Dear Mr. Kinch:

On May 15, 2009, the Nelson Dewey Generating Station, a facility owned and operated by Wisconsin Power and Light Company ("WPL"), on whose behalf this response is submitted, received a "Request for Information Under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act" (hereinafter "Request") from the United States Environmental Protection Agency ("EPA"). EPA's Request was undated. EPA's Request required a response within 10 business days of receipt; therefore, this response is timely filed.

EPA's Request seeks information relating to Nelson Dewey Generating Station's 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 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 seeks responses to ten specific questions set forth in Enclosure A to the Request.

This letter and the enclosed documents respond to EPA's Request. WPL has made diligent and good faith efforts to provide documents and information that are in its possession and which WPL could reasonably collect and prepare for production within the timeframe allotted.

A. General Objections

Based on its review of and good-faith efforts to respond timely to the Request, WPL wishes to note for the record that it has several objections to the form and content of the Request.

WPL objects to the Request on the grounds that it is unduly burdensome and overly broad, seeks irrelevant information, is vague and unclear in its scope, requires legal conclusions to be made, and is otherwise unreasonable, thereby exceeding EPA's authority under CERCLA Section 104(e).

WPL objects to the Request to the extent that it seeks information beyond the scope of EPA's authority under Section 104(e) of CERCLA. Section 104(e) authorizes EPA to request, upon reasonable notice, information or documents relating to the following:

1. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
2. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
3. Information relating to the ability of a person to pay for or to perform a cleanup.

WPL does not object to questions relating to the (1) type and quantity of materials stored, temporarily or permanently, in the surface impoundments and (2) nature and extent of actual releases or threatened releases; however, WPL believes that the other questions in the Request, e.g., structural integrity, dates of commissioning/expansion, PE certifications, etc., are beyond the scope of EPA's authority under Section 104(e).

WPL also objects to the extent that the Request seeks information that may be subject to attorney-client privilege or other applicable privilege, or which constitutes protected attorney work product, or which is otherwise not discoverable.

Where the questions in the Request are vague, ambiguous, overbroad, or beyond the scope of EPA's CERCLA Section 104(e) authority, WPL has made appropriate and reasonable efforts to provide responsive information to the best of its ability to interpret the questions. Subject to and without waiving its objections, WPL states that it is providing information at this time based on its review conducted in response to the specific items in the Request. In the event that WPL discovers additional responsive material, it will submit such material to EPA as soon as reasonably possible.

Because EPA has requested that WPL respond to this request within only 10 business days, WPL has not had the opportunity to determine whether the responsive contents of this letter constitute **"confidential business information,"** as defined by 40 CFR Part 2,

Subpart B. Therefore, with the exception of the Wisconsin Department of Natural Resources inspection report provided in response to item number 6 of EPA's Enclosure A, WPL requests that **EPA treat this letter and the narrative responses within as "confidential business information."**

Finally, WPL objects to the following phrase as vague, unclear, and ambiguous: "surface impoundment or similar diked or bermed management unit(s) or management units designated as landfills which receive liquid-borne material for storage or disposal of residual or by-products from the combustion of coal." For purposes of this Request, WPL interprets this phrase to mean:

1. Any surface impoundment that directly receives coal combustion by-products (CCB) in a liquid-borne manner (i.e., water mixed with ash) from the coal combustion process in the boiler, as well as any subsequent surface impoundments through which this CCB and water mixture may pass before the water exits the CCB management units via the NPDES permitted discharge point. This includes current operating CCB management units, as well as any surface impoundments which historically received CCB and which still contain free liquids.
2. WPL's interpretation of this phrase does not include storm water retention ponds, coal pile runoff retention ponds, cooling water ponds, etc. which may contain small incidental amounts of CCB which was transmitted via rain waters or as fugitive dust. These ponds and impoundments were neither designed nor intended for temporary or long-term storage or disposal of CCB.

B. <u>Specific Responses to Items in Enclosure A</u>

1. Relative to the National Inventory of Dams criteria for High, Significant, Low, or less-than-Low Hazard Potential, 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.

a. <u>WPDES Pond</u>: Based on its review of readily available records and interviews with long term staff, WPL has not identified that this pond was ever rated relative to the "National Inventory of Dams" criteria by any federal or state regulatory agency.

b. <u>Slag Pond</u>: Based on its review of readily available records and interviews with long term staff, WPL has not identified that this pond was ever rated relative to the "National Inventory of Dams" criteria by any federal or state regulatory agency.

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

a. WPDES Pond: Commissioned in 1976; modified in 1999.

b. Slag Pond: Commissioned in 1959; modified in 1976; modified in 1996.

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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).

a. WPDES Pond: Materials temporarily or permanently contained are

- Fly/Economizer ash
- Slag from washing of boilers
- Other: boiler water wash, air heater wash (fly ash), storm water runoff from site, and coal pile runoff.

b. Slag Pond: Materials temporarily or permanently contained are

- Fly/Economizer ash
- Slag
- Other: slag transport water, boiler water wash, air heater wash (fly ash), steam grade water production wastewaters, storm water runoff from plant grounds, coal pile runoff, plant floor drains, and boiler blowdown (steam/water).

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4. Was the management unit(s) designed by a Professional Engineer? Is or was the construction of the waste management (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?'

a. WPDES Pond:

- Based on review of readily available records, the pond was designed by a Professional Engineer.
- Based on review of readily available records, the pond was constructed/modified under the supervision of a Professional Engineer.
- Inspection and monitoring of the safety of the pond is not under the supervision of a Professional Engineer.

b. Slag Pond:

- Based on review of readily available records, the pond was designed by a Professional Engineer.
- Based on review of readily available records, the pond was constructed/modified under the supervision of a Professional Engineer.
- Inspection and monitoring of the safety of the pond is not under the supervision of a Professional Engineer.

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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?

a. WPDES Pond:

- WPL conducted a visual structural inspection on March 3, 2009.
- The assessment team inspecting the pond on March 3, 2009, consisted of a Civil Engineer; Senior Environmental Specialist; and a Plant Environmental and Safety Specialist.
- The March 3, 2009, inspection recommended the removal of some small trees/wood debris and some animal control measures that will be accomplished by December 31, 2009, by plant personnel or contractors working under the direct supervision of plant personnel.
- WPL currently has no future assessment/evaluation formally scheduled, but has developed an internal evaluation program which will include periodic assessments.

b. Slag Pond:

- WPL conducted a visual structural inspection on March 3, 2009.
- The assessment team inspecting the pond on March 3, 2009, consisted of a Civil Engineer; Senior Environmental Specialist; and a Plant Environmental and Safety Specialist.
- The March 3, 2009, inspection recommended the removal of some small trees/wood debris and some animal control measures that will be accomplished by December 31, 2009, by plant personnel or contractors working under the direct supervision of plant personnel.

- WPL currently has no future assessment/evaluation formally scheduled, but has developed an internal evaluation program which will include periodic assessments.

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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.

a. WPDES Pond:
   - This pond is part of a wastewater management unit subject to a WPDES permit. The Wisconsin Department of Natural Resources performed a Facility Wastewater Inspection on August 30, 2007. The inspection report does not include an evaluation of the structural integrity of the pond.
   - WPL is not aware of any planned state or federal regulatory agency future inspection to evaluate the safety (structural integrity) of this pond.
   - A copy of the Wisconsin Department of Natural Resources Facility Wastewater Inspection report is attached for your awareness.

b. Slag Pond:
   - This pond is part of a wastewater management unit subject to an NPDES permit. The Wisconsin Department of Natural Resources performed a Facility Wastewater Inspection on August 30, 2007. The inspection report does not include an evaluation of the structural integrity of the pond.
   - WPL is not aware of any planned state or federal regulatory agency future inspection to evaluate the safety (structural integrity) of this pond.
   - A copy of the Wisconsin Department of Natural Resources Facility Wastewater Inspection report is attached for your awareness.

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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.

a. WPDES Pond: There have been no assessments, evaluations, or inspections by a state or federal regulatory agency within the past year.

b. Slag Pond: There have been no assessments, evaluations, or inspections by a state or federal regulatory agency within the past year.

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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 was taken. Please provide the maximum height of the management unit(s). The basis for determining maximum height is explained later in this Enclosure.

a. WPDES Pond:
- Surface area: 4.65 acres
- Total storage capacity: 42,600 cubic yards; measurement date – 1999.
- Volume of materials stored: 7,500 cubic yards; measurement date – April 2009.
- Maximum height of management unit: 7- 10 feet

b. Slag Pond:
- Surface area: 4.35 acres
- Total storage capacity: 32,000 cubic yards; measurement date – 2006.
- Volume of materials stored: 7,000 cubic yards; measurement date – April 2009.
- Maximum height of management unit: 10 feet

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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).

a. WPDES Pond: WPL is not aware of any known spills or unpermitted releases from this pond within the past 10 years. For purposes of this question, all discharges exiting the pond via the discharge point governed under the NPDES permit, including any water quality exceedances, are interpreted to be "permitted releases".

b. Slag Pond: WPL is not aware of any known spills or unpermitted releases from this pond within the past 10 years. For purposes of this question, all discharges exiting the pond via the discharge point governed under the NPDES permit, including any water quality exceedances, are interpreted to be "permitted releases".

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

a. The Operator is: Wisconsin Power and Light Company

b. The Owner is: Wisconsin Power and Light Company

C. **Confidentiality of WPL's Response.**

As noted above, WPL requests that EPA treat the information submitted herein as "confidential business information".

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Please find attached the affidavit of John Larsen, Vice President-Generation, that is being submitted with this response to the information request. Please feel free to contact me at (319) 786-4686 if you have any questions concerning this response.

Very truly yours,

Daniel L. Siegfried
Managing Attorney

Enclosure: Wisconsin DNR WPDES Inspection Report dated December 14, 2007.

Certification

I certify that the information contained in this response to EPA's request for information and the accompanying documents is, based on my personal belief and my knowledge of the actions taken to respond to the information request and subject to the explanation that follows, true, accurate, and complete. The response points out ambiguities and other difficulties in responding to the request, and where that is true, a good faith effort has been made to provide information that is reasonably available and responsive to the request. As to the 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 reasonably 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: John O. Larsen

Title: Vice President - Generation