

EPA Lists 44 "High Hazard Potential" Coal Ash Impoundments

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On June 29, 2009, the U.S. Environmental Protection Agency (EPA) identified 44 coal combustion residual (CCR) impoundments as having "high hazard potential." EPA said that "[a] high hazard potential rating indicates that a failure will probably cause loss of human life." EPA's [list](#) is based on information that electric utility companies submitted in response to EPA's March 9, 2009 [request](#). 18 of the 44 sites are in Ohio, Kentucky, West Virginia, and Pennsylvania.

As outlined in our [April 16, 2009 Dinsmore & Shohl Legal Alert](#), CCRs, commonly known as "coal ash," are often stored in liquid form in pond-like management units, which have come under public scrutiny since the breach of one such Tennessee facility in December 2008. Lawmakers, regulators, public interest groups, and plaintiffs' attorneys have seized upon these developments.

Importantly, EPA's [announcement](#) states that "[a] high hazard potential rating is not related to the stability of those impoundments but to the potential for harm should the impoundment fail." The purpose of compiling the list was to "identify and reduce potential risks" and to give the 44 units "high priority attention as EPA continues its assessment of impoundment safety."

However, the language in the announcement and the list itself are likely to invite additional litigation and regulation even in the absence of a massive containment failure. EPA Administrator Lisa P. Jackson said in the announcement, "The presence of liquid coal ash impoundments near our homes, schools and business could pose a serious risk to life and property in the event of an impoundment rupture." She also renewed EPA's earlier commitment to propose regulation on the management of coal combustion wastes by December 31, 2009.

EPA continues its investigation of the vulnerabilities of CCR impoundments nationwide "and will require appropriate action at any facility that is found to pose a risk." EPA has prioritized the review of the "high hazard potential" impoundments and plans to make public the assessments upon completion.