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**Sent:** Friday, August 24, 2012 12:16 PM  
**To:** mtammaro@rtenv.com  
**Subject:** FEDERAL JUDGE RULES - TVA IS LIABLE FOR 2008 COAL ASH SPILL; RT'S PRESIDENT PROVIDES EXPERT TESTIMONY

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## FEDERAL JUDGE RULES - TVA IS LIABLE FOR 2008 COAL ASH SPILL; RT'S PRESIDENT PROVIDES EXPERT TESTIMONY

Press Release

In a ruling on one of the world's worst environmental disasters involving a massive coal ash spill in December 2008, the Tennessee Valley Authority has been found negligent, because five million cubic yards of ash spilled out of a coal ash landfill/surface impoundment, at Kingston, Tennessee a riverside community 35 miles west of Knoxville.



Gary Brown, P.E., RT's President, presented testimony in the case. A significant number of topics and opinions from Mr. Brown's testimony were cited in the Memorandum and Opinion on the case by Judge Thomas Varlan, including:

- Gary Brown testified regarding the engineering standard of care for the design, construction, maintenance, operation and inspection of coal ash facilities, TVA's Groundwater Monitoring Plan and TVA's Tennessee Department of Environmental Conservation permits and permitting requirements.
- Mr. Brown testified that based on his investigation, TVA violated the applicable standard of care with regard to the disposal area design, construction, maintenance operation and inspections, and TVA violated the standard of care in failing to follow the requirements of TDEC permits, including failure to have three distinct divider dikes in dredge cells, into which coal ash was sluiced wet. The problem of missing and/or not properly constructed divider dikes contributing to the massive coal ash release, added pressure to perimeter dikes, and no other experts disputed this finding.
- Mr. Brown specifically testified that altering the plan for the physical structures in the dredge cell area in this way - burying the divider dike, was significant because this dramatically cut down the area for which the coal ash sluiced into the dredge cell area was able to dry out, causing the dredge cell

to become wetter and ultimately placing more stresses on the dikes. This substantially contributed to lack of consolidation of the wet coal ash and the ultimate failure of the North Dike.

- Mr. Brown in his testimony also found that failure to monitor water levels in the North Dike which failed, similar to the groundwater monitoring program in place on the west dike to also be below the engineering standard of care. Mr. Brown testified that TVA had represented to TDEC that it would monitor all of the dikes, that TVA's permit modification was contingent on that representation and that this monitoring was required by TDEC's permit. In Mr. Brown's words TVA was "asleep at the switch" and that, "In my career of thirty years, this is one of the worst instances of disregard of environmental responsibility from a company I have ever heard. This is a promise the company made to monitor the facility and keep it safe. They just decided they didn't want to do it or didn't have to do it. I can't believe it, not after what I read Geosyntec [TVA's consultants] told them about the slopes and the stability, the water levels and becoming stable in 2004".

The Court concluded that policies and procedures for the operation of the coal ash disposal facility were not treated as mandatory by TVA personnel, that the policies and procedures were not consistently followed and implemented, that TVA was inconsistent in how it treated these policies, procedures and practices, representing on some occasions that these were requirements, on other occasions that these were merely practices that were followed, that TVA neglected to inform and train its inspectors and personnel in these policies and procedures, and that these policies, procedures and practices were negligently performed.

RT is proud to have been a part of this major environmental legal case, but, unfortunately, the environment impacted by this massive release of coal ash still has not been cleaned up. More than half a million cubic yards of coal ash remain on the bottom of two rivers in Tennessee, including the Emory and Clinch Rivers, and EPA has yet to decide if, when, and how, this material can be cleaned up.

Phase 1 of the trial concluded with a finding of liability, and Phase 2 of the trial will focus on damages to individual residents.

We at RT hope that all of those who have environmental management responsibilities under permits learn a simple lesson - when there are sound environmental engineering and science promises made to regulatory agencies regarding the operation of disposal facilities and management of waste, those promises have to be followed through on and environmental permit terms can never be disregarded.

For more information on this case, you can go to:

[San Francisco Chronicle Web Article](#)

or

[CNN Web Article](#)



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