

Report on Coal Combustion Waste

WHEREAS: Coal combustion waste (CCW) is a by-product of burning coal that contains high concentrations of arsenic, mercury, heavy metals and other toxins filtered out of smokestacks by pollution control equipment. CCW is often stored in landfills, impoundment ponds or abandoned mines. Over 130 million tons of CCW are generated each year in the U.S.

Coal combustion comprises 47.5% of CMS Energy's generation capacity. CCW is therefore a significant issue for our company.

The toxins in CCW have been linked to cancer, organ failure, and other serious health problems. In October 2009, the U.S. Environmental Protection Agency (EPA) published a report finding that "Pollutants in coal combustion wastewater are of particular concern because they can occur in large quantities (i.e., total pounds) and at high concentrations ... in discharges and leachate to groundwater and surface waters."

The EPA has found evidence at over 60 sites in the U.S. that CCW has polluted ground and surface waters.

Recent reports by the *New York Times* and others have drawn attention to CCW's impact on the nation's waterways, as a result of leaking CCW storage sites or direct discharge into surrounding rivers and streams.

The Tennessee Valley Authority's (TVA) 1.1 billion gallon CCW spill in December 2008 that covered over 300 acres in eastern Tennessee with toxic sludge highlights the serious environmental risks associated with CCW. TVA estimates a total cleanup cost of \$1.2 billion. This figure does not include the legal claims that have arisen in the spill's aftermath, including the large class-action lawsuit brought against TVA in January 2009.

The EPA plans to determine by the end of 2009 whether certain power plant by-products such as coal ash should be treated as hazardous waste, which would subject CCW to stricter regulations.

While dry CCW has several beneficial re-uses, such as in concrete, pavement and drywall, it can also pose public health and environmental risks in the dry form.

The EPA has identified over 580 CCW impoundment facilities around the country. At least 49 of these have been rated by the National Inventory of Dams (NID) as "high hazard potential" sites, where a dam breach would likely result in a loss of human life and significant environmental consequences. Of our company's 8 sites, only one has been rated.

Our company's response to the EPA's request for information regarding surface impoundments indicates that one site had eight exceedances of the monthly allowance of selenium – a bioaccumulative element that is hazardous to regional ecosystems.

RESOLVED: Shareholders request that the Board prepare a report on the company's efforts, above and beyond current compliance, to reduce environmental and health hazards associated with coal combustion waste, and how those efforts may reduce legal, reputational and other risks to the company's finances and operations. This report should be available to shareholders by August 2010, be prepared at reasonable cost, and omit confidential information such as proprietary data or legal strategy.