

## **TVA Responds to Questions About Kingston Recovery Project**

**March 7, 2019**

On December 22, 2008, a coal ash impoundment at TVA's Kingston Fossil Plant failed and led to the Kingston Ash Spill. A massive cleanup and recovery effort was immediately launched by TVA, working with multiple local, state, federal and private firms. While this tragic event should not have occurred, TVA accepted responsibility for restoring the impacted area.

During the recovery project, TVA put the safety of its workers and contractors first. Site safety meetings were held on a weekly basis to review safety measures and discuss safety needs and requirements. Pre-job briefings were required and workers were encouraged to voice safety concerns through various avenues, including TVA's contractors, who were required to comply with written site safety plans.

Some recovery project workers have sued one of TVA's contractors for ailments they believe are related to their work at the site. As a member of the local community and an employer for many of its residents, TVA is concerned by these claims. While we are not a part of the lawsuit, we respect the right of those suing the contractor to have their claims heard in legal proceedings.

Transparency and accountability were important parts of the Kingston recovery project from its very first days and that has not changed. Below are TVA's answers to recent questions about the Kingston project.

### **What was the process that TVA used to hire Jacobs Engineering to oversee the Kingston spill response?**

In January 2009, TVA issued a request for proposals for the potential award of a contract to assist with incident response, assessment, recovery and remediation efforts at Kingston. Out of 14 respondents, TVA selected Jacobs. To TVA's knowledge, Jacobs did not have a history of safety lawsuits or test tampering. Jacobs is a multinational firm with over 70,000 employees in 400+ locations around the world. Jacobs was and is known for its work on complex, environmental recovery projects, including multi-billion dollar projects for the federal government (e.g., K-25 and Y-12 at Oak Ridge).

TVA's contract with Jacobs became effective on February 6, 2009. The first worker safety lawsuit filed against Jacobs in connection with the Kingston recovery project occurred in 2013, more than four years after TVA awarded the recovery project contract to Jacobs.

### **What commitments did Jacobs Engineering provide to ensure that the company would be able to keep workers and the community safe?**

All recovery project contractors were required to comply with written site safety plans.

### **Given the ongoing lawsuit alleging safety violations made by Jacobs Engineering, and media reports that Jacobs admitted lying to workers, why does TVA continue to use Jacobs Engineering?**

TVA has carefully reviewed the transcript of the Phase I trial and did not find a Jacobs admission of lying to workers. TVA recognizes that troubling testimony was presented during

Phase I of the trial regarding Jacobs' safety record at the recovery project. TVA also recognizes that Jacobs presented contrary evidence regarding its safety decisions and record.

Jacobs has been and continues to be one of the leading contractors employed by the federal government. The Top 100 Contractors Report (for 2017) from the Federal Procurement Data System shows Jacobs is a Top 100 federal contractor, with almost 2,000 procurement actions and contracts over \$1.2 billion.

In 2015 and 2016, TVA competitively bid construction services and engineering and field support services for which Jacobs Engineering was selected. Under these contracts, Jacobs is not responsible for day-to-day ash handling. Jacobs currently provides TVA with field expertise in the form of quality oversight, engineering services, project management support and clerical support. Jacobs' performance has been satisfactory. While TVA has two contracts with Jacobs that have a collective maximum spend limit of \$200 million, TVA has only spent about \$10,000 on construction services and the anticipated total spend under these contracts is expected to be less than \$40 million.

TVA routinely reviews its contractors' safety records and takes appropriate actions based on known contractor safety performance and objective safety information available to TVA. TVA recognizes that troubling testimony was presented during Phase I of the trial regarding Jacobs' safety record at the recovery project. TVA also recognizes that Jacobs presented contrary evidence regarding its safety decisions and record. At this time, TVA believes a continued relationship with Jacobs is appropriate. TVA will take this evidence into consideration when considering authorizing Jacobs to perform future work.

With respect to any ongoing work performed by Jacobs, this work must be performed safely and ethically.

#### **Did TVA offer any “bonuses” to Jacobs Engineering if no workers were harmed?**

Although alleged by the plaintiffs and repeated in media coverage, TVA did not offer any form of compensation or bonus to Jacobs for not reporting worker injuries. Jacobs' contract was amended in July 2009 to include a one-year incentive opportunity if Jacobs could meet various performance measures, including having no OSHA recordable incidents and zero environmental incidents each month. But Jacobs did not earn and TVA did not pay any safety/environmental incentive under that contract provision. These facts are clear in the Jacobs trial testimony and record.

#### **On what basis did TVA determine the potentially harmful substances present in coal ash? Did it consider studies made by Duke Energy?**

The constituents of coal ash have been well-known for years, and TVA was transparent with this information throughout the Kingston recovery project. In partnership with Tennessee Department of Environment and Conservation (TDEC), Tennessee Department of Health (TDH) and EPA, TVA's recovery plan was informed by the best available science about coal ash constituents and how to perform the recovery project work safely. And TVA and TDH shared that science, including possible health impacts, with the public — in fact, the public health assessment is still available on the TDH and Centers for Disease Control and Prevention's websites today.

Similarly, the Administrative Order on Consent signed by TVA and EPA in May of 2009 acknowledged that the coal ash at Kingston contained a number of constituents including arsenic, beryllium, chromium, copper, lead, mercury, nickel, zinc, antimony, cadmium, silver, selenium, thallium and vanadium oxide. And the Non-Time Critical Removal Action Engineering Evaluation Cost Analysis for the Dredge Cell that was available for public comment in January of 2010 included information summarizing data collected by TVA, EPA and TDEC on the concentrations of metals and radioisotopes. These documents were also posted on publicly available websites by both EPA and TVA.

There is no material difference between the data shared with the public by TVA, TDEC and TDH and that in the referenced Duke study.

**Did TVA receive any worker health complaints during the Kingston ash spill response and did it take any actions?**

There were hundreds of contract employees at the recovery project. Given the scope and scale of the project, there could certainly have been routine worker reports of various conditions. Workers would have reported those, including any they attributed to coal ash exposure, directly to their employers. TVA is not aware of any worker complaints being handled improperly by TVA.

TVA is closely monitoring the outcome of the Jacobs litigation for multiple reasons. We care about the recovery project workers, and are committed to safe work standards and the safety of all employees and contractors at all TVA sites. We care about the safety performance of the contractors we hire. And we care about any potential impact that multiple plaintiffs' verdicts might have on ratepayers.

The TVA-Jacobs contract contains indemnity provisions, which are common in the industry. Determining whether TVA will indemnify Jacobs is premature and ultimately will depend on the outcome of the lawsuits and many other factors. TVA has a responsibility to disclose this potential long-term risk to its investors. Such a disclosure is not an admission of liability or financial responsibility.