

Timeline: North Carolina's Environmental Agency's Interference with Coal Ash Clean Ups and Citizen Enforcement Efforts

In North Carolina, Duke Energy—the nation's largest utility—has 14 leaking coal ash sites throughout the state where millions of tons of wet coal ash are stored in unlined holes in the ground next to rivers, drinking water reservoirs and lakes. Governor Pat McCrory's state environmental agency has routinely tried to thwart enforcement efforts by citizen conservation groups even after the significant harm and public outcry following the Dan River spill in 2014.

October 2012: Representing citizen groups throughout the state, the Southern Environmental Law Center (SELC) brings legal action before the Environmental Management Commission (EMC) to clarify Duke Energy's cleanup obligation under groundwater protection rules. The North Carolina Department of Environmental Quality (DEQ),¹ joined by Duke Energy, opposes implementing the parts of the rule that would require immediate action to stop the source of groundwater contamination.

January - August 2013: Representing citizen groups throughout the state, the Southern Environmental Law Center (SELC) sends 60-day notices of intent, required in advance of bringing suit against Duke Energy, for Clean Water Act violations at coal ash sites in Asheville, Charlotte, and Wilmington. Each time, by Day 59 of the 60-day notice period, DEQ moves to preempt citizen enforcement with state court actions, ultimately covering all of Duke Energy's coal ash sites in North Carolina.

April - November 2013: SELC moves to intervene in the state court cases on behalf of citizen groups. Duke Energy objects. DEQ is barred from objecting by the Clean Water Act, but asks the court to limit participation of conservation groups anyway. Court grants the citizen groups' intervention as full parties.

May - October 2013: DEQ negotiates a proposed settlement with Duke Energy behind closed doors, without participation of citizen groups. The settlement does not require Duke Energy to clean up any pollution or move any coal ash. Almost 5,000 people and organizations submit comments against the settlement. One person—a Duke employee—comments in support of it. DEQ asks court to approve the settlement, despite overwhelming opposition by the people of North Carolina.

August 2013 – April 2014: Duke and DEQ seek to avoid any discovery of information about the coal ash sites. The court requires DEQ to provide public records and allows focused discovery to proceed.

February 2, 2014: Spill at Duke Energy's Dan River site dumps tens of thousands of tons of coal ash and 27 million gallons of polluted water into the river.

February 10, 2014: Federal criminal grand jury issues first of several subpoenas to Duke and DEQ for records relating to Dan River coal ash storage and spill and activities of Duke Energy and DENR. U.S. Department of Justice informs DENR that an official criminal investigation is

¹ DEQ, until recently, was called the Department of Environment and Natural Resources, or DENR.

being conducted by an agency of the U.S. and a grand jury into a suspected felony. Later that day, DEQ asks the court to suspend consideration of the proposed settlement.

March 6, 2014: Wake County Superior Court rules in a declaratory judgment case, proceeding separate from the injunction cases, that DEQ has the authority to require Duke to “take immediate action to eliminate sources of contamination” at its coal ash ponds. Both Duke Energy and North Carolina appeal the ruling.

March 12, 2014: Duke Energy publicly commits to move ash to lined storage away from waterways at Dan River and the three sites under challenge from conservation groups: Asheville, Riverbend, and Sutton.

April 16, 2014: The Court denies Duke Energy’s request for a protective order to shield it from discovery of subjects also being investigated by the criminal grand jury.

August 2014: The N.C. legislature passes the Coal Ash Management Act (“CAMA”), which requires Duke Energy only to empty pits that it had already announced many months earlier and provides a long process for closing the basins through a range of options, including leaving ash in leaking coal ash pits.

December 2014 - August 2015: Tests of drinking water wells at homes around Duke Energy coal ash sites statewide reveal that 93% of tested wells have elevated levels of contaminants.

May 14, 2015: Duke Energy pleads guilty to criminal violations of the Clean Water Act at coal ash sites across North Carolina. The plea reveals Duke Energy denied an employee’s requests to have the pipe that led to the Dan River disaster inspected.

May 15, 2015: DEQ asks a judge to stop citizens groups from conducting discovery in the state court cases. DEQ had already agreed privately with Duke not to conduct any discovery. The court denied the request.

September 15, 2015: In a hearing in which Duke Energy and conservation groups asked that the court require Duke to remove coal ash from multiple sites to dry, lined storage away from waterways and groundwater, DEQ argues against requiring coal ash cleanups in Goldsboro, Lumberton, and Chatham County. The court agrees clean ups at these sites should move forward over DEQ’s objection. The court also declines DEQ’s request to entirely stop its own enforcement cases.

September 29, 2015: DEQ and Duke Energy sign an agreement between them, purporting to resolve a dispute related to a penalty at the Sutton site before the N.C. Office of Administrative Hearings. That agreement goes well beyond the Sutton site and abandons groundwater enforcement at all of Duke Energy’s coal ash sites in North Carolina for past, present, and future violations. The settlement attempts to halt the state’s enforcement of groundwater violations in its state court actions and would provide amnesty to Duke for all past, present, and future violations so long as Duke completes unspecified measures that might be required by CAMA.