

Southern Environmental Law Center: North Carolina Coal Ash Timeline

2012–2013: After filing enforcement actions, the Southern Environmental Law Center and South Carolina conservation groups secure settlements requiring South Carolina utilities to remove their coal ash from unlined pits in South Carolina. Ultimately, all South Carolina utilities are required and committed to excavate all coal ash from all unlined lagoons in the state.

October 2012: SELC and North Carolina conservation groups petition North Carolina's Environmental Management Commission to require Duke Energy to remove its coal ash from its leaking, unlined pits.

2013: Over the opposition of NC DEQ and Duke Energy, SELC and North Carolina conservation groups take legal action under the federal Clean Water Act to require Duke Energy to remove its coal ash from unlined, leaking pits across the state. After NC DEQ files state actions at Duke's request to try to block the Clean Water Act suits, SELC and North Carolina citizen groups join the state court proceedings to ensure water pollution laws are enforced.

February 2014: Duke Energy's Dan River coal ash lagoons fail, spilling over 20 million gallons of coal ash polluted water and 39,000 tons of coal ash into the Dan River.

2014: Federal grand jury investigates DEQ and Duke Energy's coal ash practices in North Carolina. Thereafter, Duke Energy agrees to excavate the coal ash from three of its sites where SELC and NC conservation groups have taken legal action (Asheville, Riverbend, and Sutton) and the Dan River site.

March 2014: Wake County Superior Court rules that DEQ has the authority to require Duke Energy to "take immediate action to eliminate sources of contamination" at its coal ash lagoons. Later in 2014, this ruling was overturned by the North Carolina legislature.

June and August 2014: The U.S. District Court in Wilmington rejects Duke Energy's motion to dismiss a lawsuit by SELC and finds that Sutton Lake is a water of the United States protected by the Clean Water Act. After the ruling and correspondence with SELC, DEQ informs Duke that the lake is a water of North Carolina requiring protection under state and federal clean water laws.

August 2014: North Carolina legislature passes the first version of the Coal Ash Management Act, but requires excavation only of the four sites Duke Energy has already agreed to excavate.

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

March 10, 2015: DEQ assesses a \$25 million penalty on Duke Energy for coal ash violations at Duke's Sutton Steam Plant in Wilmington (subsequently this fine is greatly reduced).

April 9, 2015: Duke Energy challenges the state's \$25 million penalty in the Office of Administrative Hearings.

May 14, 2015: Duke Energy's operating companies plead guilty 18 times to 9 coal ash crimes committed at sites across the state, are put under nationwide criminal probation for five years, and are fined over \$100 million.

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

June 1, 2015: Governor Pat McCrory, his top environmental regulator—DENR Secretary Donald van der Vaart—his chief of staff, and his general counsel meet for a private dinner at the Executive Mansion with Duke Energy executives including Duke Chief Executive Lynn Good, the utility's general counsel, and the president of the company's North Carolina operations.
<http://www.wral.com/governor-top-duke-energy-officials-met-amid-lawsuits-controversies/15185689/>

September 29, 2015: DEQ settles the \$25 million fine assessed at its Sutton facility before the Office of Administrative Hearings, in exchange for \$7 million for all 14 of Duke's coal ash sites in North Carolina at issue in separate state court actions, or exactly \$500,000 per site – a 98 percent reduction of the original fine. And DEQ purports to abandon and settle all groundwater claims against Duke Energy past and present as well as any future violations.

2016: Duke Energy agrees to excavate three additional sites litigated by SELC and North Carolina conservation groups: Lee, Cape Fear, and Weatherspoon. Wake County Superior Court orders the cleanups.

February 12, 2016: Wake County Superior Court agreed with arguments by SELC that the Office of Administrative Hearings could only sign off on the settlement for the Sutton plant fine and not an order approving a wide-reaching agreement that appeared to be intended to shut down other civil suits against the utility. Superior Court Judge Ridgeway said, "I have to suspect that there is some ulterior motive I don't know of any other reasonable suspicion to have, based on what I have in front of me." The court directed DEQ and Duke Energy to ask Administrative Law Judge Berger Jr. to modify and narrow his ruling. <https://www.wral.com/judge-reviewing-state-settlement-with-duke-over-coal-ash/15357975/>

2016: In March, thousands of North Carolinians participate in public hearings and submit comments calling for NC DEQ to require Duke Energy to excavate its unlined, leaking coal ash pits. In May, NC DEQ decides that under the 2014 Coal Ash Management Act, Duke Energy must excavate all of its unlined coal ash sites. DEQ and Duke Energy ask the legislature to amend the law, and the legislature changes the Coal Ash Management Act to require excavation of only the three additional sites Duke Energy has agreed to excavate and delays other decisions until 2019.

August 2016: The state epidemiologist, Dr. Davies, resigns, "I cannot work for a Department and Administration that deliberately misleads the public." Her resignation followed a late night press conference by Governor McCrory's Chief of Staff and an opinion editorial by political leaders at state agencies denying the sworn testimony under oath of state toxicologist, Dr. Rudo, who helped develop safety advisories for well owners near Duke Energy coal ash ponds. <https://www.wral.com/state-epidemiologist-resigns-over-agency-statements-about-well-water-safety-risk/15918663/>

September 2016: SELC and North Carolina conservation groups settle a Clean Water Act suit against Duke Energy by requiring all of its coal ash to be excavated from Duke Energy's Buck site in Salisbury.

September 2018: Floodwaters in the wake of Hurricane Florence inundate two coal ash basins at Duke Energy's Sutton facility near Wilmington and toxic-laden coal ash spills into Sutton Lake and through a dam breach into the Cape Fear River. In contrast, Santee Cooper in South Carolina, which started excavation years earlier at the nearby Grainger facility, had fully removed its coal ash from a basin that flooded, and worked proactively to prevent flooding of a small amount of remaining ash in another basin at the site.

January 2019: Virginia's governor and legislative leaders announce legislation to require Dominion to excavate all of its coal ash from all of its unlined pits in the state. The legislation is passed and signed by Virginia's governor in March.

January 2019: Under Governor Cooper, NC DEQ holds a series of public meetings at the six remaining sites where Duke Energy is not yet required to excavate coal ash from unlined, leaking pits. Hundreds of people attend and thousands more call on DEQ to require Duke Energy to move its coal ash to safe, dry, lined storage.

April 1, 2019: NC DEQ requires Duke Energy to remove the coal ash from its remaining six unlined, leaking sites.

April 26, 2019: Duke Energy files challenges in the Office of Administrative Hearings against the state order to clean up its toxic-laden coal ash stored in unlined, leaking pits sitting in groundwater next to rivers and lakes at six of its sites in North Carolina: Allen, Belews Creek, Cliffside (Rogers Complex), Marshall, Mayo and Roxboro.

May 2019: Groups represented by the Southern Environmental Law Center move to intervene in appeals filed by Duke Energy in the Office of Administrative Hearings in which Duke Energy challenged NC DEQ's order to clean up its coal ash at six sites in North Carolina. OAH grants intervention.

August 2, 2019: A N.C. administrative law judge confirmed the state of North Carolina's authority to require cleanup of Duke Energy's coal ash pollution of groundwater, dismissing part of Duke Energy's challenge to the state's April orders that instructed Duke Energy to fully remove all coal ash from its unlined, leaking lagoons in six communities across North Carolina.

January 2, 2020: NC DEQ, Duke Energy and the Southern Environmental Law Center announce a settlement to cleanup coal ash at its six remaining sites in North Carolina: Allen, Belews Creek, Cliffside (Rogers Complex), Marshall, Mayo and Roxboro. With this settlement agreement there is now a comprehensive plan for cleanup of all 14 Duke Energy coal ash sites in North Carolina.