

Summary Of DENR's Actions To Date On Coal Ash

By Administrator

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RALEIGH, (SGRToday.com) - The state's environmental regulatory agency today released a summary of state action on cleaning up and regulating coal ash ponds in the wake of the Dan River coal ash spill in February.

The summary released by the Department of Environment and Natural Resources is below. ----- · Civil actions: DENR filed in 2013 four lawsuits alleging violations of state law regarding unlawful discharges and groundwater contamination at all 14 Duke Energy facilities. Since DENR's filing of these lawsuits, several special-interest groups have moved to intervene, and DENR made no effort to oppose these parties from joining the state's legal actions. According to these groups, they are now "full parties" in the state's actions against the utility.

· Enhanced inspections: Since January 2013, DENR has performed more than 75 inspections at Duke Energy's 14 sites with coal ash storage. In March 2014, DENR required the utility to conduct video inspections of all its ash pond piping. DENR identified several issues to be addressed and more information that was needed. The agency is in the process of reviewing and authorizing proposed corrective actions.

· Reopening permits: In February 2014, DENR notified the utility that it would be reopening the company's National Pollutant Discharge Elimination System permits for the Dan River site. In March 2014, DENR moved to reopen Duke Energy's Riverbend, Asheville and Sutton permits. Reopening the permits allows the agency to include more terms and conditions to the permit such as enhanced monitoring where necessary to ensure elimination of all unauthorized discharges. In July 2014, Duke submitted applications for NPDES permits for Dan River, Asheville, Sutton, Cliffside, Cape Fear and Belews Creek facilities. DENR is reviewing these applications and the revised permits.

· Canvassing the discharges: In order to revise the NPDES permits to eliminate the unauthorized discharges, DENR initiated a vast and unprecedented effort to identify every potential seep statewide. Each potential discharge had to be located, identified, sampled (where there was sufficient flow), catalogued and analyzed to determine the cause of the potential discharge. Staff analyzed hundreds of samples and shared this comprehensive data set with the public and the EPA.

· Governor's plan: Recognizing the potential for protracted litigation (Duke Energy has denied every substantive allegation in the lawsuits), DENR's coal ash task force helped develop

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the governor's Comprehensive Coal Ash Action Plan. The proposal is a thorough, science-based plan that would address coal ash ponds and strengthen environmental and health regulations. It would require closure of all of Duke Energy's coal ash ponds, close loopholes in state law, eliminate special exemptions for utilities, and increase regulatory authority to ensure dam safety and protect water quality.

- Executive Order No. 62: The governor's plan formed the foundation for coal ash legislation that progressed through the General Assembly this summer. However, on Aug. 1 the General Assembly signaled that it was unable to agree on a final coal ash bill and deferred taking further action. Given the legislative impasse, Governor McCrory issued Executive Order 62, requiring DENR to expeditiously assess coal ash ponds, initiate a survey of drinking water wells to determine any contamination, halt any violations where necessary, mandate remediation plans for all facilities where violations are found, and continue prosecuting the lawsuits.
- Putting E.O. 62 into action: On Aug. 11, DENR sent four letters to Duke Energy requiring Duke to provide excavation plans for Riverbend and Asheville, groundwater assessment plans within 45 days, and local drinking water surveys within 60 days. The letters also called on Duke to conduct weekly inspections of all coal ash impoundments and annual, third-party comprehensive structural assessments. DENR also announced its intention to reopen the NPDES permits for cause for the seven plants that had not yet submitted applications to address and eliminate unauthorized discharges from their coal ash ponds.
- North Carolina-EPA joint enforcement: In March, DENR invited the EPA to partner in a potential enforcement action against Duke Energy for Clean Water Act violations at Duke's coal ash facilities in North Carolina. By partnering with the EPA, the combined expertise of the federal and state agencies will help to assess comprehensively Duke's continued noncompliance with the Clean Water Act. The EPA has sent Duke Energy letters requiring more information about potential violations. Enforcement actions, including penalties, may result.
- Natural Resources Damage Claim: In May, DENR announced it would serve as one of three trustees in a Natural Resource Damages claim against Duke Energy to address damage to the environment resulting from the Dan River coal ash spill. North Carolina's participation as a trustee will ensure that Duke Energy is held accountable for the damages to North Carolina's environmental resources and will work to require Duke Energy to fund projects that directly restore the damages caused by the spill.

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- Coal Ash Management Act of 2014: Last week, the General Assembly adopted the Coal Ash Management Act. The legislation, which was approved by lawmakers on Aug. 20, was based on McCrory's April 2014 plan.