



N.C. Department of Environment and Natural Resources

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Contact: Drew Elliot
Phone: 919-707-8626

State fines Duke Energy Progress a record \$25.1 million for coal ash contamination at Sutton Plant *Proceeds from the fine will go to N.C. public schools*

RALEIGH – Governor Pat McCrory’s Department of Environment and Natural Resources today issued Duke Energy Progress the state’s largest-ever penalty for environmental damages, fining the utility \$25.1 million for groundwater contamination at the Sutton Plant near Wilmington.

DENR fined the utility \$25,116,883.61 Tuesday based on state laws that allow fines to be assessed for continuous violations of the state’s groundwater standards. The total penalty also includes the investigative costs incurred by the Division of Water Resources. State groundwater violations at other Duke Energy facilities could result in additional fines against the utility.

Under the North Carolina constitution, proceeds from Tuesday’s fine will go to a statewide fund for public schools.

“Today’s enforcement action continues the aggressive approach this administration has taken on coal ash,” said DENR Secretary Donald R. van der Vaart. “In addition to holding the utility accountable for past contamination we have found across the state, we are also moving expeditiously to remove the threat to our waterways and groundwater from coal ash ponds statewide.”

At Sutton, the state agency determined that Duke Energy allowed a host of coal ash contaminants to leach into the groundwater at the facility for up to five years, in at least one case. DENR calculated the penalty by determining the number of days specific constituents exceeded a groundwater quality standard, multiplied by a daily penalty amount.

In the case of the thallium, for instance, state officials determined that Duke exceeded the standard for Thallium at the Sutton facility for 1,668 days. State officials multiplied 1,668 by a civil penalty allowed by law of \$5,000, which equals an \$8,340,000 fine for thallium alone. Pollutants that are considered a greater public health risk, including thallium, selenium, arsenic and boron, carried heavier penalties, state officials said. The state’s investigative costs totaled \$8,883.61.

Tuesday’s fine was issued by a “Findings and Decisions and Assessment of Civil Penalties” to Duke Energy Progress from Jay Zimmerman, director of the N.C. Division of Water Resources. Under state law, Duke Energy has 30 days to respond to the fine and may choose to appeal it to the N.C. Office of Administrative Hearings. Copies of the “Findings and Decisions” document and related documents can be found on DENR’s website at: <http://portal.ncdenr.org/web/guest/duke-coal-ash-facilities>.

Other large penalties DENR has issued in the past

Before Tuesday’s action, DENR’s largest penalties for environmental violations were a \$5.6 million fine the Division of Air Quality issued in 1986 to Texas Gulf (now PCS Phosphate) in Aurora, a \$1.4 million fine DAQ issued in 1991 to Weyerhaeuser in Craven County, and a \$1 million fine DAQ issued in 1994 to Steelcase in Henderson County. DENR’s other largest fines include the then-Division of Water quality’s \$729,000.00 fine against International Paper in 1984, the Division of Waste Management’s fine in 1990 of \$598,900 to Porcelanite Tile, the DWM’s fine in 1994 of \$589,999 to Akzonobel Surface Chemist, and the DWM’s fine in 2007 of \$553,225 to Environmental Quality in Apex.

Jamie Kritzer, Public Information Officer
Phone: (919) 707-8602
<http://www.facebook.com/ncdenr>
1601 Mail Service Center, Raleigh, NC 27699-1601
<http://www.facebook.com/ncdenr>

Jamie.Kritzer@ncdenr.gov
Facebook:

RSS feed: <http://portal.ncdenr.org/web/opa/news-releases-rss>

Twitter: <http://twitter.com/NCDENR>

Sutton history

The Sutton Plant began operation as a coal-fired electric generating station in 1954. The three coal units were retired in 2013 as a new natural gas-fired unit came online at the site.

In August 2014, DENR sent Duke Energy Progress a [notice of violation](#) and intent to enforce for Sutton, calling it “the legally required first step toward issuing the utility a fine for violations of the state’s groundwater contamination laws.”

That action followed the filing in 2013 of lawsuits that focused on stopping the violations at Duke Energy’s coal ash ponds.

Tuesday’s action marks the second time in recent months that DENR has reversed decisions made under previous leadership to protect the environment in the Wilmington area. In November 2014, DENR [reclassified Sutton Lake](#) as a public resource instead of an industrial cooling pond. The lake, which receives coal ash wastewater discharges from the Sutton plant ash ponds, is now be considered to be “waters of the state,” a classification that means the lake will be protected by more stringent water quality standards.

The reclassification followed a document review during which records were found indicating that while the water body [met the legal definition](#) for waters of the state, [previous department leadership decided to disregard that determination](#). The lake reclassification also prompted a change in the state’s hazard classification for two dams that are part of the coal ash impoundments at the facility.

As a result of the reclassification, the state agency gave Duke Energy 60 days notice that its wastewater discharge permit would be reopened. The reclassification may mean additional treatment conditions are placed in the discharge permit or other environmental permits will be required in the future to ensure the health of the lake.

Other fines possible

In addition to the penalties for violating state groundwater standards, penalties for violations of the utility’s federal Clean Water Act permit will be addressed through an [enforcement agreement](#) DENR has established with the Environmental Protection Agency.

Closing the coal ash ponds

In September 2014, the [Coal Ash Management Act](#) became law, putting the state on a path to closing all the utility’s coal ash ponds. Then in December 2014 the EPA published [federal regulations on coal ash](#) that, although largely weaker than North Carolina’s Coal Ash Management Act, reinforce the responsibility of impoundment owners.

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Jamie Kritzer, Public Information Officer

Phone: (919) 707-8602

<http://www.facebook.com/ncdenr>

1601 Mail Service Center, Raleigh, NC 27699-1601

[RSS](#)

Jamie.Kritzer@ncdenr.gov

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