



N.C. Department of Environment and Natural Resources

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State moving forward on addressing groundwater contamination at Wilmington-area coal-fired power plant

RALEIGH – The N.C. Department of Environment and Natural Resources today sent Duke Energy Progress a notice of violation and intent to enforce for groundwater contamination from coal ash ponds at the L.V. Sutton Electric Plant in New Hanover County.

The notice of violation is the legally required first step toward issuing the utility a fine for violations of the state's groundwater contamination laws.

“We said in court last year that the groundwater around the Sutton Plant was contaminated by Duke's coal ash ponds,” said Tom Reeder, the director of the N.C. Division of Water Resources who wrote and sent the notice Tuesday. “But as the legal process for stopping the violations drags on, we will take what action we can using our existing authority to hold the utility financially accountable for damaging the public resource.”

The lawsuits filed last year by the North Carolina Attorney General, at the request of DENR, focused on stopping the violations at Duke Energy's coal ash ponds. Today's action represents the first step in assessing penalties for violations of the state's groundwater protection laws. In addition to any 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.

Tuesday's notice of violation was prompted by the state's finding that monitoring wells surrounding the coal ash ponds at the Sutton Plant exceeded the state's groundwater standards for boron, thallium, selenium, iron, manganese and other constituents.

The agency has given Duke Energy Progress 15 days to respond to the notice of violation. Any response from the utility will be included in the package sent to Reeder for his determination of fines.

“If any failure to act is continuous, penalties may be assessed [up to] \$25,000 per day per violation...” Reeder wrote in Tuesday's letter.

DENR sued the utility in August 2013 for wastewater and groundwater violations related to 12 sites the utility uses to store coal ash residuals. Two previous lawsuits covered permit violations at the other two coal-fired plants owned by the utility in North Carolina. Duke Energy has denied those allegations and the case is now in the discovery phase of litigation. There is no current estimate for when the case might go to trial.

While wastewater permits allow the discharge of waste to state water bodies under conditions that protect the environment, there is no permit for groundwater discharge that exceeds state rules. If an exceedence can be traced to a source, it is treated as a violation and the violator must take steps to remediate the problem and restore the groundwater.

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