

BEFORE THE
NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

CAPE FEAR RIVER WATCH, SIERRA)
CLUB, WATER KEEPER ALLIANCE,)
and WESTERN NORTH CAROLINA)
ALLIANCE)
Petitioners.)
)
)
)

REQUEST FOR
DECLARATORY RULING
FACTUAL STIPULATIONS

The Department of Environment and Natural Resources (“DENR”) and Petitioners Cape Fear River Watch, Sierra Club, Water Keeper Alliance, and Western North Carolina Alliance (“Petitioners”), hereby agree on the following factual stipulations for the hearing of this matter before the Environmental Management Commission:

1. Fourteen coal-fired power plants in North Carolina operate unlined coal ash ponds for treatment of coal combustion residue produced in the generation of electricity. At the fourteen facilities, some of the coal ash ponds are permitted under NPDES permits for wastewater treatment. The ponds contain a mixture of water, coal combustion waste and other waste. The fourteen power plants which are the subject of this proceeding are those identified in Attachment 1 to this Stipulation and are incorporated herein by reference.
2. All of these power plants were originally issued NPDES permits by DENR prior to December 30, 1983.
3. By letter dated December 18, 2009, DENR’s Aquifer Protection Section (“APS”) requested that Progress Energy and Duke Energy install groundwater monitoring wells at the compliance boundaries for all of the fourteen facilities. For each facility, the APS identified wells inside the compliance boundary that were not “suitable for determining compliance.” Well installation and groundwater monitoring at the compliance boundaries began in 2010. The power plants monitor groundwater quality and compile reports that are then submitted to DENR.
4. For those of the fourteen coal-fired power plants which voluntarily monitored prior to 2010, most monitoring wells were installed within the compliance boundary. After December 2009 and the installation of the new wells, the

majority of the wells were installed at the compliance boundary with two exceptions. First, Sutton has continued to monitor its existing wells, some of which are located within the compliance boundary. APS recently approved monitoring wells for that facility at or beyond the compliance boundary. Second, due to space limitations at Riverbend and the Allen Steam Station, monitoring wells at those facilities are located inside the compliance boundary and computer modeling used to predict compliance at the boundary.

5. Groundwater samples taken from monitoring wells at the fourteen facilities indicate the presence of some constituents in excess of the relevant groundwater standards established for them. These constituents include: arsenic, thallium, boron, sulfate, nickel, iron, chromium, manganese, and selenium.
6. Some of these samples have been found to exceed groundwater standards for the same substance over multiple sampling events.
7. At the Asheville Steam Electric Plant, the company voluntarily monitors groundwater wells located inside the compliance boundary. Groundwater samples reported to DENR by Progress Energy for these wells have exceeded standards for multiple constituents inside the compliance boundary. Thallium has exceeded groundwater standards in monitoring well CB-3 on each date sampled over the past two years. Thallium is not detectible in samples taken from the well DENR considers the background well at the site. Thallium is a substance associated with coal ash waste. Until recently, well CB-3 was located on the compliance boundary for the facility. Progress Energy has purchased adjacent property and the said well is now located within the compliance boundary. DENR has not required Progress Energy to take corrective action to address exceedences of groundwater standards detected in monitoring wells located within the compliance boundary established for the Asheville Plant and has not required the Asheville plant to take immediate action to eliminate a source or sources of exceedences within the compliance boundary.
8. At Progress Energy's Sutton Plant, adjacent to the Cape Fear River, monitoring well MW-2 is located inside the compliance boundary. Samples taken at that well have shown arsenic at levels as much as 26 times the groundwater standard. Arsenic has exceeded groundwater standards in well MW-2 in four out of the five sampling events over two years. Arsenic is not detectible in samples taken from the well DENR considers the background well at the site. DENR has not required Progress Energy to take corrective action to address exceedences of groundwater standards detected in monitoring wells located within the compliance boundary established for the Sutton Plant and has not required the Sutton plant to take immediate action to eliminate a source or sources of exceedences within the compliance boundary.
9. To date, DENR has not required any power plant in North Carolina to take corrective action to address exceedences of groundwater standards detected in

- monitoring wells located within the compliance boundary established for a coal ash pond, and has not required any operator to take immediate action to eliminate a source or sources of exceedences within the compliance boundary.
10. In 2009, APS asked the North Carolina Attorney General for an informal advisory opinion regarding application of 15A North Carolina Admin. Code 2L to coal ash ponds, which is attached to Petitioners' Request for Declaratory Ruling at Attachment 15 and speaks for itself.
 11. By writing dated November 17, 2010, DENR responded to a June 21, 2010 request from the U.S. Environmental Protection Agency for comment concerning a proposed Coal Combustion Residuals (CCRs) rule. In its response, DENR indicated that: "[t]he [s]tate [c]ompliance [b]oundary establishes the location at which groundwater standards must be met; exceedence of the state groundwater standard can be allowed within the compliance boundary as long as the groundwater standard is met at the boundary."
 12. In letters dated December 18, 2009, and January 11, 2010, and DENR advised Progress Energy that facilities are required to monitor groundwater at, but not inside, their compliance boundaries.
 13. In commenting upon proposed amendments to N.C.G.S. Ch. 130A, DENR staff have suggested that solid waste coal combustion product (CCP) landfills could be installed over settling ponds containing wet CCP's, but only if the wet CCP ponds were properly closed prior to permitting of the solid waste landfill. If compliance could not be determined at the compliance boundary, a groundwater monitoring plan would be required under DENR's proposal.
 14. Progress Energy has recently announced the retirement of its coal-fired H.F. Lee power plant near Goldsboro, North Carolina, in fall of 2012, and the conversion of its L.V. Sutton plant near Wilmington, North Carolina, to natural gas in 2014.

This the 2d day of November, 2012.


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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing REQUEST FOR DECLARATORY RULING FACTUAL STIPULATIONS has been served on the Attorneys of Record for the Petitioners and the Intervenor as follows:

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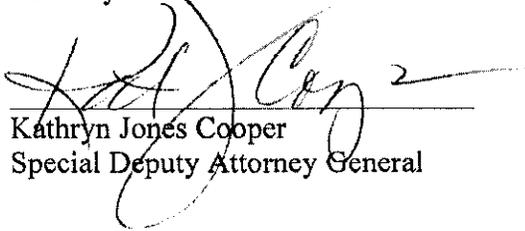
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This the 22 day of November, 2012.

ROY COOPER
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By:


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**DWQ Attachment No. 1
Facilities List**

Facility Name	NPDES Permit No.	DWQ Region	Date original permit issued
Allen Steam Station	NC0004979	Mooreville	2/8/1977
Asheville	NC0000396	Asheville	6/30/1981
Belews Creek	NC0024406	Winston-Salem	6/30/1977
Buck	NC0004774	Mooreville	3/31/1976
Cape Fear	NC0003433	Raleigh	8/30/1976
Cliffside	NC0005088	Asheville	3/3/1976
Dan River	NC0003468	Winston-Salem	8/30/1976
Lee	NC0003417	Washington	6/30/1977
Marshall	NC0004987	Mooreville	3/3/1976
Mayo	NC0038377	Raleigh	7/12/1982
Riverbend	NC0004961	Mooreville	3/3/1976
Roxboro	NC0003425	Raleigh	6/30/1981
Sutton	NC0001422	Wilmington	6/30/1977
Weatherspoon	NC0005363	Fayetteville	3/20/1980