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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2013 CVS 004061

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WAKE CO., C.S.C.

STATE OF NORTH CAROLINA *ex rel.*)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENT AND NATURAL)
RESOURCES, DIVISION OF)
WATER QUALITY,)

Plaintiff,)

v.)

DUKE ENERGY PROGRESS, INC., formerly)
known as CAROLINA POWER & LIGHT)
COMPANY d/b/a PROGRESS ENERGY)
CAROLINAS, INC.,)

Defendant.)

**AMENDED COMPLAINT
AND MOTION FOR
INJUNCTIVE RELIEF
RULE 15(a) N.C.R.C.P.
RULE 65, N.C.R.C.P.**

Now, prior to service of a responsive pleading, comes the Plaintiff State of North Carolina, and amends its complaint as a matter of course, pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure (N.C. Gen. Stat. § 1A-1, Rule 15(a)), by rewriting the complaint as follows:

The Plaintiff State of North Carolina in accordance with Article 21 of Chapter 143 of the North Carolina General Statutes, and N.C. Gen. Stat. § 1A-1, Rule 65, complaining of the Defendants alleges and says:

PARTIES

1. Plaintiff is the sovereign State of North Carolina. This action is being brought upon the relation of the North Carolina Department of Environment and Natural Resources (hereinafter "DENR"), Division of Water Quality (hereinafter "DWQ"), an agency of the State established pursuant to the provisions of N.C. Gen. Stat. § 143B-279.1 *et seq.*, and vested with

the statutory authority regarding protection of the environment and enforcement of environmental laws pursuant to N.C. Gen. Stat. § 143-211 *et seq.*

2. Defendant, Duke Energy Progress Inc. (formerly Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., prior to April 29, 2013), is a corporation organized and existing under the laws of the State of North Carolina. Defendant corporation has a corporate office in Wake County, North Carolina. Defendant's principal place of business is in Wake County, North Carolina and is located at 410 South Wilmington Street, PEB 17B5, Raleigh, North Carolina 27601. Defendant's Registered Agent is CT Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, North Carolina 27601

3. Duke Energy Progress owns the following facilities ("Facilities").

a. ***Former Duke Energy Facility:***

Riverbend Steam Station in Gaston County; and

b. ***Former Progress Energy Carolinas Facility:***

Asheville Steam Electric Generating Plant ("Asheville Steam Electric Plant") in Buncombe County.

4. Defendant (or its predecessors) was doing business in the counties set forth in paragraph 3 above, at the time the violations or threatened violations were committed at the Facilities that gave rise to this action.

JURISDICTION AND VENUE

5. The Superior Court has jurisdiction of this action for injunctive relief for existing or threatened violations of various laws and rules and regulations governing the protection of the state's water resources pursuant to N.C. Gen. Stat. §§ 7A-245 and 143-215.6C, and for such other relief as the Court shall deem proper.

6. Wake County is a proper venue for this action because the county is the principal place of business for the Defendant violator.

GENERAL ALLEGATIONS

Applicable Laws and Regulations

7. Pursuant to N.C. Gen. Stat. § 143-215.3(a)(1), the Environmental Management Commission (“EMC” or the “Commission”) has the power “[t]o make rules implementing Articles 21, 21A, 21B or 38 of . . . Chapter” 143 of the North Carolina General Statutes. These statutes, and the rules adopted under them, are designed to further the public policy of the State, as declared in N.C. Gen. Stat. § 143-211, “to provide for the conservation of its water and air resources . . . [and], within the context of this Article [21] and Articles 21A and 21B of this Chapter [143], to achieve and to maintain for the citizens of the State a total environment of superior quality.”

8. N.C. Gen. Stat. § 143-211 further provides that “[s]tandards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources.”

9. The Commission has the power to issue permits with conditions attached as the Commission believes are necessary to achieve the purposes of Article 21 of Chapter 143 of the General Statutes. N.C. Gen. Stat. § 143-215.1(b)(4).

10. Pursuant to its authority in N.C. Gen. Stat. § 143-215.3(a)(4) to delegate such of its powers as it deems necessary, the Commission has delegated the authority to issue permits, and particularly discharge permits, to the Director of the Division of Water Quality. Title 15A of

the North Carolina Administrative Code ("NCAC"), rule 2H.0112¹. A copy of this rule is attached hereto as Plaintiff's Exhibit No. 1, and is incorporated herein by reference.

11. N.C. Gen. Stat. § 143-215.1 requires a permit before any person can "make any outlets into the waters of the state" or "cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications ... unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article [Article 21 of Chapter 143 of the General Statutes]." N.C. Gen. Stat. §§ 143-215.1(a) (1) and (6).

12. The Commission's rules in the 15A NCAC Subchapter 2L (hereinafter "2L Rules"), "establish a series of classifications and water quality standards applicable to the groundwaters of the State." 15A NCAC 2L.0101(a). A copy of the 2L Rules is attached hereto as Plaintiff's Exhibit No. 2 and is incorporated herein by reference.

13. "Groundwaters" are defined in the 2L Rules as "those waters occurring in the subsurface under saturated conditions." 15A NCAC 2L.0102(11).

14. The 2L Rules "are applicable to all activities or actions, intentional or accidental, which contribute to the degradation of groundwater quality, regardless of any permit issued by a governmental agency authorizing such action or activity except an innocent landowner who is a bona fide purchaser of property which contains a source of groundwater contamination, who purchased such property without knowledge or a reasonable basis for knowing that groundwater contamination had occurred, or a person whose interest or ownership in the property is based or

¹ 15A NCAC 2H.0112

derived from a security interest in the property, shall not be considered a responsible party.”
15A NCAC 2L.0101(b).

15. The policy section of the 2L Rules provides that the 2L Rules “are intended to maintain and preserve the quality of the groundwaters, prevent and abate pollution and contamination of the waters of the state, protect public health, and permit management of the groundwaters for their best usage by the citizens of North Carolina.” 15A NCAC 2L.0103(a).

16. “Contaminant” is defined in the 2L Rules as “any substance occurring in groundwater in concentrations which exceed the groundwater quality standards specified in Rule .0202 of the Subchapter.” 15A NCAC 2L.0102(4).

17. “Natural Conditions” are defined in the 2L Rules as “the physical, biological, chemical and radiological conditions which occur naturally.” 15A NCAC 2L.0102(16).

18. The policy section of the 2L Rules provides further that, “[i]t is the policy of the Commission that the best usage of the groundwaters of the state is as a source of drinking water. These groundwaters generally are a potable source of drinking water without the necessity of significant treatment. It is the intent of these Rules to protect the overall high quality of North Carolina’s groundwaters to the level established by the standards and to enhance and restore the quality of degraded groundwaters where feasible and necessary to protect human health and the environment, or to ensure their suitability as a future source of drinking water.” 15A NCAC 2L.0103(a).

19. The policy section of the 2L Rules provides further that, “[n]o person shall conduct or cause to be conducted, any activity which causes the concentration of any substance to exceed that specified in Rule .0202 of this Subchapter, except as authorized by the rules of this Subchapter.” 15A NCAC 2L.0103(d).

20. The groundwater "Standards" are specified in 15A NCAC 2L.0202. *See* 15A NCAC 2L.0102(23). Some groundwater standards and their concentrations are specifically listed in .0202(g) and (h). "Where naturally occurring substances exceed the established standard, the standard shall be the naturally occurring concentration as determined by the Director." 15A NCAC 2L.0202(b)(3). If a substance is not specifically listed and it is not naturally occurring, the substance cannot be permitted in concentrations at or above the practical quantitation limit in Class GA or Class GSA waters, except that the Director may establish interim maximum allowable concentrations ("IMAC") pursuant to 15A NCAC 2L.0202(c). These are listed in Appendix #1 of 15A NCAC 2L. The IMACs are the established standard until adopted by rule. *See* the last page of Plaintiff's Exhibit No. 2.

21. The DWQ Director established IMAC for Antimony on August 1, 2010 and for Thallium on October 1, 2010, substances for which standards had not been established under the 2L Rules. A copy of the Public Notice establishing the IMACs and a copy of the Approved IMACs are attached hereto as Plaintiff's Exhibit Nos. 3 and 4, respectively, and both exhibits are incorporated herein by reference. The interim maximum allowable concentration for Thallium is 0.0002 mg/L (0.2 µg/L) established pursuant to 15A NCAC 2L .0202(c). The interim maximum allowable concentration for Antimony is 1 µg/L established pursuant to 15A NCAC 2L .0202(c). *See* the last page of Plaintiff's Exhibit No. 2.

22. "It is the intention of the Commission to protect all groundwaters to a level of quality at least as high as that required under the standards established in Rule .0202 of this Subchapter." 15A NCAC 2L.0103(b).

23. A "Compliance Boundary" is defined in the 2L Rules as "a boundary around a disposal system at and beyond which groundwater quality standards may not be exceeded and

only applies to facilities which have received an individual permit issued under the authority of [N.C. Gen. Stat. §] 143-215.1 or [N.C. Gen. Stat. §]130A.” 15A NCAC 2L.0102(3).

24. Pursuant to 15A NCAC 2L.0107(a), “[f]or disposal systems individually permitted prior to December 30, 1983, the compliance boundary is established at a horizontal distance of 500 feet from the waste boundary or at the property boundary, whichever is closer to the source.”

25. The “Waste Boundary” is defined in the 2L Rules as “the perimeter of the permitted waste disposal area.” 15A NCAC 2L.0102(26).

26. A “Corrective Action Plan” is defined in the 2L Rules as “a plan for eliminating sources of groundwater contamination or for achieving groundwater quality restoration or both. 15A NCAC 2L.0102(5). A site assessment pursuant to a corrective action should include the source and cause of contamination, any imminent hazards to public health and safety, all receptors and significant exposure pathways, the horizontal and vertical extent of the contamination, as well as all geological and hydrogeological features influencing the movement of the contamination. 15A NCAC 2L .01006 (g).

27. Pursuant to N.C. Gen. Stat. § 143-215.6C, “[w]henver the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part [Part 1, Article 21, of the General Statutes], any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, . . .” the Department is authorized to “request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation.”

28. That section further provides that “[u]pon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred

or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation.” N.C. Gen. Stat. § 143-215.6C.

29. Additionally, the section provides that “[n]either the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for the violation of this Part.” N.C. Gen. Stat. § 143-215.6C.

30. Defendant is a person consistent with N.C. Gen. Stat. § 143-212(4) and pursuant to N.C. Gen. Stat. § 143-215.6C.

Factual and Legal Allegations

31. Defendant implemented a voluntary groundwater monitoring program at the Facilities in 2006.

32. In 2009, Plaintiff DWQ required Defendant to place monitoring wells at the compliance boundaries of all Coal Ash Ponds at the Facilities.

33. DWQ approved Defendant’s proposed compliance boundary and monitoring wells locations at each of the Facilities on the following dates:

a. ***Former Duke Energy Facility:***

Riverbend Steam Station – August 26, 2010; and,

b. ***Former Progress Energy Facility:***

Asheville Steam Electric Plant – October 20, 2010;

34. Defendant constructed compliance monitoring wells at the compliance boundaries of the Coal Ash Ponds at each of the Facilities on the following dates:

a. ***Former Duke Energy Facility:***

Riverbend Steam Station – December 2010;

b. ***Former Progress Energy Facility:***

Asheville Steam Electric Plant – August 2010;

35. Each of the Facilities has a specific set of parameters being monitored:

a. ***Former Duke Energy Facility:***

Riverbend Steam Station – Antimony, Arsenic, Barium, Boron, Cadmium, Chromium, Chloride, Copper, Iron, Lead, Manganese, Mercury, Nickel, Nitrate, pH, Selenium, Sulfate, Thallium, TDS, Water Level, and Zinc; and,

b. ***Former Progress Energy Facility:***

Asheville Steam Electric Plant – Antimony, Arsenic, Barium, Boron, Cadmium, Chromium, Chloride, Copper, Iron, Lead, Manganese, Mercury, Nickel, Nitrate, pH, Selenium, Sulfate, Thallium, TDS, Water Level, and Zinc;

36. In 2010, Defendant began submitting groundwater monitoring data to DWQ from the Facilities.

37. On June 17, 2011, the DWQ adopted a policy for compliance evaluation of long-term permitted facilities with no prior groundwater monitoring requirements (hereinafter “June 17, 2011 Policy”). A copy of the June 17, 2011 Policy is attached hereto as Plaintiff’s Exhibit No. 5 and is incorporated herein by reference.

38. DWQ’s June 17, 2011 Policy establishes an approach to evaluate groundwater compliance at long-term permitted facilities. Specifically, the policy requires staff and responsible parties to consider multiple factors before determining if groundwater concentrations in samples taken at the permitted facility are a violation of the groundwater standards, or if the concentration is naturally occurring. Such factors considered are well design, sample integrity, analytical methods, statistical testing, etc.

39. Both Facilities are subject to the June 17, 2011 Policy and DWQ has been working with the Defendant to move through the evaluative process as described in the policy.

40. DWQ's Aquifer Protection staff compiled tables of the analytical results of groundwater samples collected at the Facilities. Both of the Facilities began submitting data in 2010, and DWQ prepared charts of the Ash Pond Exceedances from 2010 to April 1, 2013. The charts are labeled by National Pollutant Discharge Elimination System ("NPDES") Permit number and facility name. The Riverbend chart is attached hereto as Plaintiff's Exhibit No. 6 ("Riverbend Steam Station Ash Pond Exceedances Chart"), and the Asheville Steam Electric Plant chart is attached hereto as Plaintiff's Exhibit No. 7 ("Asheville Steam Electric Ash Pond Exceedances Chart"), and both exhibits are incorporated herein by reference.

41. Each chart contains the following information: the well number, the parameter sampled, the date of the sample (month and year), the 2L limit (groundwater standard), the sampling result and the unit of measurement.

Duke Energy Facility

Riverbend Steam Station

42. On March 3, 1976, pursuant to N.C. Gen. Stat. § 143-215.1, other lawful statutes and regulations issued by the Commission, and the Clean Water Act, DWQ issued NPDES Permit No. NC0004961 to Duke Energy for the Riverbend Steam Station ("Riverbend Steam Station NPDES Permit"), located in Gaston County, North Carolina.

43. The Riverbend Steam Station NPDES Permit has been renewed subsequently. The current NPDES Permit was re-issued on January 18, 2011, with an effective date of March 1, 2011, and with an expiration date of February 28, 2015. A copy of the current Riverbend Steam Station NPDES Permit No. NC0004961 is attached hereto as Plaintiff's Exhibit No. 8, and is incorporated herein by reference.

44. The Riverbend Steam Station NPDES Permit authorizes the continued discharge of treated wastewater to receiving waters designated as the Catawba River (Class WS-IV & B-CA waters) in the Catawba River Basin in accordance with the effluent limitations, monitoring requirements and other conditions set forth therein.

45. Among other things, the Riverbend Steam Station NPDES Permit authorizes the continued discharge of once-through cooling water through Outfall 001. This discharge consists of intake screen backwash and water from the plant chiller system, turbine lube oil coolers, condensate coolers, main turbine steam condensers and the intake tunnel dewatering sump.

46. In addition, the Riverbend Steam Station NPDES Permit authorizes a continued discharge from an Ash Pond through Outfall 002. The Ash Pond discharge consists of induced draft fan and preheater bearing cooling water, stormwater from roof drains and paving, treated groundwater, track hopper sump (groundwater), coal pile runoff, laboratory drain and chemical makeup tanks and drums rinsate wastes, ash transport water, general plant/trailer sanitary wastewater, metal cleaning waste, chemical metal cleaning waste, combustion turbine cooling water discharges, turbine and boiler rooms sumps, vehicle rinse water, and stormwater from pond areas and upgradient watershed.

47. Further, the Riverbend Steam Station NPDES Permit authorizes the continued discharge of yard sump overflows through Outfall 002A.

48. Outfalls 002 and 002A consist of coal pile runoff, ash transport water, metal cleaning wastes, treated domestic wastewater, remediated groundwater, low volume wastes, blowdown from wet cooling towers for combined cycle unit, and boiler blowdown.

49. The effluent limitations and monitoring requirements in the Riverbend Steam Station NPDES Permit for the discharge from Outfall 001 requires sampling for the following

parameters: Flow and Temperature, with the temperature requirements in effect when only units with a shared control system are operating.

50. The Riverbend Steam Station NPDES Permit prohibits Chlorination of the once-through condenser cooling water discharged through Outfall 001.

51. The effluent limitations and monitoring requirements in the Riverbend Steam Station NPDES Permit for Outfall 002 require sampling for the following parameters: Flow, Total Suspended Solids, Oil and Grease, Total Copper, Total Iron, Total Arsenic, Total Selenium, Total Mercury, Total Phosphorus, Total Nitrogen, pH, and Chronic Toxicity.

52. The metal cleaning waste, coal pile runoff, ash transport water, domestic wastewater and low volume waste must be discharged into the Ash Settling Pond.

53. No chemicals, cleaners or other additives may be present in the vehicle wash water to be discharged through Outfall 002.

54. The effluent limitations and monitoring requirements in the Riverbend Steam Station NPDES Permit for Outfall 002A require sampling for the following parameters: Flow, pH, Total Suspended Solids, Oil and Grease, Fecal Coliform, Total Copper and Total Iron.

55. The Riverbend Steam Station NPDES Permit prohibits the discharge of floating solids or visible foam other than in trace amounts from any of its outfalls.

Unpermitted Seeps at the Riverbend Steam Station

56. As mentioned above, the Defendant's Riverbend Steam Station has three permitted outfalls (001, 002 and 002A) discharging directly into the Catawba River which are included in the Riverbend Steam Station NPDES Permit.

57. Defendant's Riverbend Steam Station NPDES Permit does not authorize the Defendant to make any outlet or discharge any wastewater or stormwater other than those included in the Riverbend Steam Station NPDES Permit.

58. Upon information and belief, Plaintiff believes there are non-engineered seeps at Defendant's Riverbend Steam Station, which are different locations from the outfalls described in the Riverbend Steam Station NPDES Permit.

59.. A seep or discharge from the Ash Pond or any other part of the Riverbend Steam Station that is not included in the Riverbend Steam Station NPDES Permit is an unpermitted discharge in violation of N.C. Gen. Stat. § 143-215.1(a)(1) and (a)(6).

Exceedances of 2L Groundwater Standards at the Riverbend Steam Station

60. DWQ's Aquifer Protection staff compiled tables of the analytical results of groundwater samples collected at the Buck Steam Station from 2010 through April 1, 2013, and prepared a chart of the Ash Pond Exceedances which are listed in the Riverbend Steam Station Ash Pond Exceedances Chart. See Plaintiff's Exhibit No. 6.

61. The Riverbend Steam Station Ash Pond Exceedances Chart shows 21 exceedances from the 2L Groundwater Standards for Iron (300 µg/L) in MW-11SR, MW-14, MW-15, MW-7SR, MW-8D, and MW-8I during 7 sampling events from February 2011 to March 2013.

62. The Riverbend Steam Station Ash Pond Exceedances Chart shows 38 exceedances from the 2L Groundwater Standard for Manganese (50 µg/L) in MW-11DR, MW-11SR, MW-114, MW-15, MW-7SR, and MW-8D during 7 sampling events from February 2011 to March 2013.

63. DWQ staff is working with the Defendant to determine if these exceedances are naturally occurring or if corrective action will be required.

Progress Energy Facility

Asheville Steam Electric Plant

64. On June 30, 1981, pursuant to N.C. Gen. Stat. § 143-215.1, other lawful statutes and regulations issued by the Commission, and the Clean Water Act, DWQ issued NPDES Permit No. NC00000396 to Progress Energy for the Asheville Steam Electric Plant (“Asheville Steam Electric Plant NPDES Permit”), located in Buncombe County, North Carolina.

65. The Asheville Steam Electric Plant NPDES Permit has been renewed subsequently. The current NPDES Permit was re-issued on November 16, 2005, with an expiration date of December 31, 2010. However, since the Defendant timely applied for re-issuance 180 days prior to the expiration date, pursuant to N.C. Gen. Stat. § 150B-3, Defendant can continue to operate under the November 15, 2005 NPDES permit until a new permit has been issued. A copy of the November 15, 2005 NPDES permit No. NC0000396 is attached hereto as Plaintiff’s Exhibit No. 9, and is incorporated herein by reference.

66. On June 11, 2010, Progress Energy submitted a renewal application to DWQ. While the renewal application is being processed, Defendant continues to operate the Asheville Steam Electric Plant under the 2005 Asheville Steam Electric Plant NPDES permit, as modified in 2009 to include a name change.

67. The Asheville Steam Electric Plant NPDES Permit authorizes the discharge of treated wastewater to receiving waters designated as the French Broad River, Lake Julian, and an unnamed tributary to Powell Creek in the French Broad River Basin in accordance with the

effluent limitations, monitoring requirements and other conditions set forth in the Asheville Steam Electric Plant NPDES Permit.

68. Among other things, the Asheville Steam Electric Plant NPDES Permit authorizes an Ash Pond Treatment System at Outfall 001 that discharges directly into the French Broad River. The ash pond receives ash transport water, coal pile runoff, storm water runoff, various low volume wastes (such as boiler blowdown, backwash from the water treatment processes, ash hopper seal water, plant drains), air preheater cleaning water, and chemical metal cleaning wastewater discharged from Internal Outfall 004 (potentially).

69. The Asheville Steam Electric Plant NPDES Permit authorizes a Once-Through Non-Contact Cooling Water System that discharges a wastestream directly into Lake Julian through Outfall 002.

70. The Asheville Steam Electric Plant NPDES Permit authorizes a Chemical Metal Cleaning Treatment System that occasionally discharges a wastestream via Internal Outfall 004 to the Ash Pond Treatment System or to the old ash pond (with DWQ approval). Generally, chemical metal cleaning wastes are treated by evaporation in boilers.

71. The Asheville Steam Electric Plant NPDES Permit authorizes a FGD wet scrubber wastewater treatment system which discharges to the secondary settling basin after the Ash Pond via Internal Outfall 005 (with an ultimate discharge through Outfall 001).

72. The Asheville Steam Electric Plant NPDES Permit authorizes a Stormwater Discharge System to discharge stormwater from Outfalls SW-1, SW-2, SW-3, SW-4, SW-5 and SW-6. Stormwater drainage from the new access road used to transport coal and oil truck deliveries discharges from Outfalls SW-1, SW-2 and SW-3 directly to Lake Julian. Stormwater drainage from the old access road used to transport coal and oil truck deliveries discharges from

Outfalls SW-4 and SW-6 directly to Lake Julian, and Outfall SW-5 directly to an unnamed tributary to Powell Creek.

73. The effluent limitations and monitoring requirements in the Asheville Steam Electric Plant NPDES Permit for the discharge from Outfall 001 (Ash Pond Treatment System) require sampling for the following parameters: Flow, Oil and Grease, Total Suspended Solids, pH, Total Mercury, Total Arsenic, Total Beryllium, Total Cadmium, Total Chlorides, Total Chromium, Total Copper, Total Fluoride, Total Lead, Total Manganese, Total Nickel, Total Selenium, Total Silver, Total Thallium, Total Zinc, Total Nitrogen, Total Phosphorus, Chronic Toxicity and Fish Tissue Sampling.

74. The effluent limitations and monitoring requirements in the Asheville Steam Electric Plant NPDES Permit for the discharge from Outfall 002 (Once-Through Non-Contact Cooling Water System) require sampling for the following parameters: Total Residual Chlorine, Time of Chlorine Addition, Temperature and pH.

75. The effluent limitations and monitoring requirements in the Asheville Steam Electric Plant NPDES Permit for the discharge from Internal Outfall 004 (Chemical Metal Cleaning Treatment System) require sampling for the following parameters: Total Copper and Total Iron.

76. The effluent limitations and monitoring requirements in the Asheville Steam Electric Plant NPDES Permit for the discharge to the secondary settling basin after the Ash Pond via Internal Outfall 005 (FGD wet scrubber wastewater treatment system) require sampling for the following parameters: Flow, Total Suspended Solids, Total Mercury, Total Arsenic, Total Beryllium, Total Cadmium, Total Chlorides, Total Chromium, Total Copper, Total Fluoride,

Total Lead, Total Manganese, Total Nickel, Total Selenium, Total Silver, Total Thallium and Total Zinc.

77. The effluent limitations and monitoring requirements in the Asheville Steam Electric Plant NPDES Permit for discharge from Outfalls SW-1, SW-2, SW-3, SW-4, SW-5 and SW-6 (Stormwater Discharge System) require sampling for the following parameters: Color, Odor, Clarity, Floating Solids, Suspended Solids, Foam, Oil Sheen and Other Obvious Indicators of Stormwater pollution.

Unpermitted Seeps at the Asheville Steam Electric Plant

78. As mentioned above, the Defendant's Asheville Steam Electric Plant has four permitted outfalls and six stormwater outlets discharging directly into the French Broad River or Lake Julian which are included in the Asheville Steam Electric Plant NPDES Permit.

79. Defendant's Asheville Steam Electric Plant NPDES Permit does not authorize the Defendant to make any outlet or discharge any wastewater or stormwater other than those included in the Asheville Steam Electric Plant NPDES Permit.

80. On March 11, 2013, DWQ staff inspected the Asheville Steam Electric Plant and observed several seeps from the facility discharging into surface waters adjacent and flowing to the French Broad River. Seeps identified at the site, included engineered discharges from the toe-drains of the 1964 and 1982 Coal Ash Ponds, discharges from the Asheville Steam Electric Plant property west and southwest of the coal ash ponds, including areas west of Interstate Highway 26, up to the banks of the French Broad River. These locations are different from the outfalls or stormwater outlets described in the Asheville Steam Electric Plant NPDES Permit.

81. Upon information and belief, Plaintiff believes there are other non-engineered seeps at Defendant's Asheville Steam Electric Plant, which are different locations from the outfalls and stormwater outlets described in the Asheville Steam Electric Plant NPDES Permit.

82. A seep or discharge from the Ash Pond or any other part of the Asheville Steam Electric Plant that is not included in the Asheville Steam Electric Plant NPDES Permit is an unpermitted discharge in violation of N.C. Gen. Stat. § 143-215.1(a)(1) and (a)(6).

Exceedances in Violation of 2L Standards at the Asheville Steam Electric Plant

83. DWQ's Aquifer Protection staff compiled a table of the analytical results of groundwater samples collected at the Asheville Steam Electric Plant from 2010 through April 1, 2013, and prepared a chart of the Ash Pond Exceedances which are listed in the Asheville Steam Electric Ash Pond Exceedances Chart. See Plaintiff's Exhibit No. 7.

84. The Asheville Steam Station Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standard for Iron (300 ug/L) in samples taken at Monitoring Wells CB-3, CB-4B, CB-5, and CB-6. Although Iron is a naturally occurring element, its presence in groundwater and specific occurrence at this site indicate impacts to groundwater resulting from coal burning activities.

85. The Asheville Steam Station Ash Pond Exceedances Chart shows exceedances from the 2L standard for Manganese (50 ug/L) in samples taken at Monitoring Wells GW-1, CB-2, CB-3, CB-3R, CB-4, CB-5, CB-6, and CB-8. Although Manganese is a naturally occurring element, its presence in groundwater and specific occurrence at this site indicate impacts to groundwater resulting from coal burning activities.

86. The Asheville Steam Station Ash Pond Exceedances Chart shows exceedances from the 2L standard for Boron (700 ug/L) in samples taken at Monitoring Wells CB-3R, CB-6, and CB-8. Although Boron is a naturally occurring element, its presence in groundwater and specific occurrence at this site indicate impacts to groundwater resulting from coal burning activities.

87. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L GW standard for Thallium (0.2 µg/L) in samples taken at Monitoring Wells CB-3 and CB-3R. Although Thallium is a naturally occurring element, its presence in groundwater and specific occurrence at this site indicate impacts to groundwater resulting from coal burning activities.

88. The Asheville Steam Station Ash Pond Exceedances Chart shows exceedances from the 2L standard for TDS (500 mg/L) in samples taken at Monitoring Wells CB-8. The presence of Total Dissolved Solids in groundwater and the specific occurrence at this site indicate impacts to groundwater resulting from coal burning activities.

89. Defendant's exceedances of the groundwater standards for Iron, Manganese, Boron, Thallium, and TDS at the compliance boundary of the Asheville Steam Electric Plant Ash Pond are violations of the groundwater standards as prohibited by 15A NCAC 2L.0103(d).

Other Exceedances of 2L GW Standards at the Asheville Steam Electric Plant

90. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standard for Iron in samples taken at Monitoring Wells CB-1, CB-2, CB-7, CB-8, and GW-1.

91. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standard for Manganese in samples taken at Monitoring Well CB-1 and CB-7.
92. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standard for Boron in samples taken at Monitoring Well CB-3.
93. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standards for Chloride in samples taken at Monitoring Well CB-8.
94. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standards for Selenium in in samples taken at Monitoring Well CB-8.
95. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standards for Sulfate in samples taken at Monitoring Well CB-6.
96. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standards for Thallium in samples taken at Monitoring Well CB-2.
97. The Asheville Steam Electric Plant Ash Pond Exceedances Chart shows exceedances from the 2L Groundwater Standards for TDS in samples taken at Monitoring Well CB-6.

98. DWQ staff is working with the Defendant to determine if these exceedances are naturally occurring or if corrective action will be required.

CLAIMS FOR RELIEF

99. The allegations contained in paragraphs 1 through 99 are incorporated into these claims for relief as if fully set forth herein.

100. Defendant's unpermitted seeps from both of the Facilities are violations of N.C. Gen. Stat. §§ 143-215.1(a)(1) and (a)(6).

101. Defendant's exceedances of the groundwater standards for Boron, Iron, Manganese, Selenium, Thallium, and TDS at the compliance boundary of the Asheville Steam Electric Plant Ash Pond are violations of the groundwater standards as prohibited by 15A NCAC 2L.0103(d).

102. Plaintiff is entitled to injunctive relief, as set forth more specifically in the prayer for relief, pursuant to N.C. Gen. Stat. § 143-215.6C.

103. Defendant's violations of N.C. Gen. Stat. §§ 143-215.1(a)(1) and (a)(6) for the unpermitted seeps and Defendant's violations and potential violations of the groundwater standards, without assessing the problem and taking corrective action, poses a serious danger to the health, safety and welfare of the people of the State of North Carolina and serious harm to the water resources of the State.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, State of North Carolina, prays that the Court grant to it the following relief:

1. That the Court accepts this verified complaint as an affidavit upon which to base all orders of the Court.

2. That the Court preliminarily, and upon final judgment permanently enter a mandatory injunction requiring the Defendant to abate the violations of N.C. Gen. Stat. § 143-215.1, NPDES Permits and groundwater standards at the Facilities;

3. That the Court preliminarily, and upon final judgment permanently enter a mandatory injunction requiring the Defendant take the steps required in the attached "Ash Ponds Assessment Needs", which is attached hereto as Plaintiff's Exhibit No. 10 and is incorporated herein by reference;

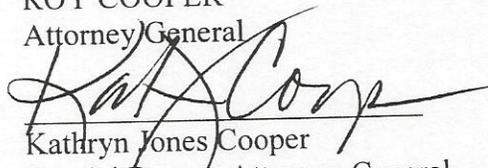
4. That the Defendant be taxed with the costs of this action.

5. Any other and further relief that the Court deems to be just and proper.

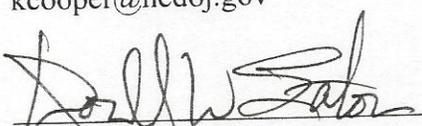
Respectfully submitted, this the 20th day of May, 2013.

ROY COOPER
Attorney General

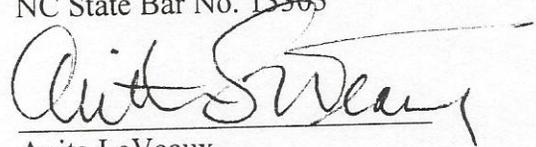
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State of North Carolina ex rel.
North Carolina Department of
Environment and Natural Resources
Division of Water Quality

STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF WAKE

Jeffrey Poupart, first being duly sworn, deposes and says that he is the Point Source Branch Supervisor of the Surface Water Protection Section of the Division of Water Quality in the North Carolina Department of Environment and Natural Resources; that he has read the foregoing verified Amended Complaint and Motion Injunctive Relief, and that he is acquainted with the facts and circumstances alleged therein; and believes them to be true.


Jeffrey Poupart

Wake County, North Carolina

I certify that the following person appeared before me this day, acknowledging to me that he signed the foregoing document: *Jeffrey Poupart*.

20th day of May, 2013.


Official Signature of Notary

JANET D. LEACH
Notary's printed or typed name

My Commission Expires: 9-15-2013

