



Conservation Groups Get Voice in Coal Ash Fight

Court Rules Conservation Groups Are Full Parties in Sutton Plant Action

The Wake County Superior Court ruled that conservation groups may participate as full parties in the enforcement action brought by North Carolina against Duke Energy Progress for coal ash pollution at the Sutton Plant near Wilmington, NC. The Southern Environmental Law Center sought to intervene in the state enforcement action on behalf of Cape Fear River Watch, the Sierra Club, and Waterkeeper Alliance. Duke Energy Progress opposed the participation of the conservation groups.

“This ruling ensures that community interests in clean drinking water and a healthy Sutton Lake will be represented at the table,” said Frank Holleman, senior attorney for the Southern Environmental Law Center. “Duke tried to shut out the conservation groups, but the court rejected its position.”

In June 2013, the Southern Environmental Law Center sent the North Carolina Department of the Environment and Natural Resources and Duke Energy Progress a 60-Day Notice under the Clean Water Act that it would bring suit to enforce the Clean Water Act against Duke Energy Progress for its coal ash pollution of groundwater and Sutton Lake if DENR did not. At the end of the 60-Day period in August, DENR filed the pending state enforcement action against Duke Energy Progress for violating North Carolina’s groundwater laws. The court’s ruling allows the conservation groups represented by the Southern Environmental Law Center to participate in the state’s civil prosecution against Duke Energy Progress on the same footing as the state and Duke Energy Progress.

“Duke Energy Progress should clean up its coal ash pollution of our community’s groundwater, our drinking water, and Sutton Lake,” said Kemp Burdette, the Cape Fear Riverkeeper. “This ruling will ensure that the interests of the entire community are heard in court.”

Earlier this fall, the local water utility announced a deal to install a water line to protect residents near the Sutton facility whose drinking water supply wells are threatened by Duke Energy Progress's coal ash pollution. As part of that deal, Duke Energy Progress has insisted that 11,000 acres of groundwater – 17 square miles – be placed off limits to the public water system forever, due to the threat from Duke Energy Progress's coal ash contamination of groundwater supplies. The water system's existing drinking water wells will be abandoned.

“Coal ash is polluting North Carolina's ground water and rivers from the mountains to the coast,” said Kelly Martin, with the Sierra Club's Beyond Coal Campaign. “We will be working in this case and others to ensure that coal ash pollution is cleaned up and our water is protected.”

The Southern Environmental Law Center has also filed suit in federal court against Duke Energy Progress on behalf of the conservation groups to clean up the coal ash pollution of groundwater and Sutton Lake. That suit sets out claims for violations of the Clean Water Act that North Carolina did not bring in its state civil prosecution.

“North Carolina's water resources and its citizens are suffering from coal ash pollution,” said Donna Lisenby, Global Coal Campaign Coordinator for Waterkeeper Alliance. “By storing its coal ash in primitive pits and lagoons beside our waterways, Duke Energy Progress is threatening one of our most precious resources, clean water.”

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About Cape Fear River Watch

Founded in 1993, Cape Fear River Watch works to protect and improve the water quality of the Lower Cape Fear River Basin through education, advocacy, and action.

About the Sierra Club

Sierra Club is America's largest and most influential grassroots environmental organization. Inspired by nature, we are 2.1 million of your friends and neighbors, working together to protect our communities and the planet. Read more at <http://www.sierraclub.org>.

About the Waterkeeper Alliance

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About the Southern Environmental Law Center

The Southern Environmental Law Center is a regional nonprofit using the power of the law to protect the health and environment of the Southeast (Virginia, Tennessee, North and South Carolina, Georgia, and Alabama). Founded in 1986, SELC's team of more than 60 legal and policy experts represent more than 100 partner groups on issues of climate change and energy, air and water quality, forests, the coast and wetlands, transportation, and land use. www.SouthernEnvironment.org.

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Court Rules Conservation Groups Are Full Parties in Allen and Marshall Plants Coal Ash Pollution Suits

Mecklenburg County Superior Court ruled that the [Catawba Riverkeeper](#) represented by the Southern Environmental Law Center will be a full party in a civil prosecution brought by North Carolina against Duke Energy for coal ash pollution at its Allen and Marshall plants on Lakes Wylie and Norman. The Southern Environmental Law Center sought to intervene on behalf of the Riverkeeper in the state's action against Duke Energy. Duke Energy opposed the participation of the Southern Environmental Law Center and the Riverkeeper.

“Because of this ruling, we will be at the table working to protect these important lakes and drinking water reservoirs from Duke Energy’s toxic coal ash pollution,” said Frank Holleman, senior attorney at the Southern Environmental Law Center. “Duke Energy sought to close the Riverkeeper out of the case, but the Court rejected Duke’s position.”

Duke Energy stores millions of tons of coal ash in unlined lagoons on the banks of both Lake Wylie and Lake Norman on the Catawba River. These lagoons contaminate groundwater with toxic substances, and the coal ash lagoon at Allen on Lake Wylie is leaking contaminated water into the drinking water reservoir. Lake Wylie provides drinking water to Belmont, N.C., and Rock Hill, S.C., and Lake Norman provides drinking water to Mooresville and Charlotte. The North Carolina Department of the Environment and Natural Resources has determined that Duke Energy is violating North Carolina clean water laws due to its coal ash pollution at its plants on both lakes and that Duke Energy’s pollution “poses a serious threat to the health, safety, and welfare of the people of North Carolina” and “serious harm to the water resources of the state.”

“Duke Energy’s coal ash is polluting all the drinking water reservoirs on the Catawba River in the Charlotte region,” said Sam Perkins, the Catawba Riverkeeper. “We will work in this case to see that Duke Energy’s toxic coal ash pollution is cleaned up.”

North Carolina has also brought a civil prosecution against Duke Energy for its coal ash pollution of Mountain Island Lake, a third drinking water reservoir on the Catawba River that serves Charlotte, Mecklenburg County, Gastonia, and Mount Holly. Previously, the court also allowed the Riverkeeper to participate in that civil prosecution, again over the objection of Duke Energy.

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About the Catawba Riverkeeper Foundation

The Catawba Riverkeeper Foundation is a nonprofit organization with members in South and North Carolina that works to protect and restore the Catawba/Wateree River and its watershed.

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Conservation Groups Act to Join State Charges against Progress Energy's Coal Ash Pollution at Sutton Plant Near Wilmington

Conservation groups today filed in court to join North Carolina's complaint against Duke Energy Progress over its illegal groundwater pollution from coal ash at its Sutton facility near Wilmington, N.C. The coal waste has contaminated the area with arsenic, selenium, and other toxic pollutants, which threaten a local community's drinking water supply.

The motion to intervene in the state enforcement action was filed by the Southern Environmental Law Center on behalf of Cape Fear River Watch, the Sierra Club, and the Waterkeeper Alliance. The state's suit was a response to a 60-Day Notice of intent from those groups that they bring suit against Progress for its Sutton coal ash pollution.

"The groundwater pollution at Sutton is serious and threatens the drinking water wells for the nearby Flemington community," said Frank Holleman, the senior attorney for the Southern Environmental Law Center who represents the groups. "Independent citizens groups must be at the table to be sure that the public is protected from Progress's serious coal ash pollution."

Near the end of the 60-Day Notice period on August 16, North Carolina sued Progress for illegal coal ash pollution at six coal ash sites, including Sutton. The state set out under oath that the pollution "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." In a separate action, North Carolina also sued Duke Energy Carolinas, a sister company, for coal ash pollution at six other locations across the state. In total, pollution from Duke Energy's coal ash waste at 14 facilities in North Carolina is now before the courts.

"We want to ensure that this illegal pollution is cleaned up and that the drinking water for the

Flemington community is protected. I and our members shop, fish, and live near this site, and it must be cleaned up," said Kemp Burdette, the Cape Fear Riverkeeper.

The Flemington community is a low-income, racially diverse neighborhood near the coal ash lagoons. Coal ash is contaminating groundwater that flows in the direction of the community's drinking water wells. Flemington's water supply is listed by the state as being at high risk of contamination. The community also has a history of water pollution problems; it was switched to the current wells after its previous wells were contaminated by a nearby landfill.

In the action, North Carolina specifically lists "Risk Factors" at Sutton due to violations of groundwater standards at eight monitoring wells upgradient of drinking water wells for the Flemington community. The enforcement action sets out that the drinking water wells are only 2200 feet from the monitoring wells that show elevated levels of coal ash pollutants and only 2700 feet from the coal ash lagoon itself. The monitoring wells show illegal pollution by Arsenic, Thallium, Boron, Manganese, Iron, and ph.

"This coal ash pollution is a toxic legacy that is illegally polluting our groundwater and threatening our drinking water," said Kelly Martin of the Sierra Club's Beyond Coal Campaign. "It is long past time to clean this mess up."

North Carolina sets out that Progress has illegally contaminated the groundwater at Sutton with a long list of pollutants, including toxic substances: Arsenic, Selenium, Lead, Thallium, Boron, Antimony, Manganese, Iron, Sulfate, and Total Dissolved Solids.

"We brought this illegal pollution to North Carolina's attention through our 60-Day Notice, and we should be in the enforcement action to see that it is properly and fully cleaned up not studied indefinitely," said Donna Lisenby, Global Coal Coordinator for the Waterkeeper Alliance. "Our communities and our natural resources must be protected from this toxic threat."

The North Carolina courts have previously allowed the Southern Environmental Law Center and conservation groups to intervene in coal ash suits at the Progress Skyland plant near Asheville and at the Duke Energy Carolinas plant at Mountain Island Lake near Charlotte.

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Conservation Groups Join State's Lawsuits against Duke Energy

The Wake County and Mecklenburg County Superior Courts ruled late Friday that conservation groups represented by the Southern Environmental Law Center will join in state lawsuits against Duke Energy over pollution from coal ash at the French Broad River in Asheville and at Mountain Island Lake near Charlotte. The Southern Environmental Law Center represents the Sierra Cub, the Waterkeeper Alliance, and the Western North Carolina Alliance in the Asheville suit and the Catawba Riverkeeper in Mountain Island Lake suit.

Duke Energy had sought to keep the conservation groups out of both suits.

“We’re pleased that the court allowed our participation in the lawsuit,” said Amelia Burnette, a senior attorney at the Southern Environmental Law Center who represents the Asheville groups. “We’re committed to ensuring that Duke meets its legal mandate to stop and remedy unlawful pollution caused by its coal ash lagoons.”

The Asheville plant has two old coal ash lagoons, built in 1964 and 1982, that sprawl over 90 acres adjacent to the French Broad River, seven miles upstream from the City of Asheville. The ash lagoons have been seeping for at least three decades, according to public records, and groundwater around the lagoons is contaminated with pollutants including boron, manganese, thallium, and selenium.

“Independent citizen groups must be at the table to ensure that the region’s drinking water is protected,” said Frank Holleman, senior attorney at the Southern Environmental Law Center, representing the Catawba Riverkeeper Foundation in the Mountain Island Lake suit. “Now, we can work in the state suits to clean up Duke Energy’s coal ash pollution.”

Mountain Island Lake on the Catawba River in Gaston County is the drinking water reservoir for 860,000 people in Charlotte, Mecklenburg County, Gastonia, and Mount Holly. Duke Energy stores 2.7 million tons of coal ash in lagoons on the banks of the Lake that leak into the drinking water reservoir, contaminate groundwater, and discharge pollutants including arsenic, cobalt, manganese, and iron.

Hartwell Carson, WNCA's French Broad Riverkeeper, said storing millions of tons of coal ash right beside a major river like the French Broad is bound to cause problems. "And in this case, the lagoons are illegally polluting the river and have caused widespread groundwater contamination. Many recreationists in the region use the French Broad River, and it's vitally important that polluters comply with laws designed to protect water quality," Carson said.

"It is irresponsible to store 2.7 million tons of coal ash waste in leaking, polluting, unlined lagoons on the banks of Mountain Island Lake, the drinking water reservoir for one of the country's largest metropolitan areas. Our goal is to protect the Catawba and our drinking water," said Sam Perkins, the Catawba Riverkeeper.

"Coal ash pollution is part of the toxic legacy of coal-fired power plants in North Carolina," said Kelly Martin of the Sierra Club's Beyond Coal campaign. "The coal ash at Duke Energy's Asheville coal plant threatens our beautiful river and the health of people living nearby. The Sierra Club and our partners want to protect our river and our community, and we can do this better as part of the state's lawsuit."

The enforcement actions against Duke Energy's coal ash pollution began when the Southern Environmental Law Center sent 60-Day Notices under the Clean Water Act to the North Carolina Department of the Environmental and Natural Resources and Duke Energy that it intended to bring suit against Duke Energy for its coal ash pollution in Asheville and at Mountain Island Lake. Near the end of the notice periods, DENR filed these enforcement suits. The Southern Environmental Law Center then moved to intervene in the suits, and Duke Energy opposed the participation of the Conservation Groups.

In the meantime, DENR and Duke Energy have proposed a settlement of the enforcement suits that would not require Duke Energy to clean up the coal ash pollution. That settlement is now open for public comment until August 14, 2013, and has been subject to criticism by the Conservation Groups. Any settlement would require court approval.

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About Sierra Club

The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 1.4 million members and supporters nationwide. The Sierra Club works to safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying and litigation. Visit us on the web at www.sierraclub.org and follow us on Twitter at @sierra_club.

About Waterkeeper Alliance

Waterkeeper Alliance unites more than 200 Waterkeeper organizations that are on the front lines of the global water crisis patrolling and protecting more than 1.5 million square miles of rivers, lakes and coastlines in the Americas, Europe, Australia, Asia and Africa. Waterkeepers emphasize citizen advocacy to defend the fundamental human right to swimmable, drinkable, and fishable waters, and combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and to the rule of law.

About Western North Carolina Alliance

For 30 years, the Western North Carolina Alliance has been a trusted community partner, marshaling grassroots support to keep our forests healthy, our air and water clean, and our communities vibrant. WNCA empowers citizens to be advocates for livable communities and the natural environment of Western North Carolina.

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