

Criminal charges filed against Duke Energy for NC coal ash spills

Misdemeanor counts stem from coal ash spills in 4 N.C. rivers

By Bruce Henderson and Anne Blythe, The Charlotte Observer

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CHARLOTTE, N.C. — Federal prosecutors Friday filed criminal charges against Duke Energy for illegal discharges from ash ponds across North Carolina, where a massive spill a year ago triggered intense scrutiny of the company's environmental management.

Duke said it has reached a settlement agreement with the federal government over nine misdemeanor violations of the Clean Water Act. The settlement would end an investigation of its ash handling that began with a spill into the Dan River on Feb. 2, 2014.

Duke would pay \$68.2 million in fines and restitution and \$34 million for community service and mitigation projects. The money will come from shareholders, not customers.

The settlement has to be reviewed and approved by a federal judge. U.S. Attorney Thomas Walker of the Eastern District, where the cases will be transferred, said he would have no comment until they come before a judge.

"We are accountable for what happened at Dan River and have learned from this event," Duke CEO Lynn Good said in a statement. "We are setting a new standard for coal ash management and implementing smart, sustainable solutions for all our ash basins. Our highest priorities are safe operations and the well-being of the people and communities we serve."

A criminal bill of information filed in U.S. District Court in Charlotte charges Duke with coal ash and wastewater discharges from an unpermitted drain at the Riverbend power plant west of Charlotte. A second, similar count is for the Asheville plant.

A third, filed in Raleigh, alleges a discharge of coal ash and coal ash wastewater from an unpermitted drainage ditch near the H.F. Lee Steam Electric Plant in Goldsboro into the Neuse River. The time period for that discharge was no later than Oct. 2010 through the end of 2014.

Other charges are connected to the spill and illegal discharges at the Dan River plant and maintenance issues at the Cape Fear power plant in Chatham County, Duke said.

The charges say Duke "negligently" discharged the pollutants. Employees failed to "exercise the degree of care that someone of ordinary prudence would have exercised" and aided and abetted each other.

The charges are misdemeanors.

Duke revealed a proposed settlement of the charges Wednesday in an earnings report that put \$102 million into a litigation account.

The possibility of criminal charges had hung over the nation's biggest electric utility for a year.

A February 2014 spill of 39,000 tons of coal ash turned the Dan River the color of cement. The spill prompted a public outcry, investigations and – occurring in Eden, the hometown of N.C. Senate leader Phil Berger – legislators’ scrutiny.

Within weeks, a federal grand jury in Raleigh began probing a “suspected felony” involving Duke’s coal ash handling.

Wide-ranging subpoenas to Duke, 18 current or former state environmental regulators and the utilities commission demanded inspection records, correspondence and enforcement documents regarding the 108 million tons of ash stored at power plants scattered across the state.

Advocates accused Duke and the administration of Gov. Pat McCrory, a former Duke Energy employee, of working together to avoid harsh punishment for the company.

Groundwater contamination apparently from coal ash has been found at each of Duke Energy’s 14 North Carolina coal-fired plants. Duke has reported leaks that drain more than 3 million gallons a day.

The federal charges and settlement sting a fast-growing company that until Feb. 2, 2014, had largely avoided public embarrassment in recent decades.

The Dan River spill happened months before the Environmental Protection Agency issued the first national standards on coal ash. And while it was the third-largest spill of the past decade, Duke’s was the only one of the three to result in criminal charges.

The difference? An apparent determination by federal prosecutors that Duke willfully broke the law.

Dam inspectors repeatedly warned Duke to stay alert for signs of leakage into the 48-inch stormwater pipe that broke under an ash pond at the retired Dan River power plant in Eden, records show.

Only after the pipe broke did Duke learn that it was made of metal, not the much stronger concrete that the utility had assumed.

The North Carolina Department of Environment and Natural Resources says the federal settlement won’t affect state lawsuits over Duke’s ash ponds – filed under pressure from advocacy groups – or investigation of groundwater contamination.

DENR cited Duke for eight violations at seven power plants after the spill but has levied no fines. In March, DENR cited Duke for violations after the company pumped 61 million gallons of water from ash ponds into a tributary of the Cape Fear River.

About a dozen environmental groups have been allowed to join the state’s four lawsuits, giving them a say in any settlements regarding 12 of the 14 power plants. The groups have also filed federal lawsuits against several Duke power plants, all still before the courts.

A \$100 million settlement would be second largest under the landmark 1972 Clean Water act if it were solely a fine. Instead, the settlement is expected to include money for community-service and mitigation projects.

The Dan River spill

The EPA declared the cleanup of the Dan River finished in July, after Duke vacuumed up 3,000 tons of ash and sediment. More than 90 percent of the spilled ash was left in the river. EPA said removing it would do more harm than good.

The U.S. Fish and Wildlife Service, working with North Carolina, Virginia and Duke, is leading an assessment of the environmental damage. It's likely to end with Duke paying for restoration projects in the Dan River basin.

A Duke-commissioned study in November found freshwater mussels are thriving in the Dan. North Carolina's Department of Environment and Natural Resources reported that the river-bottom bugs and worms at the base of the food chain are also healthy.

Other experts say one year is far too short a time to gauge the long-term effects of the potentially toxic metals in ash on the river. Metals in the river bottom may recirculate into the water.

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Read more here: http://www.newsobserver.com/2015/02/20/4570946_criminal-charges-filed-against.html?rh=1#storylink=cpy