

Investigation Into Coal Ash Spill Widens

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RALEIGH, N.C. (AP) — Federal prosecutors widened their investigation triggered by a massive coal ash spill in North Carolina, demanding reams of documents and ordering nearly 20 state environmental agency employees to testify before a grand jury.

The subpoenas were made public by the N.C. Department of Environment and Natural Resources on Wednesday. They also ordered state officials to hand over any records pertaining to investments, cash or other items of value they might have received from Duke Energy or its employees.

Charlotte-based Duke also confirmed it was served with a new subpoena, the second received by the nation's largest electricity provider. Company spokesman Tom Williams declined to discuss it.

On Feb. 2, a pipe running under a coal ash pond collapsed at Duke's Dan River Steam Station in Eden, coating the bottom of the Dan River, near the Virginia border, with toxic ash up to 70 miles downstream.

Meanwhile, state officials said Duke successfully contained "about 90 percent" of the flow from a second pipe at the dump spewing arsenic-laced groundwater into the river.

Public health officials have advised residents not to touch the river water or eat the fish.

State environmental Sec. John Skvarla refused to answer when asked at a news media briefing if he had been served with a subpoena. Hours later, Skvarla spokesman Drew Elliot said in an email that his boss had not been served.

Skvarla was appointed last year by Gov. Pat McCrory, a Republican who worked for Duke Energy for more than 28 years. Josh Ellis, McCrory's spokesman, confirmed the governor had not been subpoenaed.

Among those ordered to appear before the grand jury next month is Tom Reeder, the Division of Water Quality director who oversees the state's enforcement of environmental violations at Duke's 31 coal ash dumps located at 14 coal-fired power plants spread across North Carolina.

The 20 subpoenas disclosed by the state agency follow two Feb. 10 subpoenas, which were issued the day after a story by The Associated Press raised questions about a proposed deal between state officials and Duke that would have fined Duke \$99,111 to settle violations over toxic groundwater contamination at two facilities.

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The settlement came about after a coalition of citizen groups tried to use the U.S. Clean Water Act to sue Duke in federal court last year. The state agency intervened three times to use its authority to issue violations over the pollution and take the case to state court, where the agency quickly negotiated the proposed settlement that included no requirement Duke actually clean up its past pollution or prevent further contamination.

The citizens groups opposed the deal, saying it shielded Duke from far harsher penalties it might have faced in federal court had the state not intervened. The state put the settlement on hold last week, the day after the AP reported on it.

Skvarla said he briefed McCrory before intervening, but he never discussed the specific terms of the settlement. Environmental groups have suggested Skvarla shepherded a "sweetheart deal" for McCrory's former employer.

Since his first unsuccessful campaign for governor in 2008, campaign finance reports show Duke Energy, its political action committee, executives and their immediate families have donated at least \$1.1 million to McCrory's campaign and affiliated groups that spent on TV ads, mailings and events to support him.

The groups want Duke to remove its coal ash from the leaking, unlined pits adjacent to rivers and lakes and move it to sealed landfills licensed to handle toxic waste. The company has said it plans to "close" an unspecified number of its dumps, perhaps by covering the acres of ash with giant tarps to keep rainwater out.

In a local television interview Wednesday, McCrory said his preference was for Duke to remove its dumps, but that other options would also be considered. Echoing a contention made earlier by Skvarla, the governor suggested scooping out the toxic ash and hauling it away might actually cause more environmental harm than leaving it in place.

"The best case scenario is to move the ash ponds, but I also have to understand that in some cases that option may not be environmentally sound or may cause a worsening of the situation," McCrory told WRAL of Raleigh.

Asked for a real-world example or scientific study suggesting that moving toxic ash away from rivers and lakes might be harmful, staff at the state environmental agency did not provide one.

Utilities in other states have either removed ash from unlined pits near waterways or are currently doing so, including South Carolina Electric & Gas. Duke has also safely removed some ash from its facility near Asheville.

At the media briefing, Skvarla criticized reports by AP and other media that raised questions about whether the deal with Duke proposed by his agency was in the best interests of North Carolina's residents. Rather than legal adversaries, he said his agency and the environmental groups had been working in concert.

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"We're on the same side of the table," Skvarla said. "We all have the same outcome in mind. We are all passionate about protecting the environment. We have a legal charge to protect the environment and they as private citizens have created organizations that are dedicated to protecting the environment."

Lawyers for the groups that originally tried to sue Duke said the secretary was engaging in revisionist history. They said it was hard to be "on the same side of the table" when they weren't allowed in the room for the negotiations.

"Nothing in the state's rush to broker a quick side deal with Duke, without participation of the citizens who instituted this litigation, suggests a partnership," said D.J. Gerken, a managing attorney at the Southern Environmental Law Center. "But more striking is the state's refusal to require Duke to do anything to stop its ongoing contamination of our waters until after years of study to confirm what we already know — Duke's coal ash waste has been polluting our groundwater and rivers for years."

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