

Federal Grand Jury Investigates Duke Energy Spill

MICHAEL BIESECKER, MITCH WEISS, Associated Press

RALEIGH, N.C. (AP) — A federal grand jury planned to convene Tuesday as part of a widening criminal investigation triggered by the massive Duke Energy coal ash spill that coated 70 miles of the Dan River with toxic sludge.

The session at the federal courthouse in Raleigh comes as environmental groups amp up pressure on regulators and lawmakers to force Duke to clean up the leaky, unlined ash pits polluting North Carolina's waterways. Prosecutors have issued at least 23 grand jury subpoenas to Duke executives and state officials.

Thomas Walker, the U.S. Attorney for the Eastern District of North Carolina, declined to comment, citing the secrecy of grand jury proceedings.

The subpoenas seek records from Duke, the state Department of Environment and Natural Resources and the state Utilities Commission. They include reams of documents, including emails, memos and reports, related to the Feb. 2 spill into the Dan River and the state's oversight of the company's nearly three dozen other coal ash dumps spread out at 14 power plants.

Those called to testify include Tom Reeder, the state's water quality director.

The first batch of subpoenas was issued Feb. 10, the day after an Associated Press story raised questions about whether North Carolina regulators had helped shield Duke from a coalition of environmental groups that wanted to sue under the U.S. Clean Water Act to force the company to clean up its coal ash pollution.

Their efforts were stymied by the state environmental agency, which used its authority under the federal act to intervene. The state quickly proposed what environmentalists derided as a "sweetheart deal" where the \$50 billion Charlotte-based company would have paid just \$99,111 to settle violations over toxic groundwater leeching from two of its plants with no requirement that it stop the pollution.

That proposed settlement was put on hold indefinitely after last month's spill.

Jamie Kritzer, a spokesman for the state environmental department, declined to comment beyond saying the agency is cooperating with the federal probe.

Environmentalists had long complained about the level of coordination between Duke and North Carolina's regulators and lawmakers.

Gov. Pat McCrory, a Republican, worked for Duke for more than 28 years before retiring to campaign for the state's highest elected post.

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Following the spill, McCrory and state environmental secretary John Skvarla asked Duke for details about company plans to clean up the coal ash dumps.

Duke President Lynn Good responded last week. She said it would take the company at least two years to clean up the Eden dump, which spilled the ash into the Dan River. She said the company will move its remaining ash away from the river to either a lined landfill or a "lined structural fill solution."

Good said the company will be responsible for cleaning up after the disaster, though it is not clear how the miles of contaminated river bottom might be restored or how long that might take. Public health officials have advised people to avoid contact with the water in the Dan and not to eat the fish.

She said the company will also move ash dumps in the Asheville and Charlotte area, and is looking at options for the Sutton pits near Wilmington.

Good said the company will continue to work on long-range plans for 11 other sites where the company has leaky unlined ash pits.

Skvarla called the plan inadequate, saying he wanted more answers from Duke.

He said regulators plan to modify permits at Charlotte and Asheville area ash pits to stop pollution from seeping into public waterways. Skvarla said regulators want to stop all unauthorized discharges from those leaky ash dumps, and possibly move the waste.

But Southern Environmental Law Center senior attorney Frank Holleman said the state is dragging its feet. He said the agency had the power to force Duke to clean up the sites.

Meanwhile, more North Carolina lawmakers are calling on Duke to take action.

State Senate Leader Phil Berger, a Rockingham County Republican who lives near the spill site, said he wants the General Assembly's Environmental Review Commission to look into the issue to make sure that it "never happens again."

"As a resident of Eden, I have personally experienced the impact and understand the gravity of the recent coal ash spill," he said.

He noted that Senate Rules Chairman Tom Apodaca announced last month he is drafting a bill to require Duke to clean up the other coal ash ponds.

The co-chair of the commission that would consider the legislation, Republican Rep. Mike Hager of Rutherfordton, is a retired Duke Energy engineer who ran the five coal-fired generators at the company's Cliffside Steam Station.

In another development, North Carolina regulators say they are investigating whether Duke Energy broke the law when workers pumped contaminated water

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from a coal ash dump near the Cape Fear River.

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