Duke Wants Citizen Groups Kept Out Of Ash Action

MITCH WEISS, Associated Press

CHARLOTTE, N.C. (AP) — Duke Energy is asking a judge to prevent citizens groups from taking part in any enforcement action that would make the company clean up nearly three dozen coal ash pits across North Carolina.

The Department of Environment and Natural Resources filed a complaint against Duke last year. Several citizens groups got involved in the case, saying the waste dumps polluted groundwater.

But Duke filed a motion Monday to remove the citizens' groups from the case.

The company said the groups have an "independent right" to file claims and seek relief. But they are "prohibited from expanding this enforcement action beyond the claims asserted and relief sought by" the state environmental agency.

Duke did not immediately respond to request for comment Tuesday.

The company also filed motions in response to the state's enforcement action, denying allegations in the complaint.

Drew Elliot, a spokesman for the state regulatory agency, said he couldn't comment about Duke's action.

"We're back to a period of very actively litigation on the matter, and we will have to stick with what we said in our lawsuits," he said.

But Frank Holleman, a senior attorney with the Southern Environmental Law Center, said Duke's motion runs counter to what the company has been saying since a Feb. 2 massive coal ash spill at Duke's plant in Eden, which coated 70 miles of the Dan River in toxic sludge.

"What Duke's CEO has been saying publicly is they accept responsibility. Duke officials have said they are better than this, that they want to do the right thing for the state and they want to take action to protect our water resources. But instead of cleaning up, what they've done is lawyer up. They have filed a legal document in court denying any legal liability whatsoever," he said.

Holleman said Duke is taking the position that community groups should not play any role in the case.

"This is contrary to the spirit of what Duke is saying ... that it wants to work with local communities to clean up the site and clean up our natural resources," he said.

This is the company's latest filing. Duke recently asked a judge to shield its records from North Carolina regulators and environmental groups while a federal criminal probe is ongoing.

Federal prosecutors have issued at least 23 subpoenas as part of a widening criminal probe triggered by the Duke has received two of the subpoenas, which order the company to provide reams of documents to a grand jury that has convened in Raleigh.

Federal investigators are looking at whether the company received preferential treatment from the state environmental agency. Duke has nearly three dozen other ash pits spread out at 14 coal-fired power plants across the state.

The state enforcement case began last year when the environmental law group, working on behalf of a coalition of citizens groups, tried to use the U.S. Clean Water Act to sue Duke in federal court over groundwater pollution leeching from its coal ash dumps.

The state environmental agency instead used its authority to issue violations and take the case to state court, quickly negotiating a settlement involving two plants that would have fined Duke $99,111 with no requirement that the $50 billion company clean up its pollution. The citizens groups protested, calling it a "sweetheart deal" intended to protect Duke from possibly harsher federal penalties.

The agency asked a judge to dismiss that agreement two weeks ago, saying it now intends to move forward in court. The citizens groups have intervened in the case, meaning they will have access to documents Duke would provide.

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