
From: Cooper, Kathy <kcooper@ncdoj.gov>
Sent: Monday, May 06, 2013 10:38 AM
To: Presnell, Lacy
Cc: Osborne, Jay L; Waylett, Kathleen
Subject: FW: State of NC v. CP&L d/b/a Progress Energy Carolinas, Inc. (13 CVS 4061) Attorney Client Privileged and Attorney Work Product
Attachments: Draft NPDES Permit Language re Coal Plants_(45552341)_1-c.pdf

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From: Case, Charles D. [<mailto:ccase@hunton.com>]
Sent: Friday, May 03, 2013 3:47 PM
To: Cooper, Kathy
Cc: Emory, Frank; Rosser, Brent; Billy Clarke; Garry.Rice@duke-energy.com; Daniel.Kemp@pgnmail.com
Subject: State of NC v. CP&L d/b/a Progress Energy Carolinas, Inc. (13 CVS 4061)

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SETTLEMENT COMMUNICATION

Kathy,

Attached is draft language for DWQ's consideration. Duke understands that it was requested to provide this type of draft language, which can serve as a basis for discussions about potential resolution of the pending lawsuit over Asheville and the outstanding NOI over Riverbend, as well as other coal-fired plants in North Carolina.


Specifically, the attached language has been drafted with the intention that it could provide a starting point for the language of a consent judgment to resolve any pending litigation and/or also as additional language for the plants' NPDES permits.

It is our understanding that this language will be provided to Chuck Wakild and Lacy Presnell, as well as other appropriate DENR officials involved in this issue, so that it will provide a basis for discussions that might occur as early as next week.

Please call me at your convenience. In the meantime, have a great weekend!

Regards,

: Charles

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Draft Language for possible inclusion in schedules of compliance or NPDES permits

Definitions

Engineered structural drainage – Discharge from engineered drainage structures (e.g. toe drains, French drains, chimney drains) associated with earthen coal combustion residual impoundments designed to maintain dike integrity are hereby covered by this permit.

Other Channelized Drainage – Other surface water conveyances influenced by coal combustion residual impoundments possessing a continuous, measurable flow.

Drainage Identification

The Permittee will identify any engineered structural drainage not already shown in the permit or pending application for the facility and any other channelized drainage associated with coal combustion residual impoundments within 180 days of the issuance of this permit.

Special Condition A (##) Coal combustion residual Impoundment drainage

All discharges from engineered structural drainage (e.g. toe drains, French drains, chimney drains, etc.) and other channelized drainage identified at the facility and associated with earthen impoundments containing coal combustion residuals are hereby covered by this permit. The Permittee will perform qualitative inspection of engineered structural drainage flows at least _____ and maintain records of inspections onsite for a minimum of _____ years. Records will be made available upon request by the Division. Any significant changes in these flows that have the potential to impact water quality should be reported to the Division. Each qualitative inspection shall consist of:

- Inspection date and time
- Name and signature of the inspector(s)
- Any features needing maintenance or repairs
- Any unusual events observed (e.g. excessive erosion, significant changes in ash dike drainage flow volume, abnormal ash dike drainage pathways (based on historical inspections), atypical coloration of ash dike drainage, observed oil sheens)

Sampling and Analysis

The Permittee will sample engineered structural drainage structures at least _____ and submit those results along with the monthly Discharge Monitoring Report for the month in which the samples were taken. A reduction in sampling frequency may be requested after one calendar year of reporting. Additionally all engineered structural drainage need not be monitored if some are deemed substantially identical (i.e. representative) by the Division.

Adverse Impacts to Receiving Waterbody

As engineered structural drainage and other channelized drainage is very small compared to other permitted flows, potential impacts from coal combustion residual impoundment drainage flows will be considered, on a case by case basis, by the Division in developing required conditions to ensure and document adequate protection of water quality.