

Comments made by Molly Diggins, State Director of the NC Sierra Club, before the
Environmental Management Commission on April 22, 2014

Good afternoon.

My name is Molly Diggins and I am the State Director of the North Carolina Chapter of the Sierra Club. The Sierra Club has over 55,000 members and supporters in North Carolina who are concerned about coal ash clean-up. Thank you for the opportunity to speak today.

Addressing our state's coal ash crisis is certainly a great challenge. Fortunately, it's a challenge we can meet. Working together, we have done so before on similar issues that also seemed overwhelming at times.

In 2002, the General Assembly successfully dealt with another source of pollution from coal-fired power plants: harmful air emissions linked to childhood asthma. The Clean Smokestacks Act achieved significant actual reductions in air pollution, on schedule, driven by a timetable set by a bipartisan vote of the General Assembly -- and supported by the utilities.

Today, as we talk about coal ash, I find it helpful to keep past successes in mind as we address what is a certainly a dangerous situation that needs the legislature's attention, action and leadership.

North Carolina has more than 30 wet coal ash pits at 14 sites around the state. These waste pits are no more than unlined holes in the ground in close proximity our waterways -- including drinking water supplies.

For the most part, these wet coal ash pits were constructed in the 1960's, before the passage of the Clean Water Act and before adoption of modern standards for waste disposal. While other waste disposal facilities were required to either upgrade to standards that protect groundwater and surface water or to close, very little has changed in how we dispose of wet coal ash.

Simply put, Duke Energy's wet coal ash pits are relics of the 1960s.

As a case in point, not a single one of North Carolina's construction and monitoring standards for landfills applies to wet coal ash pits. Those landfills standards are intended to address some of the same risks.

The point is clear. Despite being a Fortune 500 company, with profits of \$2.7B last year, Duke Energy has successfully been allowed to manage its wet coal ash waste as if the clock had stopped half a century ago.

As the people of North Carolina look to the legislature for a solution, there are three things we would encourage you to consider as essential components of legislation in the short session.

First, we are counting on you to prevent the problem from getting worse. Wet coal ash disposal should be phased out. Duke Energy has already indicated it is on track to do so. We ask that you hold Duke accountable and put an end to the practice in law.

Secondly, any real solution must have a timeline, with a fixed date to close out all 33 wet coal ash ponds and to remove the ash to dry, lined storage away from the water. We appreciate that Sen. Apodaca has indicated that the Senate legislation will include a such a timetable.

Third, criteria must be provided for prioritizing wet coal ash ponds for closure. The toxic pits that pose the most immediate threat to groundwater and surface water supplies should be closed first.

Just an additional word about closure of coal ash ponds:

We would encourage the legislature to set minimum standards, based on scientific data, for closure of the coal ash ponds. We know that moving the coal ash from unlined ponds near water will eliminate the threat to groundwater and surface water. The standards should allow alternatives only if Duke Energy can adequately demonstrated that those alternatives will be just as effective in protecting water supplies.

As the legislature considers action to clear up coal ash, there is some housekeeping to be done in the state's own statutes and rules.

We need to bring coal ash under the state's current waste management laws. Currently, North Carolina is the only state in the country that does not treat wet coal ash as solid waste. It needs to be made clear that ash that comes out of a wet coal ash pond is managed as solid waste. At a bare minimum, we ask you to make sure that our standards for handling wet ash waste are at least as protective as the standards we have for other forms of waste.

And finally, although attention has been focused on wet coal ash pits, structural fill also lacks basic regulation. At a minimum, liners and groundwater monitoring are basic requirements that should be added to law when coal ash is used as structural fill.

As we move forward, it is our hope that North Carolina will adopt a regulatory program that requires a solid waste permit for all coal ash disposal, including structural fill, and one which affords adequate opportunity for public comment on permits as well as timely public access to information. The decisions you make will affect local communities across the state. The voices of citizens need to be heard in these decisions, just as you are hearing today from the public.

In closing, coal ash is a can that has been kicked down the road for far too long. The Dan River spill was a terrible disaster - but it's opened all our eyes to the reality that we need to deal with our state's coal ash problem now.

We encourage the ERC to take effective action in the short session to protect our communities and our waterways from toxic coal ash. Thank you for the opportunity to speak.