



Clean Water for North Carolina

Clean Currents

Spring 2019

A newsletter of clean water and community environmental justice issues

Coal Ash Communities Continue Fight for Justice, Demanding Full Excavation

It's been 5 years since the Dan River spill, when a pipe draining the ash basin of a retired coal plant in Eden, NC burst, releasing 39,000 tons of coal ash. Duke Energy pled guilty to criminal negligence for improperly sealing the pipe, allowing the sludge, laced with arsenic, lead, mercury, and a host of other harmful pollutants, to flow into the river. This disaster revealed the dangers of wet coal ash storage next to rivers, and motivated legislators to pass the Coal Ash Management Act (CAMA), requiring Duke Energy to submit closure plans for all 14 coal ash sites in the state. "High risk" sites would be fully excavated while a range of closure options would be proposed for "low risk" sites. When it comes to groundwater contamination and impacts to surrounding communities, however, there is no such thing as "low risk." Since the Dan River spill, communities across NC have spoken out at every opportunity to tell NC Dept. of Environmental Quality to protect their communities and require Duke to remove its coal ash from unlined leaking ash pits.

The impacts of coal ash contamination raise Environmental Justice concerns at several sites across the state. Many of the residents living closest to coal ash pits in NC are people of color and/or low income communities. Polluting industries often avoid placing operations in or prioritize cleanup for wealthier communities with more resources to organize and fight against pollution. Of the 14 coal ash sites in NC, 8 were ranked "high risk" and their coal ash was moved into lined landfills. The sites closest to Asheville and Wilmington, relatively affluent communities and home to several environmental organizations, were among the first to be fully excavated. The coal ash from these sites has been trucked to landfills in poorer communities -- to Cliffside, whose own coal ash still sits in unlined pits below the groundwater level held in place with leaky, failing dams, and to a new ash landfill in a low-income area of Chatham County with other major polluting industry.

The largest coal ash deposits in NC are at Duke Energy's Roxboro power plant, 70 miles NE of Raleigh. The power company bought farmland at low cost from mostly African-American families in the 1960s and used it to build an electric plant and pile up coal ash. Residents have been victims of Environmental Injustice repeatedly, including being subjected to blowing ash and intense air emissions, then finding that many of their drinking water wells were contaminated by toxic coal ash chemicals. Before CAMA rules were weakened in 2016, Roxboro and other sites were ranked as "intermediate risk," with Duke likely required to excavate these sites. Faced with high cleanup costs and pending lawsuits, Duke made a deal to provide alternate water supplies to folks living within ½ mile of coal ash sites in order to get a "low-risk" ranking and cheaper closure options. Some communities got public water hookups, but despite strong advocacy, residents around Roxboro and Belews Creek power plants, both African American communities, got only filtration systems that they don't trust.

Coal ash must be stored at least 5 ft above the water table, with groundwater monitoring. Recent reports show that coal ash sites across NC are currently violating the federal coal ash rules and contaminating groundwater -- only two fully excavated sites are not in violation! Duke Energy wants to put a cap on the remaining sites and leave million tons of ash to pollute groundwater. In January, DEQ scheduled "information sessions" on the remaining 6 coal ash sites to get public input on closure proposals.

Residents turned out in droves once again, rejecting the disempowering format and demanding to hear each other's questions and comments. Residents overwhelmingly called for full excavation in every single community. If DEQ truly fulfills their mission to protect communities rather than industry, we should see "full excavation" as the chosen closure method for every coal ash site across the state! See Page 8 for how YOU can help!



Community Members and Advocates Speak Out at Cliffside Coal Ash Closure Meeting

WHO WE ARE

Clean Water for North Carolina

Clean Water for North Carolina is a private, non-profit organization based in Asheville, NC. CWFNC works to ensure that all people have a right to live, work, and play in clean and safe communities. Together, we have the power and responsibility to work for a healthy and sustainable environment. Our staff works with an active and diverse board of directors, as well as members, to increase grassroots involvement in environmental decisions.

CWFNC spearheads action statewide and helps grassroots and environmental groups, individuals, and local governments develop strategies to address threats to the environment.

Our Mission

CWFNC promotes clean, safe water and environments and empowered, just communities for all North Carolinians through organizing, education, advocacy, and technical assistance.

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Seeking a “Just Transition” for a Climate We Can All Live With

With the introduction in Congress of the resolution for the “Green New Deal,” by Representatives Ocasio-Cortez and Markey, a deeper national conversation has begun about how to achieve a stable, livable climate to protect everyone’s health and safety, while at the same time protecting those most at risk from any economic impacts and environmental injustices. The concept of a “just transition” is many decades old, and has been used to call for retraining of workers trapped in toxic and nuclear industries—it’s now much needed to deal with the climate emergency!

While some have been critical of the social justice aspects of the Green New Deal, such as full employment and a wider economic safety net, remember that those were key components of the original Roosevelt era “New Deal,” to recover from the nation’s deepest depression and bring work to millions who had lost their jobs due to the crash of financial markets that had speculated shamelessly.

In the same way, our civilization has speculated shamelessly on economic development dependent on fossil fuels and other highly centralized and capital intensive energy sources, and it’s well on its way to crashing the climate as well as worldwide economies. Any effort to bring climate change under control must pay particular attention to people of color and low income, and women, many of whom are already deeply disadvantaged in seeking employment, education and even basic needs like housing, food, safe water and air. The transition to a new energy economy is already creating many new jobs--there are now more employees in the renewable energy sector than in all of the US coal and nuclear plants combined.

Despite resistance from big utilities like Duke Energy, whose shareholders’ profits are tied to building big, expensive power plants (and pipelines) and controlling fuels like fracked gas, we must create ways to affordably distribute renewable technologies so everyone has access, either through local suppliers or off the grid systems. It’s frankly immoral to keep letting utilities define our energy and climate future. The Green New Deal may not be perfect, but it’s fostered a historic and creative conversation we all need to engage in!

GenX: Throwing Caution to The Wind

As we go to press, two stories related to GenX, have been published with grave implications both for North Carolinians’ health and the credibility of our environmental agency. GenX is the perfluorinated compound produced by Chemours, which was supposed to be a safer replacement for C-8, produced until 2010 at DuPont’s Fayetteville Works and used for non-stick and stain-resistance surfaces.

First, NC Policy Watch reported that over a decade ago, an employee of NC Dept. of Environment and Natural Resources (now DEQ) found evidence of air transmission of C-8, but when he tried to sound the alert, he was shut down by the agency. CWFNC was part of the C-8 working group, seeking to stop discharges and emissions of C-8 to the environment, but the agency would never confirm rumors that we heard about air emissions being the likely source of well contamination. NC’s recent whistleblower protection law would have helped get that information to the public much sooner!

Second, a new air permit has just been issued to Chemours. It’s based on Chemours’ projection that a thermal oxidizer will reduce air emissions by 99%. For compounds that are persistent and bioaccumulating in the environment, reduction by 99% still allows for exposures to continue and even grow! Despite comments from many, including CWFNC, that the production should be stopped completely at this facility, the DEQ’s permit is appallingly inadequate.

Preventing Harm to Communities

Corridor for Injustice – Atlantic Coast Pipeline Traps Eastern NC Communities

As Governor Cooper proclaims his dedication to combatting climate change and fighting for coastal communities against offshore drilling, the ACP has begun ripping through rural, low income communities and communities of color in eastern NC. The 600 mile fracked gas pipeline was approved by a federal agency in 2017, claiming there was “public necessity and convenience”. Gov. Cooper’s Dept. of Environmental Quality approved the most critical state permit—the 401 Water Quality Certification—in Jan 2018, the same day that the Gov’s office announced a \$57.8M fund from pipeline builders Duke and Dominion, supposedly for economic development, renewable energy and mitigation. Only recently we learned that Cooper and advisors were in close communication

with Duke and Dominion at the time of this approval, and that Cooper had a leasing arrangement with Duke for a solar installation on his land in Nash County.

In NC, 200 miles of highly pressurized gas would snake through 8 eastern counties: Northampton, Halifax, Nash, Wilson, Sampson, Johnston, Cumberland and Robeson counties, disproportionately burdening African American and Native American communities. All but Johnston County have both lower average income than NC and a higher percentage of people of color. While the announced terminus would be in Robeson County, in an area with more than 95% Native American residents, the ACP, if not stopped, is likely to extend into SC to bring the gas to the coast for export to international markets.

If It’s Not Needed, Why Is the ACP Being Built?

Reports by the Institute for Energy Economics and Financial Analysis and Synapse Energy Economics both documented the lack of need and substantial impacts of the ACP. These were ignored by the Federal Energy Regulatory Commission (FERC) when they certified the “necessity” for the pipeline. Energy demand in the Southeast has been flat for years, and is likely to be for decades, so ACP’s claim of rising energy demand rings hollow. FERC is generally recognized to be a “rubber stamp” for the oil and gas industry’s big projects.

As the ACP’s builders, huge utilities, can request recovery of costs through rates charged to energy customers and FERC offered a 14% rate of profit on their expenses, these utilities knew they could make a lot more profit on a pipeline than generating electricity. Most energy customers haven’t yet realized how much their rates could go up as a result of a pipeline that’s not meeting any need and could be out of service within 20 years if, as expected, demand stays flat and gas production dwindles.

A Monument to Environmental Injustice

The key reason Clean Water for NC became involved in challenging the ACP is the enormous scope of environmental injustices it would cause all along the pipeline. It’s clear that the pipeline builders saw cash-strapped local governments as more likely to yield to the lure of promised tax revenues and small grants. In May, 2018, CWFNC and a dozen other groups filed a Civil Rights Complaint with EPA, but were told that the case was too “broad” and would need to be narrowed to one or two communities, appallingly unjust to all of the impacted communities along the ACP corridor. We saw that FERC and NC’s EJ analyses were deeply flawed, actually designed not to find “disproportionate impact” on communities of color. FERC continues to grant approval for construction in Northampton County, with 60% African American population, despite ACP’s work stoppage due to cancelled permits.



Laying strung pipe in Northampton County during “work stoppage”

How Can It Be Stopped?

Mounting visible resistance and legal challenges are raising questions about the viability of the ACP, as project costs skyrocket and construction delays pile up. The pipeline has been stripped of seven federal permits, as the courts find that federal agencies rushed through faulty permitting processes and sidelined any real protections for communities and the environment. On the ground, impacted landowners, residents and public interest groups continue to organize resistance through protest flotillas on impacted waterways, press conferences and sit-ins at the DEQ and Governor’s office. With distrust in the actual completion of the ACP growing on Wall Street, financial analysts recently graded the project “credit negative.”

While ACP representatives say confidently that they will prevail, the future of the ACP is an uncertain blur as the project’s façade of “public necessity” and the veneer of “environmental stewardship” are chipped away in the courts and on the ground.



Victory for Aqua NC Water Customers, While Sewer Customers Fight On

Water customers of the private, for-profit utility giant Aqua NC won a huge victory this past December, as our Utilities Commission ultimately decided to grant the company less than a third of the increase in revenue from water service they had requested. While both the Public Staff and Attorney General Josh Stein joined customers in challenging Aqua's proposed rates hike, the Commission's final decision is a testament to all the hard work and organizing among Aqua customers during the rate hearings, and a victory for all Aqua customers throughout the state, burdened with poor drinking water quality and service!

BUT, the fight for just, transparent water and wastewater service for all NC communities churns on, as customers who receive wastewater service from Aqua continue to fight for fair, affordable rates. The company currently

charges sewer customers a high flat rate for service--\$72.04, regardless of how many gallons of wastewater are actually processed.

Not only are flat sewer charges blatantly unfair, especially for lower-income customers and those living on fixed incomes, but they also remove any incentive for customers to conserve water. If ratepayers are paying \$72 a month, regardless of how much wastewater is discharged, why bother cutting back? Customers prefer volumetric rates -- rates that reflect actual usage -- over flat rates because they are fairer. CWFNC continues to strategize with Aqua customers to challenge flat rates, support customer organizing, and point out this injustice to the Public Staff at the Utilities Commission, whose job is to ensure that utility rates are reasonable and in the public interest.

How the National Water Shutoff Crisis Hits Home in NC

Food and Water Watch recently published a report, titled *America's Secret Water Crisis: National Shutoff Survey Reveals Affordability Emergency Affecting Millions*, that takes a deep look into this national crisis estimated to have affected 15 million people in 2016. The report notes that numbers are likely even higher, as private, for-profit utilities refused to take part in the assessment. These for-profit water companies charge 65% more than publicly owned utilities nationwide, so higher rates would almost certainly have a greater effect on ability of customers to pay.

In analyzing the report's data, one troubling reality becomes clear: residents in US cities with high unemployment and poverty rates suffered the most from water shutoffs due to nonpayment. And the

same pattern appears to hold true for lower-income communities throughout North Carolina, including residents of mobile home parks.

Clean Water for NC has worked with some residents who have had their water turned off for nonpayment, and then were told they might have to pay up to \$2000 to have water or wastewater service turned back on. As we prepare to continue our outreach to impacted communities, we will advocate for policies that tackle the water access crisis, including affordability programs based on household income, extended payment periods, and multi-lingual notices. Clean Water for NC strongly believes that water is a human right and residential water shutoffs for inability to pay must be banned.

Water Justice for Mobile Home Residents

It was nearing the holidays last December, when families living in a mobile home park in Clyde, NC discovered their water had been shut off. This was not their fault - the owner of the park neglected to pay the water bill, leaving residents with no running water for over a month. News of this shut-off, along with water quality problems in other parks have drawn our attention again to the challenges faced by mobile home park (MHP) residents.

Social injustices are common in mobile home communities. Over half of all people living in mobile homes have household incomes less than \$30,000 a year. Mobile homes account for 16% of all housing in NC (2nd in the nation), and over 30% in some counties. Because of low rents and down payments, mobile

homes can be an appealing housing option. However, most manufactured housing loans are not mortgages but personal property loans, putting buyers at risk of predatory lending, with high interest rates. And because mobile homes are usually sited on rented private property, residents are at the mercy of landlords, having little recourse for eviction or failure to provide services.

Many MHP water systems have violations of the Safe Drinking Water Act, including the Lead and Copper Rule. Parks serving more than 25 people are required to operate as a public water system, with periodic reporting, but some evade this requirement. Clean Water for NC will investigate some of these risks in a new outreach initiative for mobile home parks. Watch for updates!



Hurricane Florence: A Flood of Inequalities

The devastation of Hurricane Florence is a story of inequalities that begins long before it hit the coast. The historic rains that flooded eastern NC communities were just the latest evidence of the overflowing presence of environmental stressors. Toxic waste sites, landfills, hog waste lagoons, coal ash sites, and other polluting sources are commonly found in this long-injured region and the specific locations of these sites are not accidental. Undesirable and toxic by-products of global consumption have preferentially been placed in the back yards of African-American, indigenous communities and other minorities as well as low income communities. NC is no different. In addition to ongoing state and local policies, racialized social norms have targeted the abilities of poor people and communities of color to thrive. These communities often exist in the convergence of poor housing conditions, food “deserts”, little or no healthcare, unemployment, low wages, and all while being poisoned by their environments.

To survive and recover from climate disaster like Hurricane Florence while being a part of targeted and poor communities is an exercise in resilience. Florence left in its path close to forty inches of rain, loss of power, the destruction of housing and infrastructure, sewer and hog waste overflows, and billions of dollars in losses. But who is most affected and destabilized, and for how long, is highly dependent on those inequalities.

To talk about the impacts of climate change necessitates a conversation about the intersections of race, class, and gender. As federal, state, and nonprofit agencies consider a way forward to avoid climate catastrophe, we must focus on those who have been negligently left behind, and we must challenge the systems that create those conditions. Florence reminds us that we have much work to do and we cannot do it right unless we listen closely and follow the leadership of impacted communities while they tell us what is needed, not just to survive, but to thrive.



What is WOTUS and How Will EPA's Proposed Rollbacks Impact NC?

The “Waters of the United States”, also known as WOTUS, is a policy of the US Environmental Protection Agency and the US Department of the Army that defines the scope of waters protected under the federal Clean Water Act. In 2015, under the Obama administration, a revised rule expanded the definitions to include groundwater and many wetlands. The changes were resisted by many farmers, developers, timberland owners and other landowners. Years before that federal rule change, NC legislation and rules had made our regulations stronger than federal rules by requiring permits for all discharges into wetlands and groundwater. That matters, as almost all water permits are issued by state agencies, not federal.

The 2015 Rule was challenged in multiple courts, creating confusion and division. While the anti-regulatory NC Gov. McCrory was in office, NC was one of the states that sued to stop the more protective 2015 federal rule, but Gov. Cooper's administration withdrew from that suit in 2017. Shortly after, a Trump Administration Executive Order required EPA to redefine WOTUS once again,

and a draft rule was published recently. Though the EPA website says this new version hopes to achieve greater “predictability and clarity” for Clean Water Act programs, water advocates understand that the proposed federal rule would reduce the “jurisdiction” or scope of waters that would be covered by Clean Water Act protections.

Some significant changes in the draft rule are the exclusion of many wetlands, streams and ponds and removal of groundwater, which goes against a recent court ruling that confirmed groundwater is under the Clean Water Act. State agencies continue to have their own regulations, but the new WOTUS rule would loosen federal permitting requirements. At a time when black, brown and poor communities' environments and waters are already being targeted for pollution, we are concerned about the effects weaker protections in this new rule could have. While NC's stronger rules mean it is less vulnerable to federal rollbacks than many states, we'll need to keep a close eye on these proposed new federal rules and work to prevent weakening of NC's more protective clean water rules.



Polluter Accountability

Communities Impacted by Animal Waste Endure Weak Regulations

Recent public hearings on draft general permits for wet-waste swine, poultry, and cattle operations in NC brought out diverse public comments, including from CWFNC staff. These permits will govern how hundreds of animal operations will be regulated for the next 5 years. Concentrated Animal Feeding Operations (CAFOs) in North Carolina are densely situated in low-income communities with high percentages of people of color. In response to legal action from EJ communities living near hog waste lagoon and sprayfield operations, the NC Department of Environmental Quality (DEQ) is developing a community mapping tool to analyze disproportionate impacts to communities near polluting facilities. But it will be too little, too late for this permit cycle. The 5-year duration of these general permits would force neighboring communities to endure prolonged negative impacts without the critical analysis this mapping tool could provide.

Animal waste from CAFOs puts nearby communities at risk from air emissions and water contamination. A Duke University report highlights EPA's National Water Quality Inventory, showing animal feeding operations are one of the top ten sources of groundwater contamination. Over 30% of CAFOs in NC are located in communities where over 96% of residents get their drinking water from groundwater wells. Poultry operators are permitted to spray waste



Hog waste being sprayed onto fields

in fields as close as 100 feet from drinking water wells, leaving no room for error in mechanized applications. Furthermore, CAFOs are the leading source of impaired rivers and streams in nearly 12% of NC waters. With no surface water monitoring required by the draft permits, the public can't know the impact of bacteria, viruses, and chemical contaminants such as heavy metals and animal medications, that enter waterways from saturated sprayfields and leaking waste lagoons, especially during heavy rain events.

Hurricane Florence drew attention to the urgency of better regulating animal operations. Nearly 3.5 million animals perished from poultry and swine operations in eastern NC floodwaters. The draft general permits include some improvements: addition of groundwater monitoring for facilities in the 100-year floodplain, increased record keeping and transparency about animal mortality. But we are deeply concerned that, 25 years after the explosion of CAFO's in NC, DEQ still isn't doing enough to safeguard the communities impacted by the waste from animal operations. A series of nuisance suits by livestock farm neighbors has resulted in multi-million dollar judgments, but the powerful CAFO lobby pushed through 2018 NC legislation that limits filing of nuisance suits to within one year of the start of an animal operation, and only with documented violations, tough conditions to meet.



Neighbors of hog operations pray for justice in nuisance suit

EPA Enforcement Drops to Record Lows—Communities Suffer

When environmental regulations and laws are strengthened, substantial benefits result for the public: air that causes fewer deaths and less asthma, water that can support healthy biodiversity and is safe to drink, and lowers public exposure to toxic or cancer causing materials. But only if those laws and regulations are enforced, as CWFNC's long standing Environmental Enforcement Campaign documented. A new report by Public Employees for Environmental Responsibility (PEER), has pointed to a spectacular drop in EPA enforcement actions taken and fines collected in the second year of the Trump administration. It's telling that most of the enforcement actions taken were initiated during the Obama administration, but it's breathtaking that the number of criminal enforcement referrals from EPA last year, for cases that can directly threaten human health

or for intentional violations, was the lowest in 30 years!

The number of investigators at the EPA dropped to 147 last year, less than half of the investigators in 2003. With fewer investigators to pursue leads, "you are absolutely missing cases," says Doug Parker, former head of EPA's Criminal Investigation Division. This failure to hold polluters accountable leads to industry scofflaws ignoring regulations completely, usually for economic advantage. Which are the communities where violations are least likely to be found, investigated and prosecuted, especially with limited staff? Low income, people of color and rural communities, meaning that lack of enforcement has implications for Environmental Justice. Add the Trump administration's ongoing agenda to rollback clean air, clean water and hazardous waste regulations, and you have a perfect recipe to increase threats to EJ communities.

Clean Water for North Carolina

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Take Action!

As NC DEQ prepares to publish their chosen recommendations for closure of these 6 remaining coal ash sites in early April, it's likely that Duke Energy will push hard for the least expensive, least protective option — "cap in place. Communities have made it clear that no option other than Full Excavation for all 6 sites is acceptable. We urge all CWFNC allies to call Governor Cooper and key officials at DEQ to tell them that you expect them to select the MOST protective option— Full Excavation! Join impacted communities fighting for their safety, health and quality of life!

Help us call for complete excavation of coal ash at all of these ash sites impacting communities!

Key officials to contact:

Governor Roy Cooper (919) 814-2000
<https://governor.nc.gov/contact/contact-governor-cooper>
DEQ Secretary Michael Regan (919) 707-8600
Assistant Secretary Sheila Holman (919) 707-8619

