



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

March 10, 2015

CERTIFIED MAIL - # 7004 2890 0004 0654 2115
RETURN RECEIPT REQUESTED

Harry K. Sideris
Senior Vice President
Environmental, Health & Safety
Duke Energy
526 South Church Street
Mail Code EC3XP
Charlotte, North Carolina 28202

SUBJECT: Assessment of Civil Penalties for Violation(s) of
N.C. General Statute(s) 143-215.1
L.V. Sutton Electric Plant
New Hanover County
NPDES Permit No. NC0001422
Enforcement File No. LV-2015-0035

Dear Mr. Sideris:

This letter transmits notice of a civil penalty assessed against Duke Energy in the amount of \$25,108,000.00, and \$8,883.61 in investigative costs, for a total of \$25,116,883.61. Attached is a copy of the assessment document explaining this penalty.

This action was taken under the authority vested in me by delegation provided by the Secretary of the Department of Environment and Natural Resources. Any continuing violation(s) may be the subject of a new enforcement action, including an additional penalty.

Within **thirty days** of receipt of this notice, you must do **one** of the following:

1. Submit payment of the penalty:

Payment should be made directly to the order of the Department of Environment and Natural Resources (do not include waiver form). Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Please submit payment to the attention of:

S. Jay Zimmerman, P.G.
Director, Division of Water Resources
1636 Mail Service Center
Raleigh, North Carolina 27699-1636

OR

2. Submit a written request for remission including a detailed justification for such request:

Please be aware that a request for remission is limited to consideration of the five factors listed below, as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Because a remission request forecloses the option of an administrative hearing, such a request must be accompanied by a waiver of your right to an administrative hearing and a stipulation and agreement that no factual or legal issues are in dispute. Please prepare a detailed statement that establishes why you believe the civil penalty should be remitted, and submit it to the Division of Water Resources at the address listed below. In determining whether a remission request will be approved, the following factors shall be considered:

- (1) whether one or more of the civil penalty assessment factors in NCGS 143B-282.1(b) were wrongfully applied to the detriment of the violator;
- (2) whether the violator promptly abated continuing environmental damage resulting from the violation;
- (3) whether the violation was inadvertent or a result of an accident;
- (4) whether the violator has been assessed civil penalties for any previous violations; or
- (5) whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

Please note that all evidence presented in support of your request for remission must be submitted in writing. The Director of the Division of Water Resources will review your evidence and inform you of their decision in the matter of your remission request. The response will provide details regarding the case status, directions for payment, and provision for further appeal of the penalty to the Environmental Management Commission's Committee on Civil Penalty Remissions (Committee). Please be advised that the Committee cannot consider information that was not part of the original remission request considered by the Director. Therefore, it is very important that you prepare a complete and thorough statement in support of your request for remission.

In order to request remission, you must complete and submit the enclosed "Request for Remission of Civil Penalties, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form within thirty (30) days of receipt of this notice. The Division of Water Resources also requests that you complete and submit the enclosed "Justification for Remission Request." Both forms should be submitted to the following address:

S. Jay Zimmerman, P.G.
Director, Division of Water Resources
1636 Mail Service Center
Raleigh, North Carolina 27699-1636

OR

3. File a petition for an administrative hearing with the Office of Administrative Hearings:

If you wish to contest any statement in the attached assessment document you must file a petition for an administrative hearing. You may obtain the petition form from the Office of Administrative Hearings. You must file the petition with the Office of Administrative Hearings within thirty (30) days of receipt of

Assessment of civil penalty
L.V. Sutton Electric Plant
Enforcement # LV-2015-0035

this notice. A petition is considered filed when it is received in the Office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for official state holidays. The petition may be filed by facsimile (fax) or electronic mail by an attached file (with restrictions) - provided the signed original, one (1) copy and a filing fee (if a filing fee is required by NCGS §150B-23.2) is received in the Office of Administrative Hearings within seven (7) business days following the faxed or electronic transmission. You should contact the Office of Administrative Hearings with all questions regarding the filing fee and/or the details of the filing process. The mailing address and telephone and fax numbers for the Office of Administrative Hearings are as follows:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Tel: (919) 431-3000
Fax: (919) 431-3100

One (1) copy of the petition must also be served on DENR as follows:

Sam M. Hayes
General Counsel, DENR
1601 Mail Service Center
Raleigh, NC 27699-1601

Failure to exercise one of the options above within thirty (30) days of receipt of this notice, as evidenced by an internal date/time received stamp (**not a postmark**), will result in this matter being referred to the Attorney General's Office for collection of the penalty through a civil action.

Please be advised that additional penalties may be assessed for violations that occur after the review period of this assessment. If you have any questions, please contact S. Jay Zimmerman at (919) 807-6351.

Sincerely,



S. Jay Zimmerman, P.G.
Director, Division of Water Resources

ATTACHMENTS

cc: Jim Gregson, WQROS WiRO Supervisor w/ attachments
WQROS File Copy w/ attachments
WQ Permitting, Permit File NC0001422 w/ attachments
New Hanover County Health Department

